

STATE OF NEW JERSEY  
MERIT SYSTEM BOARD  
AND  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of	:	
	:	
JOSEPH DENARO,	:	
	:	
Appellant,	:	JOINT ORDER
	:	ON CONSOLIDATION AND
v.	:	PREDOMINANT INTEREST
	:	
TOWNSHIP OF TEANECK,	:	
	:	
Respondent.	:	OAL Dkt. No. CSV 09966-98N
_____	:	
TOWNSHIP OF TEANECK,	:	
	:	
Respondent,	:	
	:	
-and-	:	PERC Dkt. No. CI-H-98-45
	:	
JOSEPH DENARO,	:	
	:	
Charging Party.	:	
_____	:	

SYNOPSIS

The Merit System Board and the Chair of the Public Employment Relations Commission have issued a joint order consolidating an MSB appeal and a PERC unfair practice charge for hearing before a Special Administrative Law Judge. The MSB appeal and the charge were filed by Joseph DeNaro contesting his reassignment by the Township of Teaneck from one title to another. After the ALJ issues a recommended decision, the Commission will review the record to determine whether protected activity motivated the reassignment decision. The Merit System Board will then review the record to determine whether DeNaro's reassignment was for legitimate business reasons and was otherwise warranted under Merit System Law.

This synopsis is not part of the joint order. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission or the Merit System Board.



Relations Commission alleging, in part, that the reassignment was in retaliation for his protected activity as union vice-president. On March 2, the unfair practice charge was amended. On November 10, 1998, a Complaint was issued on the retaliation claim and on a claim alleging that the employer refused to process a grievance. The remaining allegations in the charge were dismissed. D.U.P. No. 99-5, 24 NJPER 507 (¶29235 1998).

On May 29, 1998, DeNaro appealed his reassignment to the Merit System Board, alleging that it was in retaliation for his filing of a grievance regarding his request for a promotion based on his out-of-title work. On October 8, the appeal was transmitted to the Office of Administrative Law as a contested case.

On January 8, 1999, the employer filed a motion for consolidation and a predominant interest determination that the Board has the predominant interest and that both matters should be heard by an Administrative Law Judge. On September 9, Administrative Law Judge Michael L. Ravin ordered that the matters should not be consolidated and that the Board matters should be stayed pending the outcome of the unfair practice charge.

On October 22, 1999, the employer filed exceptions. The employer seeks an order consolidating the cases and holding that the Board has the predominant interest, or in the alternative, that the Commission has the predominant interest and that the cases should be heard by a Commission Hearing Examiner designated as a Special Administrative Law Judge under N.J.S.A. 52:14F-8(a), 52:14F-6(b) and N.J.A.C. 1:1-17.6(d).

Having independently evaluated the record and considered the Administrative Law Judge's order, the Merit System Board at its meeting on December 7, 1999 and the Chair of the Public Employment Relations Commission, acting pursuant to authority delegated to her by the full Commission, on November 22, 1999 made the following determination in this matter.

The unfair practice charge and the appeal should be consolidated. They involve the same parties and the same personnel action. Consolidation will save time and expense and avoid duplication and the risk of inconsistent results. The consolidated cases should be heard by a Hearing Examiner designated as a Special Administrative Law Judge because both cases center on allegations that the Township discriminated against DeNaro because of activity protected by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

#### JOINT ORDER


The above matters are consolidated for hearing before a Hearing Examiner of the Public Employment Relations Commission designated as a Special Administrative Law Judge. The Administrative Law Judge will first offer recommended findings of fact and conclusions of law to both the Public Employment Relations Commission and the Merit System Board, disposing of all issues in controversy through a single initial decision under N.J.S.A. 1:1-18.3 and consistent with N.J.A.C. 1:1-17.8(a); and

Upon transmittal of the initial decision to both agencies, the underlying record will be forwarded to the Commission to determine whether DeNaro engaged in activity protected under the New Jersey Employer-Employee Relations Act and whether that activity, if protected, was a substantial or motivating factor in his reassignment; and

The Commission's decision and the complete record will then be sent to the Merit System Board which will then determine whether DeNaro's reassignment was for legitimate business reasons and was otherwise warranted under Merit System Law; and

Where appropriate, the matter will be returned to the Commission for its consideration of whether specialized relief is warranted under its Act.

DECISION RENDERED BY THE  
MERIT SYSTEM BOARD ON  
DECEMBER 7, 1999

  
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JANICE M. MINTZ  
COMMISSIONER

DECISION RENDERED BY THE CHAIR OF  
THE PUBLIC EMPLOYMENT RELATIONS  
COMMISSION ON NOVEMBER 22, 1999

  
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MILLICENT A. WASELL  
CHAIR