

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

In the Matter of

MICHAEL MUENCH,	:	
	:	
Appellant,	:	JOINT ORDER
	:	ON CONSOLIDATION AND
v.	:	PREDOMINANT INTEREST
	:	
BURLINGTON COUNTY	:	OAL Docket Nos. CSVYN11461-94S
EXTERMINATION COMMISSION	:	CSVYN8803-92S
	:	CSVYN741-95S
Respondent.	:	CSVYN5948-92
	:	CSVYN11729-93
	:	CSVYN10106-95
<hr/>		
COMMUNICATIONS WORKERS OF	:	
AMERICA, AFL-CIO,	:	
	:	
Charging Party,	:	
	:	
v.	:	
	:	
BURLINGTON COUNTY	:	
EXTERMINATION COMMISSION,	:	PERC Docket Nos. CO-H-96-22
	:	CO-H-96-27
Respondent.	:	CO-H-95-169
	:	

SYNOPSIS

In a Joint Order, the Chairman of the Public Employment Relations Commission and the Merit System Board remand three unfair practice charges filed by the Communications Workers of America against the Burlington County Extermination Commission and six Merit System Board appeals filed by Michael Meunch against the Extermination Commission to an Administrative Law Judge for issuance of a supplemental opinion on the consolidation and predominant interest issues. The Administrative Law Judge is directed to review each appeal and unfair practice charge in this decision and to discuss the basis for consolidating or not consolidating each appeal or charge. The Administrative Law Judge is also directed to consider predominant interest issues in light of a previous Joint Decision and Order in Glover v. State of New Jersey (Dept. of Treasury) and State of New Jersey (Dept. of Treasury) and CWA, P.E.R.C. NO. 96-13, 21 NJPER 292 (126185 1995).

This synopsis is not part of the decision. 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.

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

In the Matter of

MICHAEL MUENCH,	:	
	:	
Appellant,	:	JOINT ORDER
	:	ON CONSOLIDATION AND
v.	:	PREDOMINANT INTEREST
	:	
BURLINGTON COUNTY	:	OAL Docket Nos. CSVYN11461-94S
EXTERMINATION COMMISSION	:	CSVYN8803-92S
	:	CSVYN741-95S
Respondent.	:	CSVYN5948-92
	:	CSVYN11729-93
	:	CSVYN10106-95
_____	:	
COMMUNICATIONS WORKERS OF	:	
AMERICA, AFL-CIO,	:	
	:	
Charging Party,	:	
	:	
v.	:	
	:	
BURLINGTON COUNTY	:	PERC Docket Nos. CO-H-96-22
EXTERMINATION COMMISSION,	:	CO-H-96-27
	:	CO-H-95-169
Respondent.	:	
_____	:	

Appearances:

For the Appellant-Charging Party, Weissman & Mintz,
attorneys (Joel N. Weissman, of counsel)

For the Respondent, Stephen J. Mushinski, County Counsel
(Craig D. Bailey, Assistant County Counsel)

JOINT DECISION AND ORDER

Michael Muench was suspended several times, demoted in lieu
of layoff, and terminated from his position as a helicopter pilot for

the Burlington County Extermination Commission. He was charged with neglect of duty, misuse of public property, failure to perform duties, failure to observe regulations, insubordination, creating a disturbance, and making false statements. Muench appealed the suspensions (CSVYN11461-94, CSVYN741-95, CSVYN5948-92 and CSV11729-93), demotion (CSVYN8803-92), and termination (CSVYN10106-95) to the Merit System Board and the matter was transmitted to the Office of Administrative Law for determination as a contested case.

In addition, Muench's majority representative, the Communications Workers of America, AFL-CIO filed three unfair practice charges with the Public Employment Relations Commission. Two charges alleged that Muench was illegally suspended (CO-95-169) and terminated (CO-96-22) in retaliation for filing grievances and reporting a possible pesticide misapplication to the Department of Environmental Protection. A third charge alleged that a shop steward, Daniel Stevenson, was suspended (CO-96-27) for filing a group grievance and that Muench was a co-grievant who was terminated during Stevenson's suspension. The charges were consolidated and a Complaint was issued.

CWA and Muench moved to have four Merit System Board appeals (CSVYN11461-94, CSVYN741-95, CSVYN8803-92 and CSVYN10106-95) and the unfair practice proceedings consolidated for hearing before an Administrative Law Judge. CWA and Muench also asked that the Administrative Law Judge's decision first be reviewed by the Commission to determine whether the employer's actions violated the

New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and to determine what remedies would be appropriate for any violations of that statute and then be reviewed by the Merit System Board to determine whether disciplinary charges should be sustained under the Civil Service Act, N.J.S.A. 11A:1-1 et seq., and to determine what remedies would be appropriate for any violations of that statute.

The County then filed a motion seeking consolidation of the Merit System Board appeals cited by CWA and Muench plus two other disciplinary appeals (CSVYN5948-92 and CSVYN11729-93). However, it added that the demotion appeal (CSVYN8803-92) involved economic issues and should not be consolidated with the disciplinary appeals.

CWA and Muench responded by agreeing that all the disciplinary appeals cited by the County should be consolidated and the demotion appeal (CSVYN8803-92) should not be consolidated with the other appeals. It amended its motion accordingly.

The County then changed its mind about the demotion appeal and responded that it should be consolidated with the other appeals because it involved allegations of harassment and discrimination. It amended its motion accordingly.

On January 11, 1996, Administrative Law Judge J. Roger Persichilli issued a decision and order consolidating the first five Merit System Board appeals captioned above for hearing before an Administrative Law Judge. The decision also stated that the parties had agreed to proceed separately to hearing on the termination appeal (CSVYN10106-95). The caption on the Judge's opinion does not cite

this appeal and the Judge's opinion does not indicate whether the hearing on the termination appeal was to encompass the unfair practice charge contesting Muench's termination. The order also directed that the Administrative Law Judge's decision be reviewed by the Merit System Board only. Neither the Administrative Law Judge's order nor the caption of his opinion cited any of the unfair practice charges.

Having independently evaluated the record and considered the Administrative Law Judge's order, the Merit System Board at its meeting on March 6, 1996 and the Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, on February 21, 1996 agree that this matter must be remanded to the Administrative Law Judge for further consideration of the consolidation and predominant interest issues and for the issuance of a supplemental opinion in accordance with this decision within 14 days. The Administrative Law Judge is directed to review each of the Civil Service appeals and the unfair practice charges captioned in this decision and to discuss the basis for consolidating or not consolidating each appeal or charge. The Administrative Law Judge is also directed to consider predominant interest issues in light of the Joint Decision and Order in Glover v. State of New Jersey (Dept. of Treasury), and State of New Jersey (Dept. of Treasury) and CWA, P.E.R.C. No. 96-13, 21 NJPER 292 (¶26185 1995) (copy attached) in which the Commission and the Merit System Board agreed that the Administrative Law Judge would first offer recommended findings of fact and conclusions of law to both the

Commission and the Merit System Board; the Commission would then determine whether the employee had engaged in activity protected by the Employer-Employee Relations Act and whether that activity, if protected, was a substantial or motivating factor in the personnel actions; and the Merit System Board would then determine whether the personnel actions were for legitimate business reasons and were otherwise warranted under Merit System law; and, if appropriate, the Commission would then consider whether specialized relief was warranted under its Act. Accordingly the following determination is made:

ORDER

The above-captioned matters are remanded to the Administrative Law Judge for consideration of the consolidation and predominant interest issues in accordance with this decision and for the issuance of a supplemental opinion within 14 days.

DECISION RENDERED BY THE
MERIT SYSTEM BOARD ON
March 6, 1996

DECISION RENDERED BY THE CHAIRMAN
OF THE PUBLIC EMPLOYMENT RELATIONS
COMMISSION ON February 21, 1996


Linda M. Anselmini
Commissioner


James W. Mastriani
Chairman

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

In the Matter of

GEORGE GLOVER,

Appellant,

v.

STATE OF NEW JERSEY
(DEPARTMENT OF TREASURY),

Respondent.

JOINT ORDER
ON CONSOLIDATION AND
PREDOMINANT INTEREST

OAL Docket No. CSV 10708-94

STATE OF NEW JERSEY
(DEPARTMENT OF TREASURY),

Respondent,

-and-

PERC Docket No. CO-H-95-71

COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO,

Charging Party.

Appearances:

For the Appellant-Charging Party, Weissman & Mintz,
attorneys (Steven P. Weissman, of counsel)

For Respondent, Deborah T. Poritz, Attorney General
(Mary L. Cupo-Cruz, Senior Deputy Attorney General)

JOINT DECISION AND ORDER

George Glover was suspended and then terminated from his
position as a senior stock clerk in the Division of Taxation,
Department of Treasury. He was charged with insubordination,

neglect of duty, conduct unbecoming a State employee, inhibiting the effective operation of State service, and failure to follow proper procedures. Glover, a Civil Service employee, requested a hearing before the Merit System Board and the matter was transmitted to the Office of Administrative Law for determination as a contested case.

In addition, Glover's majority representative, the Communications Workers of America, AFL-CIO, filed an unfair practice charge with the Public Employment Relations Commission. The charge alleges that Glover had been illegally suspended and terminated in retaliation for his efforts as CWA's chief shop steward to represent a senior clerk in a work-related dispute between that employee and his supervisor. In its Answer, the employer asserts that Glover's efforts exceeded the proper role of a shop steward and therefore were not protected by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The employer also alleges that the suspension and termination were motivated and warranted by other events in addition to Glover's efforts to represent the senior clerk.

Administrative Law Judge Joseph Lavery issued an Order consolidating these matters, directing that an Administrative Law Judge hear the consolidated case, finding that neither the Merit System Board nor the Public Employment Relations Commission has the predominant interest, and directing that the matter first be considered by the Merit System Board and then by the Commission. CWA has filed exceptions and supplemental exceptions asserting that a Commission Hearing Examiner should be appointed as a Special Administrative Law Judge to hear the case and that, consistent with

settled precedent, the case should first be considered by the Commission and then by the Merit System Board. The employer has filed a reply and a supplemental reply to the exceptions and has also filed cross-exceptions asserting that the Merit System Board has the predominant interest and should consider the case first.

Having independently evaluated the record and considered the Administrative Law Judge's order, the Merit System Board at its meeting on July 25, 1995 and the Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, on August 7, 1995 made the following determination in this matter.

ORDER


The above matters are consolidated for hearing before an 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 Glover 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 suspension and termination; and

The Commission's decision and the complete record will then be sent to the Merit System Board which will then determine whether Glover's suspension and termination were for legitimate business reasons and were otherwise warranted under Merit System law; and

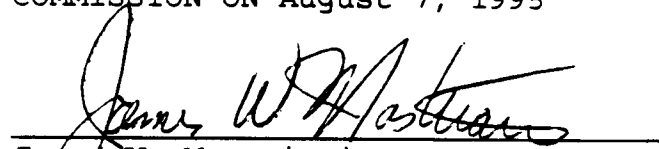
Where appropriate, the matter will be returned to the Commission for its consideration of whether specialized relief is warranted under its Act.

DECISION RENDERED BY THE
MERIT SYSTEM BOARD ON
July 25, 1995


Linda M. Anselmini
Commissioner

DATED: Trenton, New Jersey
July 25, 1995

DECISION RENDERED BY THE CHAIRMAN
OF THE PUBLIC EMPLOYMENT RELATIONS
COMMISSION ON August 7, 1995


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
August 7, 1995