

P.E.R.C. NO. 86-144

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY SHERIFF'S DEPARTMENT,

Respondent,

-and-

Docket No. CI-86-26-133

WILLIAM DENVER,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that an unfair practice charge filed by William Denver against the Essex County Sheriff's Department with the Commission should be consolidated with an appeal filed by Denver with the Civil Service Commission for a hearing before the Office of Administrative Law. The charge alleged the Sheriff's Department violated the New Jersey Employer-Employee Relations Act when it transferred him to an evening work shift in retaliation for filing a grievance contesting a work assignment. The charge further alleged that Denver resigned his position because he could not comply with the change in shift, but that this resignation was involuntary and that the County's action, therefore, was a constructive discharge. Denver's appeal to the Civil Service Commission seeking rescission of his transfer and contending the transfer to the evening shift forced it. The Commission further holds, in agreement with a recommendation by an Administrative Law Judge, that it has the predominant interest to decide the dispute.

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Appearances:

For the Respondent, David H. Ben-Asher, County Counsel
(Elaine K. Hyman, Assistant County Counsel)

For the Charging Party, William Denver, Pro Se

DECISION AND ORDER

On November 20, 1985, William Denver filed an unfair practice charge against the Essex County Sheriff's Department ("County") with the Public Employment Relations Commission. The charge alleges the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(a)(3),^{1/} when it transferred Denver to the evening work shift in retaliation for filing a grievance contesting a work assignment. Denver further alleges that he resigned his position because he

^{1/} This subsection prohibits public employers, their representatives or agents from: "(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

could not comply with the change in shift, but that this resignation was involuntary and that the County's action, therefore, was a constructive discharge.

On March 5, 1986, a Complaint and Notice of Hearing issued. On March 17, 1986, the County filed its Answer. It denied the Complaint's allegations and, as an affirmative defense, asserted the managerial prerogative to assign Denver to the 2 p.m. to 10 p.m. shift for "training purposes."

On November 13 and December 3, 1985, Denver filed petitions with the Civil Service Commission seeking rescission of his resignation and contending that the transfer to the evening shift "forced" it.

On January 25, 1986, the County filed a motion to consolidate the unfair practice and Civil Service proceedings and sought a predominant interest determination before the Office of Administrative Law. Denver filed a cross-motion to consolidate and contended the Commission has the predominant interest.

On April 1, 1986, Hon. George Perselay, Administrative Law Judge, issued an order on motion for consolidation and determination of predominant interest. The administrative law judge first concluded, in agreement with the parties, that consolidation was appropriate. He then concluded that the Public Employment Relations Commission has the predominant interest. He found, in pertinent part, that:

the unfair labor practice appears to be the dominant issue. The determination of that issue will moot the remaining issues in the case. If the transfers are proper, the resignation is

voluntary. If the transfers are improper and unfair, the resignation would be involuntarily induced and ought to be set aside.

The Administrative Law Judge served his decision on the parties, the Commission,^{2/} and the Civil Service Commission and informed them that the order would be deemed adopted if neither agency head reversed or modified it within 45 days of receipt of the order or received an extension of time to consider the order. Neither party has excepted to the order.

We agree that the cases should be consolidated and we have the predominant interest since the important issue in resolving both disputes is whether the County transferred Denver to the 2 p.m. to 10 p.m. shift in unlawful retaliation against him for filing an earlier grievance. See In re Bridgewater Tp., 95 N.J. 235 (1984).^{3/} Pursuant to N.J.A.C. 1:1-14.6(d), we direct this matter be heard by an Administrative Law Judge.

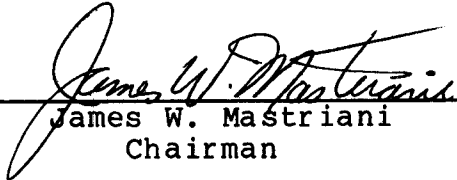
^{2/} We were inadvertently not served with a copy of this order until May 23, 1986.

^{3/} We disagree, in part, however with the Administrative Law Judge's summary conclusion that "if the transfers are improper and unfair, the resignation would be involuntarily induced." The validity of Denver's resignation is judged on whether it was voluntary or whether he was constructively discharged. While an illegal transfer and a change in one's working hours after 20 years of the same hours are factors that would support a constructive discharge finding, all the surrounding circumstances must be examined before such a finding can be made. In Morris County, P.E.R.C. No. 82-28, 7 NJPER 578 (¶12259 1981) we said that a constructive discharge occurs "where the facts reveal that an employee resigned due to an employer's unfair practice or following an employer's imposition of onerous 'working conditions' after the

ORDER

Judge Perselay's order on motion for consolidation and designation of predominant interest is adopted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Horan was not present.

DATED: Trenton, New Jersey
June 25, 1986
ISSUED: June 26, 1986

3/ Footnote Continued From Previous Page

employee's exercise of a protected activity. For an employer to be held legally responsible, it must be alleged and shown that the termination involved was the culmination of a plan on the employer's part to force such action, or the foreseeable consequence of earlier harassment." We also note that Denver's job title from August 28, 1985 to September 16, 1985 is not determinative on the unfair practice issue. Even if the County had the legal right to assign him to the "security desk," it still could not have illegally retaliated against him for filing a grievance contesting that assignment. Even the filing of non-meritorious grievances is protected under the Act.