

A.B.D. No. 92-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION APPEAL BOARD

OAL DKT #PRB-2532-90
AGENCY DKT #AB-90-2

JOHANNA NAGEL,

Petitioner,

v.

**COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,**

Respondent.

Hugh L. Reilly, Esq. (National Right to Work Legal Defense Foundation, Inc.) for petitioner

For respondent, **Steven P. Weissman**, Esq., Communications Workers of America, AFL-CIO District 1, and **Michael T. Leibig**, Esq., (Zwerdling, Paul, Leibig, Kahn & Thompson, P.C., attorneys) for respondent

DECISION AND ORDER

On May 30, 1991, Administrative Law Judge Steven C. Reback entered an initial decision recommending the dismissal of a petition of appeal filed by Joanna Nagel for failure to prosecute. We reverse and remand.

The initial decision incorrectly identifies one of respondent's attorneys, Michael T. Leibig, as counsel for the petitioner. Accordingly neither the petitioner, nor her counsel, Hugh L. Reilly, Esq., was served with the initial decision.

The initial decision states that on December 7, 1990 Mr. Leibig wrote to Judge Reback to request, on behalf of both parties, a postponement of a scheduled hearing. The decision goes on to state that Judge Reback's "office" advised Mr. Leibig that a motion

would be required to place the matter on the inactive list and that no such motion was ever filed. The decision also states that on April 19, 1991 Judge Reback sent a letter to Mr. Leibig advising that unless a motion seeking to put the case on inactive status was received in the next 10 days, the matter would be dismissed.

The December 7, 1990 and April 19, 1991 letters are in the record of the case we have received from the Office of Administrative Law. On June 17, 1991 we received a letter dated June 13, 1991 from Mr. Leibig's office asserting that the petition should not be dismissed and urging that it be consolidated with other petitions pending before Administrative Law Judge Joseph Lavery.

Even assuming that Mr. Leibig's office bore responsibility for placing the case on the inactive list, the petition cannot be dismissed because counsel for respondent failed to make a submission. Before we remand the case, we observe that Mr. Leibig's December 7, 1990 letter and a letter we sent to the Office of Administrative Law on December 13, 1990 (a copy of which was received by Judge Reback), suggested that this case be consolidated with other petitions filed by employees represented by the CWA (including another petition filed by Ms. Nagel) which were pending before Judge Lavery.* We suggest that upon receipt of this

* Anderson, et al. and CWA, Docket No. AB-88-8 (PRB 02805-88); Olsen, et al. and CWA, Docket No. AB-88-9 (PRB 02807-88); Battito and CWA, Docket No. AB-91-1 (PRB 08527-90S) and Nagel and CWA, Docket No. AB-91-2 (PRB 10432-90S).

remand, the Office of Administrative Law consolidate this petition with those pending before Judge Lavery.

ORDER

The Initial Decision-Failure to Appear of Judge Reback is reversed and the matter is remanded.

BY ORDER OF THE APPEAL BOARD

WILLIAM L. NOTO
Chairman

Chairman Noto and Board Member Dorf voted in favor of this decision. Commissioner Verhage voted against.

DATED: TRENTON, NEW JERSEY
July 2, 1991