

P.E.R.C. NO. 88-96

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY, (DEPARTMENT  
OF HUMAN SERVICES,

Respondent,

-and-

Docket No. CO-H-87-367

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO,

Charging Party.

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STATE OF NEW JERSEY (DEPARTMENT OF  
HUMAN SERVICES),

Respondent,

-and-

OAL Docket No. CSV-6474-87

ELIZABETH CANTWELL,

Appellant.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, remands back to the Office of Administrative Law an Administrative Law Judge's recommendation that the unfair practice charge be consolidated with a disciplinary hearing and that the Commission has the predominant interest to decide the dispute. The Chairman concurs with the Merit System Board and directs the Administrative Law Judge to make specific findings of fact and legal analysis setting forth the reasons for the predominant interest determination.

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Appellant.

Appearances:

For the Respondent, The Hon. W. Cary Edwards, Attorney  
General of New Jersey (Michael L. Diller, Deputy Attorney  
General)

For the Charging Party, Steven P. Weissman, Counsel,  
District One, Communications Workers of America

DECISION AND ORDER

On June 18 and 24, 1987, the Communications Workers of America,  
AFL-CIO ("CWA") filed an unfair practice charge and amended charge,  
respectively, against the State of New Jersey, Department of Human  
Services, Division of Youth and Family Services ("State"). The charge,  
as amended, alleges the State violated the New Jersey Employer-Employee

Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2) and (3),<sup>1/</sup> when: (1) a supervisor threatened and coerced employees represented by CWA for engaging in informational picketing, and (2) terminated Elizabeth Cantwell at the end of her working test period because she filed grievances.

On July 30, 1987, a Complaint and Notice of Hearing issued. On August 11, the State filed its Answer. It denies that it threatened and coerced employees for picketing. It admits removing Cantwell, but contends it did so because of her unsatisfactory work.

On July 13, 1987, CWA filed an appeal with the Department of Personnel contesting Cantwell's termination. It contends Cantwell was terminated because she filed grievances and was named as a witness in an unfair practice proceeding.

On October 22, 1987, CWA filed a motion for consolidation and predominant interest determination. It contends that Cantwell's disciplinary appeal before the Department of Personnel should be consolidated with the unfair practice charge. It further contended that the Commission should hear the consolidated case and decide the unfair practice claim. Then, it contends, the Department of Personnel

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; and (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."

should decide whether Cantwell's termination was in violation of Department of Personnel law.

On November 18, 1987, the State responded. It agreed that the two cases should be consolidated, but contends that the Department of Personnel has the predominant interest.

On January 25, 1988, Hon. Robert W. Scott, ALJ, concluded that the unfair practice charge should be consolidated with the disciplinary hearing and that the Commission has the predominant interest to decide the dispute.

On March 7, 1988, the Merit System Board remanded the case back to the Office of Administrative Law and directed that the Administrative Law Judge make specific findings of fact and legal analysis setting forth the reasons for the predominant interest determination.

On March 8, 1988, CWA requested that the Complaint's allegation that the supervisor threatened employees for informational picketing be severed from the discriminatory discharge allegation and that the consolidation and predominant interest motion should relate solely to Cantwell's discharge.

On April 15, 1988, the State responded. It opposes severance, contending that CWA should withdraw the motion for consolidation and predominant interest.

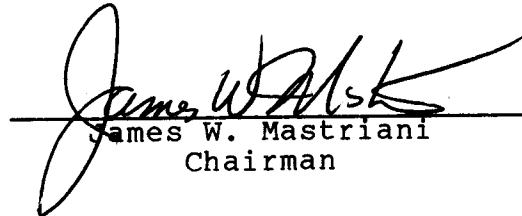
I have reviewed the Administrative Law Judge's recommendation. Acting pursuant to authority delegated to me by the full Commission, I agree with the Merit System Board that a remand is appropriate. Under

these circumstances, I need not address CWA's request to sever the two charges. That request should be made, in the first instance, to the Administrative Law Judge, subject to the Commission's review. N.J.A.C. 1:1-17-1 et seq.

ORDER

The case is remanded to the Office of Administrative Law.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
April 19, 1988