

P.E.R.C. NO. 95-31

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-94-82

COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 1040,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for special permission to appeal filed by the Communications Workers of America, Local 1040 in an unfair practice case against the State of New Jersey (Department of Human Services). The CWA asserts that the Hearing Examiner should not have excluded certain rebuttal evidence. The Commission denies special permission to appeal because it does not desire to delay the proceedings before the Hearing Examiner.

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Appearances:

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

For the Charging Party, Weissman & Mintz, attorneys
(Diane E. Ristaino, of counsel)

DECISION AND ORDER

On December 21, 1993, the Communications Workers of America, Local 1040 filed an unfair practice charge against the State of New Jersey. The charge alleges that the employer violated various subsections of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it discharged Loretta Clark, a per diem nurse at Marlboro Psychiatric Hospital. The charge specifically alleges that Clark was discharged in retaliation for writing a letter to a management official protesting staffing shortages and asserting that per diem nurses are protected under the parties' collective negotiations agreement.

A Complaint and Notice of Hearing issued. The employer filed an Answer admitting that Clark had been discharged, but denying that the discharge was motivated by hostility towards any protected activity.

On September 28 and 29, 1994, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses and introduced exhibits. After CWA presented its case-in-chief, the employer moved to dismiss the charge for failure to make out a prima facie case that anti-union animus motivated the discharge. The Hearing Examiner denied this motion. The employer then presented evidence that Clark had been discharged for doing unsatisfactory work. According to CWA, it tried to introduce unspecified evidence allegedly showing that the employer's defense of unsatisfactory work was pretextual, but the Hearing Examiner rejected its offer. The evidentiary hearing concluded. The parties have not yet filed post-hearing briefs.

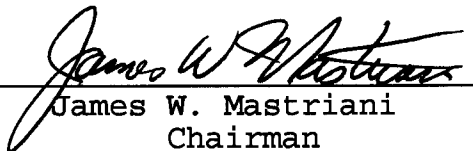
CWA seeks special permission to file an interlocutory appeal. It asserts that the Hearing Examiner should not have excluded its rebuttal evidence. It also seeks an extension of time in which to file an interlocutory appeal so that it can obtain, review, and cite the hearing transcripts. The employer opposes granting an interlocutory appeal, asserting that the charging party has not specified the evidence it wishes to introduce or articulated a basis for such an appeal and that the record had already closed before it sought to appeal.

We deny special permission to appeal. We believe the most effective and expeditious course is for the Hearing Examiner to receive the parties' post-hearing briefs and issue his report and recommendations. Any party may then file exceptions to his recommendations and we will consider the case as a whole, including any disputed evidentiary rulings. We deny special permission to appeal now, rather than granting an extension of time and awaiting further briefing, because we do not desire to delay the proceedings before the Hearing Examiner.

ORDER

The motion for special permission to appeal is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Klagholz, Ricci and Smith voted in favor of this decision. None opposed. Commissioner Goetting abstained from consideration. Commissioner Wenzler was not present.

DATED: October 25, 1994
Trenton, New Jersey
ISSUED: October 26, 1994