

P.E.R.C. NO. 2006-63

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BERNARDSVILLE,

Respondent,

-and-

Docket No. CO-2004-253

BERNARDSVILLE PBA LOCAL NO. 365,

Charging Party.

Appearances:

For the Respondent, Apruzzese, McDermott, Mastro & Murphy, attorneys (Robert J. Merryman, of counsel)

For the Charging Party, Loccke & Correia, P.A., attorneys (Michael A. Bukosky, of counsel)

DECISION

On January 17, 2005, Bernardsville PBA Local No. 365 requested special permission to appeal a Hearing Examiner's ruling in its unfair practice case against the Borough of Bernardsville. The PBA claims that the Hearing Examiner "denied the PBA's request to call the chief as a fact witness in its initial case" and that ruling compelled it to rest. The PBA also claims that the Hearing Examiner improperly ruled that the PBA could not present any further witnesses. On January 18, 2006, the Borough filed a response opposing the request.

We have reviewed the transcript of the hearing. The Hearing Examiner did not permit the PBA the opportunity to call the chief as a witness on the second day of hearing because he had to leave

within an hour. The Hearing Examiner told the PBA that it could call the chief at the next day of hearing, which she planned to schedule within two weeks. Rather than call any other witnesses, the PBA rested its case. The Hearing Examiner warned the PBA that by so doing, it was waiving its right to call other witnesses.

Special permission to appeal will be granted only in extraordinary circumstances. N.J.A.C. 19:14-4.6(b); Rutgers, The State Univ., P.E.R.C. No. 2005-47, 31 NJPER 79 (¶36 2005) (Commission will not intrude mid-hearing absent extraordinary circumstances).

No extraordinary circumstances justify review at this time. We will not intrude mid-hearing to consider whether the Hearing Examiner abused her discretion to regulate the course of the hearing by requiring the PBA to wait until the next day of hearing to examine the chief. N.J.A.C. 19:14-6.3(a)6. Contrast State of New Jersey, P.E.R.C. No. 2005-62, 31 NJPER 61 (¶30 2005) (granting special permission to appeal given the complexity, magnitude, and unusual nature of the case). Any issue concerning the PBA's right to call witnesses on rebuttal is premature as the Borough has not yet presented its case.

ORDER

The request for special permission to appeal is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners DiNardo and Fuller voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Watkins abstained from consideration. Commissioner Katz was not present.

ISSUED: February 23, 2006

Trenton, New Jersey