

P.E.R.C. NO. 2006-82

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

Docket No. CO-1994-158

-and-

THOMAS FIGUEIRA,

Charging Party-Intervenor.

SYNOPSIS

The Public Employment Relations Commission denies Thomas Figueira's request for special permission to appeal a Hearing Examiner's mid-hearing evidentiary ruling. Figueira seeks review of the Hearing Examiner's ruling granting the motion of Rutgers, The State University which sought to bar the proffered testimony of a professor as being irrelevant. The Commission holds that it will not intrude on a Hearing Examiner's evidentiary rulings mid-hearing absent extraordinary circumstances.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, McElroy, Deutsch, Mulvaney &
Carpenter, LLP (John Peirano, Jr., of counsel)

For the Charging Party-Intervenor, (Thomas Figueira,
pro se)

DECISION

On April 24, 2006, charging party-intervenor Thomas Figueira sought special permission to appeal an evidentiary ruling by the Hearing Examiner and requested oral argument. That ruling granted the motion of respondent Rutgers, The State University, to bar the proffered testimony of Professor Kenneth Carlson as being irrelevant. Rutgers opposes granting special permission to appeal.

We deny oral argument and special permission to appeal. As we stated in two previous cases involving these parties, we will not intrude upon a Hearing Examiner's evidentiary rulings mid-hearing absent extraordinary circumstances. Rutgers, The State

University, P.E.R.C. No. 2006-1, 31 NJPER 235 (¶89 2005); Rutgers, The State University, P.E.R.C. No. 2005-47, 31 NJPER 79 (¶36 2005). We did not find extraordinary circumstances in these instances and we do not find them here either. The determination of the relevance of proffered testimony is a matter generally committed to a Hearing Examiner's discretion under all the circumstances of a case and we are not equipped or inclined to second-guess a ruling on relevance in the middle of a proceeding without reviewing or understanding the entire context of the case.^{1/} After the Hearing Examiner issues his report, any party may file exceptions to his recommendations and we will consider the case as a whole, including any disputed evidentiary rulings.

ORDER

The request for special permission to appeal is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed.

DATED: May 25, 2006

Trenton, New Jersey

^{1/} On May 18, Figueira submitted a detailed proffer concerning his proposed examination of the witness. Such a proffer must be submitted to a Hearing Examiner in the first instance; unless it has been, it cannot be considered in ruling on a motion for special permission to appeal.