

P.E.R.C. NO. 2007-41

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (DEPARTMENT  
OF MILITARY AND VETERANS AFFAIRS),

Respondent,

-and-

Docket No. CO-1998-051

COMMUNICATIONS WORKERS OF AMERICA,  
LOCAL 1040, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a Motion for Summary Judgment filed by the State of New Jersey (Department of Military and Veterans Affairs). The State seeks dismissal of an amended unfair practice charge filed by the Communications Workers of America, Local 1040, AFL-CIO. That charge alleged that the State violated the New Jersey Employer-Employee Relations Act when it discharged a doctor for filing grievances and an unfair practice charge. A United States District Court dismissed a lawsuit filed by the doctor alleging that she was fired in violation of her free speech rights under the United States and New Jersey Constitutions, federal Labor-Management Relations Act, the New Jersey Law Against Discrimination, the New Jersey Conscientious Employee Protection Act, and the common law right against wrongful termination. The State asserts that dismissal of that lawsuit compels dismissal of the unfair practice charge. The Commission disagrees since CWA was not a part of the federal lawsuit and the allegations in the amended unfair practice charge were not litigated before the court. The allegations in the charge may proceed to hearing.

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 Petitioner, Stuart Rabner, Attorney General  
(Geri Benedetto, Deputy Attorney General, on the brief)

For the Respondent, Weissman & Mintz, attorneys  
(William G. Schimmel, on the brief)

DECISION

The United States District Court for the District of New Jersey dismissed a lawsuit that Dr. Virginia DeGuzman filed alleging that the State of New Jersey (Department of Military and Veterans Affairs) fired her in violation of the free speech provisions of the New Jersey and United States constitutions, the federal Civil Rights Act, the federal Labor-Management Relations Act, the New Jersey Law Against Discrimination, the New Jersey Conscientious Employee Protection Act, and the common law right against wrongful termination.<sup>1/</sup> The Court found that the State

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1/ DeGuzman v. State of New Jersey - Department of Military and  
(continued...)

fired DeGuzman because a patient under her care suffered an overdose of a prescribed drug. The State asserts that the dismissal of that lawsuit compels dismissal of the amended unfair practice charge filed by the Communications Workers of America, Local 1040, AFL-CIO and alleging that DeGuzman was discharged in violation of the New Jersey Employer-Employee Relations Act<sup>2/</sup> for filing grievances and an unfair practice charge. But CWA was not a party to the federal lawsuit. And the Court did not consider the core of the amended charge: was DeGuzman's termination motivated by hostility towards her grievances and the earlier charge? We therefore deny the State's motion for summary judgment on the amended charge.

CWA's initial charge alleged that DeGuzman and other employees had been coerced and intimidated in retaliation for filing grievances and engaging in other protected activity. The charge was amended to allege that the State later fired DeGuzman in retaliation for her grievances and the earlier charge. DeGuzman then filed her federal lawsuit. CWA and the State agreed to put the unfair practice proceedings on hold while the federal lawsuit went forward.

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1/ (...continued)  
Veteran Affairs, Civ. Action No. 00-CV-2943 (10/23/03),  
aff'd 113 Fed. Appx. 438 (3d Cir. 2004).

2/ N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (2), and (3).

The State moved for summary judgment in the federal action. Its submissions set forth facts establishing that DeGuzman was terminated because she did not follow up on her orders, thus causing a patient to suffer an overdose of a prescribed drug and undergo surgery. DeGuzman's submissions did not cite facts disputing that reason or showing that her termination was motivated by reasons proscribed by the cited laws or constitutional provisions. The District Court therefore dismissed the action and the Third Circuit Court of Appeals affirmed that ruling.

The State asserts that the federal court ruling establishes that DeGuzman was fired for just cause and is not entitled to reinstatement or back pay. Dismissal of the amended unfair practice charge is thus said to be required under the doctrines of res judicata and collateral estoppel. But neither res judicata<sup>3/</sup> nor collateral estoppel<sup>4/</sup> applies when the parties and the issues in the two actions are different. That is the case since CWA was not a party to the federal court suit and its

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3/ See Middlesex Cty. Educational Services, P.E.R.C. No. 2005-63, 31 NJPER 115 (¶48 2005); Newark Bd. of Ed., P.E.R.C. No. 84-156, 10 NJPER 445 (¶15199 1984); Roberts v. Goldner, 79 N.J. 82, 85 (1979).

4/ Hennessey v. Winslow Tp., 183 N.J. 593 (2005); Board of Directors, Ajax etc. v. First Nat'l. Bank of Princeton, 33 N.J. 456, 463 (1960); Matter of Arlinghaus' Estate, 158 N.J. Super. 139 (App. Div. 1978).

unfair practice allegations were not litigated or considered by the court.

Unlike in the federal court proceedings, the State has not submitted any certifications setting forth its reasons for terminating DeGuzman and thus putting CWA to the test of supplying certifications supporting its claim of anti-union discrimination. The parties' factual dispute over the reason for DeGuzman's termination precludes summary judgment on this issue.<sup>5/</sup> That issue as well as the other issues raised in the original charge may proceed to hearing.

ORDER

The motion of the State of New Jersey (Department of Military and Veterans Affairs) for summary judgment on the amended charge is denied.

BY ORDER OF THE COMMISSION

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

DATED: January 25, 2007

Trenton, New Jersey

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<sup>5/</sup> N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of North America, 142 N.J. 520, 540 (1995).