

P.E.R.C. NO. 86-93

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY, OFFICE
OF THE PUBLIC DEFENDER,
APPELLATE SECTION,

Respondent,

-and-

Docket No. CI-85-32-69

LITTIE ELISE RAU,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies Little Elsie Rau's motion for reconsideration of a previous Commission decision. The Commission finds that her "newly discovered evidence" would not be sufficient to change the Commission's previous decision.

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Appearances:

For the Respondent, The Hon. Irwin I. Kimmelman,
Attorney General (Barbara A. Pryor, Deputy Attorney
General)

For the Charging Party, Little Elise Rau, Esq., pro se

DECISION ON MOTION FOR RECONSIDERATION

On November 18, 1985, the Public Employment Relations Relations Commission dismissed a Complaint based on an unfair practice charge that Little Elise Rau filed against her former employer, the State of New Jersey, Office of the Public Defender, Appellate Section ("Public Defender"). P.E.R.C. No. 86-67, 12 NJPER 12 (¶17003 1985). The charge had alleged that Rau was discharged for her protected activity.

On December 9, Rau moved for reconsideration based on alleged new evidence. She asserts that the Honorable Thomas F. Shebell, Jr., would testify that he shared the same concerns about the organization and effectiveness of the Public Defender as Rau had and that other staff attorneys performed poorly yet were not fired.

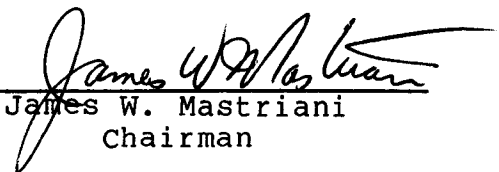
On December 12, the Public Defender opposed reconsideration. It asserted the proffered evidence was both immaterial and available before the hearing.

We deny reconsideration. We dismissed the Complaint because Rau had not established that she engaged in activity (besides protests about a Christmas party) protected by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., nor had she shown that her firing was motivated by hostility towards her Christmas party protests. The alleged new evidence would not cure either problem with her case. It was also available before the hearing and should have been presented then. We also note that on January 3, 1986, Rau filed a Notice of Appeal to the Appellate Division. We believe this filing divests us to jurisdiction to reverse or vacate a previous order. See Borough of Atlantic Highlands, P.E.R.C. No. 83-104, 9 NJPER 137 (¶14065 1983), rev'd on other grounds, 192 N.J. Super. 71 (App. Div. 1983), certif. den. 96 N.J. 293 (1984).

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Hipp and Horan were not present.

DATED: Trenton, New Jersey
February 19, 1986
ISSUED: February 20, 1986