

P.E.R.C. NO. 85-98

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-85-57-68

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission accepts, in the interests of administrative comity, an Administrative Law Judge's determination that the Civil Service Commission has the predominate interest concerning the discharge of a State employee and should determine whether the employee had been discharged for insubordination or filing grievances.

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Appearances:

For the Respondent, the Honorable Irwin J. Kimmelman,
Attorney General (Michael L. Diller, Deputy Attorney
General; George N. Cohen, Law Assistant)

For the Charging Party, Steven P. Weissman, Esquire

DECISION AND ORDER

On September 10 and November 26, 1984, respectively, the
Communications Workers of America, AFL-CIO ("CWA") filed an unfair
practice charge and an amended charge against the State of New
Jersey ("State") with the Public Employment Relations Commission.
The charge, as amended, alleged that the State, through its agents
at the Vineland Developmental Center, violated subsections 5.4(a)(1)
and (3)^{1/} of the New Jersey Employer-Employee Relations Act,

^{1/} These subsections prohibit public employers, their
representatives or agents from: (1) Interfering with,
restraining or coercing employees in the exercise of the rights
guaranteed to them by this act; and (3) Discriminating in regard
to hire or tenure of employment or any term or condition of
employment to encourage or discourage employees in the exercise
of the rights guaranteed to them by this act."

N.J.S.A. 34:13A-1 et seq. when it discharged Warren Howell, a principal training technician, because he had filed grievances against his supervisors. The amended charge also alleged that the Superintendent of the Vineland Developmental Center illegally denied Howell's request for representation at an interview.

On November 14, 1984, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The State has taken the position that it discharged Howell because he was insubordinate.

On December 14 1984, CWA filed a motion to consolidate its unfair practice charge with an ongoing Civil Service proceeding concerning Howell's removal. CWA filed the motion with Commission Hearing Examiner Alan R. Howe.

On or about December 21, 1984, the State filed a response to this motion with the Office of Administrative Law. It supported consolidation, but maintained that the Civil Service Commission had the predominant interest.

On January 2, 1985, the Hearing Examiner informed the parties that he would not decide this motion and instead any motions for consolidation should be presented through the Office of Administrative Law. CWA sought immediate review of this ruling, but the Chairman denied special permission to appeal and instead noted the Commission would review any predominant interest order by an Administrative Law Judge.

CWA then presented its consolidation motion to the Office of Administrative Law. It did not request a predominant interest determination and instead asked that each agency retain jurisdiction to determine whether its statute had been violated. The State supported consolidation, but requested a determination that the Civil Service Commission had the predominant interest.

On February 13, 1985, Administrative Law Judge Jeff S. Masin ordered that the unfair practice and removal proceedings be consolidated and a single hearing held before an Administrative Law Judge. He further found that the Civil Service Commission had the predominant interest and should determine whether Howell had been disciplined for insubordination or filing grievances. He finally found that after the Civil Service Commission determined the discharge and retaliation questions, the case would be transferred to this Commission for the issuance of any further prospective relief, such as a cease and desist order, which might be appropriate in the event a violation was found.

On February 25, 1985, CWA filed an appeal of this predominant interest determination with this Commission. It is also seeking the Civil Service Commission's review of that determination.^{2/} CWA argues that the legal issues presented by

^{2/} Neither agency has received an appeal from the consolidation order.

the unfair practice and removal proceedings are severable and that this Commission and the Civil Service Commission should each retain jurisdiction to review the Administrative Law Judge's initial decision in order to determine whether the statute each administers has been violated. The State has filed a response supporting the Administrative Law Judge's conclusions.

Preliminarily, we note our agreement with our Hearing Examiner's deferral of CWA's consolidation motion to the Office of Administrative Law. We believe all such motions should be presented to that office for initial consideration, with review by each affected agency afterwards. N.J.A.C. 1:1-14.1. We also agree that the removal and unfair practice proceedings should be consolidated for hearing since each proceeding involves identical parties and would apparently center on a common set of facts. N.J.A.C. 1:1-14.3.

We now consider the predominant interest question. We have reviewed the record. We believe that both the Civil Service Commission and this Commission have jurisdiction and competence over the common issues in this case.^{3/} While we would have affirmed a determination that this agency has predominant interest, we are not

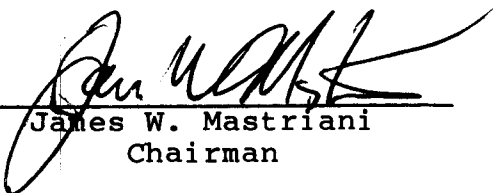
^{3/} The Administrative Law Judge should apply the standards of In re Bridgewater Township, 95 N.J. 235, 244 (1984) in assessing the question of retaliation for protected activity and the standards of Dover Township, P.E.R.C. No. 84-132, 10 NJPER 333, 339-340 (Para. 15157 1984) in assessing the question of an employee's right to representation during a disciplinary interview. We also believe that following the hearing, reconsideration of the predominant interest determination might be in order if the facts presented, as opposed to alleged, evidenced the primacy of the retaliation and representation questions.

inclined, in the interests of administrative comity, to disturb that order.

ORDER

The order of Administrative Law Judge Masin consolidating the remand proceedings and unfair practice charge and determining predominant interest is affirmed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Suskin and Wenzler voted in favor of this decision. Commissioner Graves opposed.

DATED: Trenton, New Jersey
March 15, 1985
ISSUED: March 18, 1985