

NEW JERSEY FREELANCERS' UPDATE

HEARINGS ON UNFAIR LABOR PRACTICE COMPLAINT

To: Colleagues in the legal interpreting community
From: New Jersey freelance state court interpreters

[This is an update on the status of the N.J. freelance state court interpreters, as first reported in *Proteus* Spring 2008, Vol. XVII, No. 1.]

On December 7, 2005, the Communications Workers of America (CWA) filed an unfair labor practice complaint with the Public Employment Relations Commission (PERC) against the N.J. Administrative Office of the Courts (AOC). PERC is a state administrative agency charged with administering the New Jersey Employer-Employee Relations Act; its purview is any labor issue including union representation, negotiations, unfair practices, mediation, fact-finding, and arbitration. The complaint filed by CWA alleged a violation of N.J.S.A. 34:13A-5.4a (1) (3) and (5) of the N.J. Employer-Employee Relations Act, based on the fact that the AOC at the time considered ineligible for inclusion in the bargaining unit represented by the CWA any freelancer who signed professional service agreements (PSA or PSSW, as they were later called).

Nearly immediately after a collective bargaining contract for fifty-two unionized New Jersey freelance interpreters had been ratified in July 2004, the AOC unilaterally and arbitrarily imposed a new requirement that freelancer interpreters sign professional service agreements to be eligible to work in the New Jersey courts. This requirement prevented those freelancers who signed such an agreement from acquiring union representation. These agreements had not been negotiated or provided for in the CWA contract, nor had any intent to use them been conveyed to the CWA during the negotiation period (January to July of 2004). Thus, only freelancers initially included in the bargaining unit at the time it was formed and who maintained the minimum 288-hour annual threshold remained in the bargaining unit.

The contract had provided that the only eligibility requirement for union membership was that a freelancer had to have worked a minimum of 288 hours in court over the previous year. However, the AOC quickly modified its data collection process so that freelance hours were calculated based on the number of hours of in-court time rather than the number of hours hired and paid for, as the contract had called for. As a result of these new calculations, union membership plummeted from fifty-two in 2004 to thirteen as of July 2008.

Hearings were held at PERC on May 29, 2007; October 30, 2007,

and March 18, 2008, during which freelancers testified. The hearing examiner's finding was that the judiciary violated the PERC Act by excluding from the CWA's bargaining unit those freelance interpreters who had signed professional services agreements, but who met the 288-hour threshold.

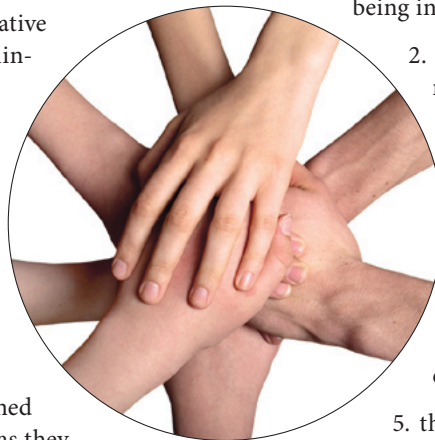
The hearing examiner recommended that PERC order the following relief:

1. that the judiciary cease and desist from engaging in any course of action that prevents freelance interpreters from being included in the CWA's unit;
2. that the judiciary cease and desist refusing to negotiate with the CWA by unilaterally implementing a program which excludes otherwise eligible freelance interpreters from inclusion in the unit;
3. that all freelance interpreters who worked 288 hours in calendar year 2007 be included in the unit;
4. that all freelance interpreters wrongly excluded be identified and made whole;
5. that the CWA be made whole for any dues or fees or other losses suffered as a result of the judiciary's unlawful conduct; and
6. that appropriate notices be posted, stating that the judiciary violated the PERC Act.

The hearing examiner's decision must be reviewed by PERC. Either party may file "exceptions" to the decision. After PERC issues a final decision, either party may appeal that decision to the appellate division.

On December 18, 2008, the AOC filed exceptions to the hearing officer's recommendations.

We will keep the interpreting community informed of the outcome. ▲



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