

D.U.P. NO. 78-14

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

ATLANTIC COUNTY PROBATION OFFICE,

Respondent,

-and-

DOCKET NO. CO-77-126

COUNCIL 71, AFSCME, AFL-CIO AND  
LOCAL 2252, A/C WHITE COLLAR  
EMPLOYEES,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge alleging that the Chief Probation Officer has refused to negotiate with the Charging Party. The Director observes that the Charge does not assert that the Charging Party is the certified or recognized collective negotiations representative of employees employed by the County Judiciary.

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Appearances:

For the Honorable George B. Francis  
John Degnan, Attorney General  
(Melvin E. Mounts, Deputy Attorney General)  
(Guy S. Michael, On the Brief)

For the Charging Parties  
Joseph Asbell & Associates, P. A.  
(Joseph Asbell, of Counsel)

For the County of Atlantic  
Murray Fredericks, County Counsel

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on November 16, 1976 by Council 71, AFSCME, AFL-CIO and Local 2252, A/C White Collar Employees ("AFSCME") against the Atlantic County

Probation Office (the "Respondent") <sup>1/</sup> alleging that the Respondent Probation Office was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(5). <sup>2/</sup>

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. <sup>3/</sup> The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations

<sup>1/</sup> For reasons set forth herein, AFSCME has misidentified the status of the public employer. The public employer of the employees described herein is determined for the reasons set forth infra, to be the Judges of the County of Atlantic as represented by the Assignment Judge, Honorable George B. Francis.

<sup>2/</sup> This subsection prohibits employers, their representatives or agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

<sup>3/</sup> N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice...Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearing before the commission or any named designated agent thereof..."

of the charging party, if true, may constitute an unfair practice within the meaning of the Act. <sup>4/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>5/</sup>

Shortly after the filing of the instant Unfair Practice Charge, the Supreme Court issued a decision of considerable import with respect to the rights of judiciary employees under the New Jersey Employer-Employee Relations Act. Passaic County Probation Officers Association v. County of Passaic, et al., 73 N.J. 247 (1977). The parties to this matter were invited by the undersigned to provide statements of position and/or briefs with respect to the applicability of the Passaic decision upon the processing of the instant Unfair Practice Charge. Concurrently, the Commission was processing an unfair practice charge filed by Ocean Council No. 12, New Jersey Civil Service Association against the County of Ocean and the Honorable Samuel D. Lenox, Jr., with respect to certain allegations of refusal to negotiate against both these respondents. The Ocean matter involved issues related to whether county court clerks were employees of a county or employees of the county judiciary. On January 24, 1978, the Commission issued its decision in the Ocean County matter, In re County of Ocean, P.E.R.C. No. 78-49, 4 NJPER 92 (74042 1978) dismissing the complaint against both the County and Judge Lenox. In said decision the Commission discussed the effect of the Passaic Probation Officers case on Commission

4/ N.J.A.C. 19:14-2.1.

5/ N.J.A.C. 19:14-2.3.

proceedings, the manner in which the Commission would address charges alleging unfair practices filed by individuals employed within the court system or by the majority representatives of such individuals, and, additionally, the extent to which the Commission would make available its conciliation and representation services to judiciary employees and the judiciary. The parties in the instant matter were also requested to provide statements and/or briefs as to the applicability, if any, of the Ocean County determination on the instant Unfair Practice Charge.

All parties have provided the undersigned with statements of position which address the Passaic Probation Officers case, the Ocean County case, and the circumstances surrounding the instant matter in great detail.

The allegations of AFSCME are as follows: During the early part of September 1976, the AFSCME Local engaged in a labor dispute involving 22 employees who worked under the Atlantic County Court system. There arose a question as to whether these employees came under the jurisdiction of the County or the County Probation Office. On September 30, 1976, the President of AFSCME Local wrote to the Chief Probation Officer requesting negotiations "for wages, hours and conditions of employment." On October 13, 1976, the Chief Probation Officer declined, on behalf of the Assignment Judge, to enter into negotiations for the Probation Department employees. Attached to AFSCME's Unfair Practice Charge is a letter from the Chief Probation Officer dated September 30, 1976 which further sheds light upon the circumstances surrounding

the labor dispute. This letter advised the Director of the Personnel Department of the County of Atlantic that certain individuals who appeared on an attached list "have participated in the strike or [who] were otherwise absent without proper cause." The letter states that the Assignment Judge had assessed a fine of \$40 against these employees. Further documentation provided by AFSCME also indicates that the Probation Department employees had been included in a unit of white collar employees of Atlantic County. AFSCME states that Judge Francis "ruled that the employees in the Probation Office were Court employees and did not come under our bargaining unit." AFSCME's statement, dated January 19, 1977 states "after the Judge rendered this decision, the President of this Local, Ms. Kerelia Summers, submitted a letter to the County <sup>6/</sup> asking for negotiations for these employees of the Probation Department. This request was denied. The above reasons are why we feel there has been unfair labor practice [sic]."

The statement of position filed by the Attorney General on behalf of the Atlantic County Assignment Judge addresses in great detail the authority of the Assignment Judge to assess disciplinary action against the employees in the Probation Office and argues that the instant Unfair Practice Charge should be dismissed. AFSCME argues in its brief that the Probation Office

<sup>6/</sup> Apparently, AFSCME's reference to a letter to the County is in error in that the letter dated September 30, 1976, was sent to Chief Probation Officer, Joseph J. Gormley. This letter referred to Judge Francis' determination that Probation Office employees were court employees.

clerical employees are entitled to negotiate terms and conditions of employment under the New Jersey Employer-Employee Relations Act. The County states that it is not a named Respondent to the instant Unfair Practice Charge and, accordingly, the Charge should be dismissed as to the County.

The undersigned has carefully analyzed the allegations of AFSCME. A great deal of confusion surrounding this matter relates to the circumstances surrounding the assignment judge's action as to the Probation Office employees as a result of the asserted strike situation. However, a careful review of the Charge reveals that it is not directed to the disciplining activities of the assignment judge, but rather relates to a demand for negotiations subsequent to a determination by the assignment judge that the instant employees were employees of the judiciary. Accordingly, the issue before the undersigned is whether the assignment judge engaged in a prohibited practice within the meaning of §(a)(5) when it declined to negotiate with AFSCME concerning the wages, hours, and conditions of employment of certain probation department employees. <sup>7/</sup>

N.J.S.A. 34:13A-5.4(a)(5) prohibits public employers from refusing to negotiate in good faith with a majority repre-

<sup>7/</sup> The undersigned determines consistent with the Passaic Probation Officers case and the Ocean County case concerning county court clerks that Probation Department clerical employees are an integral part of the Court system, come within the regulatory control and superintendence of the judiciary, and that, for purposes of the New Jersey Employer-Employee Relations Act, the judiciary, which is in substantial control of the terms and conditions of employment relating to Probation Department clerical employees, is the public employer of such employees.

representative of employees in an appropriate unit. Accordingly, if an employee representative is to claim an unfair practice under this provisions it must assert that it is the designated majority representative of employees in the appropriate collective negotiations unit. AFSCME does not claim in its Charge that it has been recognized by the judiciary as the exclusive majority representative of Probation Department employees nor does it assert that the judiciary has wrongfully withdrawn from a recognition agreement. Likewise AFSCME does not assert that it has been certified by this Commission as the exclusive representative of Probation Department employees employed by the Judges of Atlantic County. Accordingly, in the absence of AFSCME's status as either a recognized or certified majority representative of employees employed by the County judiciary in an appropriate unit, the undersigned finds that the allegations herein are insufficient to constitute unfair practices within §(a)(5).

The undersigned notes however, that the Commission is willing to make its representation processes available to AFSCME consistent with the Ocean County determination, should it desire to file a Petition for Certification of Public Employee Representative. Ocean County, in relevant part, states:

"In rendering this decision, we wish to emphasize that we understand, as set forth in Passaic that the Supreme Court fully recognizes the rights of public employees to organize as set forth in Article I, paragraph 19 of the New Jersey Constitution. Additionally, the Court has indicated that as a matter of comity, it recognizes that public employees have been accorded certain statutory rights and that it also recognizes the public policy stressed by



the Legislature regarding public employees including employees of the Judiciary, Therefore, the Commission deems it to be part of its responsibility as set forth in the public policy of the Act to assist the Judiciary and its employees in their attempts to resolve negotiations and other disputes which might arise and we will, in that connection, continue to appoint mediators and factfinders and to assist in the resolution of questions concerning representation...."

Accordingly, for the reasons set forth above, the undersigned is constrained to decline to issue a complaint in the instant matter.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: June 22, 1978  
Trenton, New Jersey