

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

UNION COUNTY COURT JUDGES,

Public Employer,

-and-

UNION COUNTY COURT CLERKS,

DOCKET NO. RO-77-75

Petitioner,

-and-

UNION COUNCIL NO. 8, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Intervenor,

-and-

COUNTY OF UNION,

Party-at-Interest.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, determines that the Union County Court Judges, not the County of Union is the public employer of the court clerks employed within the Union County Court System.

The Director finds that in light of the New Jersey Supreme Court decision, Passaic County Probation Officers Association v. County of Passaic, et al., 73 N.J. 247 (1977), the Commission's decision in In re County of Ocean, P.E.R.C. No. 78-49, 4 NJPER 92 (¶4042 1978), and the Director's finding that the court clerks are "necessary and integral" to the functioning of the State's court system, the County cannot be considered to be the employer of the court clerks.

The Director severs court clerks from a countywide blue and white collar collective negotiations unit.

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COUNTY OF UNION,

Party-at-Interest.

Appearances:

For the Public Employer,
Honorable V. William DiBuono
(Melvin E. Mounts, Deputy Attorney General)

For the Petitioner,
Sauer, Boyle, Dwyer, Canellis & Cambria, Esqs.
(William A. Cambria, of Counsel)

For the Intervenor,
Fox and Fox, Esqs.
(David I. Fox, of Counsel)

* As amended.

For the Party-at-Interest,
Weinberg, Manoff & Dietz, Esqs.
(Irwin Weinberg, of Counsel)

DECISION

On October 29, 1976, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by the Union County Court Clerks Association (the "Association") with respect to a proposed unit described as consisting of all court clerks employed by the Union County Board of Chosen Freeholders (the "County") ^{1/} at Union County Court House and related facilities. The Petition was accompanied by a valid showing of interest as required by the Commission's rules.

In accordance with N.J.A.C. 19:11-2.6, the undersigned has caused an investigation to be conducted into the matters and allegations set forth in the Petition in order to determine the facts. All parties have been advised of their obligations under N.J.A.C. 19:11-2.6 and have been afforded an opportunity thereunder to present documentary and other evidence, as well as statements of position, relating to the Petition. On the basis of the administrative investigation herein, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more

1/ As more fully delineated infra, the Petitioner has amended its Petition, designating the Union County Judiciary as the employer, rather than the County.

appropriately be resolved after a hearing. Pursuant to N.J.A.C. 19:11-2.6(c), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. On November 3, 1976, Union Council No. 8, New Jersey Civil Service Association ("Council No. 8") intervened in the instant matter, claiming to be the exclusive collective negotiations representative of the court clerks as part of its countywide blue and white collar collective negotiations unit. Council No. 8 requested dismissal of the Petition, claiming that the unit placement of court clerks was resolved in a previous Commission matter, In re Union County Board of Chosen Freeholders, E.D. No. 49 (1974). Council No. 8's request to intervene was granted.

3. On November 30, 1976, the County advised the Commission of its opposition to the Petition, essentially for the same reason stated by Council No. 8.

4. On December 9, 1976, the undersigned directed further investigation of this matter. An informal conference was convened among the parties and the Commission staff representative at which time the issues relative to this matter were discussed. Subsequent thereto, on March 16, 1977, the undersigned issued a Notice of Hearing. However, on May 18, 1977, the parties were notified of a recently issued Supreme Court decision, Passaic County Probation Officers Association v. County of Passaic, et al., 73 N.J. 247 (1977). The scheduled hearing was postponed.

5. On June 16, 1977, the undersigned invited the parties to submit positional statements concerning the relative legal issues raised by the above-referred Court decision. The undersigned stated that the decision raised serious questions concerning: (a) the continued rights under the New Jersey Employer-Employee Relations Act of those public employees whose duties make them a necessary and integral part of the Court system; and (b) the continued jurisdiction of this agency with respect to such employees. At the same time, the undersigned advised the Assignment Judge of Union County of the pending matter concerning the court clerks and of the Passaic Probation Officers decision. The undersigned notified the Judges of the County of the Commission's rules for intervention if they desired to intervene in this matter. Further, the Judges were invited to submit a statement of position with respect to this issue, in the absence of formal intervention.

6. On June 10, 1977, the Petitioner filed a statement with respect to the Passaic Probation Officers case and with respect to other potentially applicable decisions. In relevant part the Association stated:

"...This decision [Passaic Probation Officers], however, addresses the specific question as to whether the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., applies to judicial employees. The court ruled that it does not.

It must now be clear that the members of the Union County Clerks' Association cannot be included in the countywide bargaining unit represented by Civil Service Association No. 8. It is certainly inappropriate to include employees who are not covered under the act together in a unit with other employees who are covered. Since the Passaic County decision permits 'discussion' of grievances and other terms

conditions of employment, this clearly can be done only through a separate unit consisting solely of the court clerks.

Accordingly, PERC should utilize the present proceeding to sever the court clerks from Civil Service Association No. 8 so that the decision of the Supreme Court is followed. It would be inappropriate for PERC to certify the Union County Court Clerks' Association as a bargaining agent, but the severance will leave the court clerks free to constitute their unit among themselves, seek informal recognition from the judiciary and the Board of Chosen Freeholders, and make arrangements to discuss their working conditions with both as the need arises."

On June 30, 1977, the County filed a Memorandum of Law. The County, in its Memorandum, stated that the Passaic Probation Officers case should have narrow application and "does not...stand for the wider proposition that all provisions of the Civil Service Act and of the Employer-Employee Relations Act are wholly inapplicable to court employees." The County further stated that "the proposition that court clerks, probation officers, or any other category of employees essential to the administration of the courts are effectively removed from the purvue [sic] of PERC in all matters concerning the terms and conditions of their employment is not the result of Passaic County."

The County's memorandum additionally addressed the issue of a possible "dual employee" status of court attendants, and stated:

"...it seems clear that the law to be applied in matters involving judicial employees may be stated thusly: issues bearing on the terms and conditions of the employees while subject to judicial supervision are removed from PERC's jurisdiction; issues

bearing on the rights of employees established by Article I, paragraph 19, of the New Jersey Constitution and entrusted to PERC under N.J.S.A. 34:13A-1 et seq., which do not bear on terms and conditions of employees while subject to judicial supervision, such as representation, are not removed from PERC's jurisdiction."

Accordingly, the County concluded that PERC continued to maintain jurisdiction to determine the representation case here involved.

In a letter received July 19, 1977, Council No. 8 stated its position that the Passaic Probation Officers case permits the continued jurisdiction of PERC in this matter "as a matter of comity." Council No. 8 argued that such jurisdiction would permit the Commission to determine whether particular employees are "intimately related to the Judicial System." Council No. 8 stated that the employees involved in the instant Petition, exercising clerical functions, would not have the intimate relationship with the judiciary as the probation officers described in the Passaic Probation Officers case. Council No. 8 also stated, "it seems totally appropriate that P.E.R.C. should retain jurisdiction to determine the appropriateness of the employees in question to belong to the unit or units in question, and other related issues."

The Commission did not receive a reply from the Union County Judiciary to the undersigned's letter of June 16, 1977.

7. While the above positional statements and the memorandum were under consideration, another matter was proceeding before the Commission involving court clerks. This matter, an unfair practice charge filed against the County of Ocean and the

Ocean County Assignment Judge by Council No. 12, New Jersey Civil Service Association, involved an allegation that the Assignment Judge committed an unfair practice by voiding certain provisions of a collective negotiations agreement between Council No. 12 and the County as these provisions related to county court clerks who were a part of Council 12's certified collective negotiations unit. The parties to the Ocean County matter were addressing the potential applicability of the Passaic Probation Officers case to the issues involved in the charge. The undersigned determined to hold the further processing of the instant matter in abeyance pending the disposition of the Ocean County matter. The Commission issued its decision, In re County of Ocean, P.E.R.C. No. 78-49, 4 NJPER 92, (¶4042 1978) on January 24, 1978.

In its decision, the Commission disposed of a Motion to Sever filed by the County of Ocean. The Commission construed the County's motion as a motion for summary judgment and granted said motion stating:

"The New Jersey Supreme Court in the Passaic Probation Officers matter has now determined that judicial employees who are 'necessary and integral' to the functioning of the State's court system, e.g. probation officers, are clearly employees of the Judiciary from a labor relations perspective, not employees of the Freeholders of a particular county, notwithstanding that attributes of fiscal control as to an employee normally associated with being an employer may reside in a board of freeholders.

The Commission concludes that it cannot be seriously disputed that court clerks who enter abstracts of each judgment or order for the payment of money in their respective courts (R.4.101-1); make entires [sic] of all judgments, orders and attachments in

Civil proceedings (R.4:101-2); accept surety bonds in appropriate cases (R.1:13-3); grant motions and applications for entering default judgments and for other proceedings which do not require an order of the court (R.1-6-8)[sic]; take bail in amounts fixed by a Judge (R.5:7-4); keep such books and records as the Administrative Director of the Courts, with the approval of the Chief Justice, may prescribe (R.1:32-3); maintain all court calendars and dockets (R.5:10-5 and R.4:100); certify copies of orders for discovery (R.6:7-2); inform parties of trial dates (R.6:5-2); receive summons (R.6:2-2); transmit court papers on transfers of actions to the Superior Court (R.6:4-1); transmit copies of judicial opinions to the appropriate parties (R.4:48-2); issue subpoenas and summons (R.1:9-1); swear in juries, administer oaths; and perform numerous other administrative duties or the Judges to whom they are assigned are 'necessary and integral' to the functioning of the state judicial system.

New Jersey Court Rule 1:34-2 moreover specifically states the following:

'The clerk of every court, except the Supreme Court, shall be responsible to and under the supervision of the judge or presiding judge of the court of which he is the clerk, the Assignment Judge of the county, and the Administrative Director of the Courts. The clerks of the Supreme and Superior Courts shall be responsible to and under the supervision of the Administrative Director of the Courts and the Chief Justice. The clerk of the county court shall be the deputy clerk of the Superior Court with respect to Superior Court matters pending in his county and may issue writs out of the Superior Court. Deputy clerks in the juvenile and domestic relations courts and the county district courts and all other employees of such courts shall be responsible to and under the supervision of the clerk of the court.'

It is in light of the above-mentioned factors and the Passaic Probation decision that the Commission concludes that the Complaint against the County should be dismissed. The County is not an employer of the court clerks represented by the Council for

the purposes of the New Jersey Employer-Employee Relations Act and charges filed by the Council against the County therefore cannot stand."

The Commission also determined that upon receipt of an unfair practice charge it would apply a procedure, consistent with the Passaic Probation Officers case, which would first involve a determination as to whether the actions challenged concern employees who may be considered to be a "necessary and integral" part of the Judicial System. The Commission further set forth the manner in which it would resolve disputes between the judiciary and its employees in other proceedings placed before the agency. More specifically, the Commission stated that:

"Therefore, the Commission deems it to be part of its responsibility as set forth in 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 fact-finders and to assist in the resolution of questions concerning representation."

8. On January 31, 1978, the undersigned advised the Association, the County, Council No. 8, and the Assignment Judge of Union County of the Commission's determination in the Ocean County matter and provided them with a copy of that decision. The undersigned advised that he would resume the processing of the instant matter in light of the applicability, if any, of Passaic County and Ocean County. The undersigned requested that the parties and the Assignment Judge file a brief and statement of position with respect to the Passaic County and Ocean County matters and their

applicability, if any, to the instant matter.

On February 15, 1978, Council No. 8 filed a statement with the undersigned asserting that the instant matter is distinguishable from the Ocean County matter in that the includability of these court clerks in an overall unit of county employees had been determined by the Commission in E.D. No. 49 and that this determination was not within the ambit of the Passaic Probation Officers decision. More specifically, Council No. 8 argued "It was never the intention of Passaic County to change existing laws involving the res adjudicata and existing policies of comity. These concepts are specifically set forth in the Passaic County case."

On March 2, 1978, the Association replied stating "... the decision in Ocean County that Court Clerks are judiciary employees, 'necessary and integral' to the workings of the court system and not employees of the County Board of Freeholders, demands that a separate unit be established for the Court Clerks." The Association also stated:

"In our letter of June 7, 1977 [filed June 10, 1977], it was suggested that it would be inappropriate for the Commission to certify the Union County Court Clerks Association as a bargaining agent. This was based upon the specific holding of Passaic County that judicial employees are not subject to the New Jersey Employer-Employee Relations Act. However, in Ocean County, the Commission retains for itself a limited function with regard to judicial employees, such as to assist in negotiations and adjudicate unfair practice charges in certain cases which fall outside the scope of Passaic County. Based

upon this conclusion by the Commission, the Association does seek certification as a bargaining unit for these purposes."

The Petitioner, in its statement, formally amended its Petition to list the judiciary of Union County as the employer. A copy of the letter was served upon the County, Council No. 8, and the Deputy Attorney General representing the judges.

On February 27, 1978, a statement of position was filed by the County. The County stated:

"It is our opinion that neither Passaic nor Ocean erode the view expressed by Chairman Tener in In re Bergen County Board of Chosen Freeholders (Bergen County Court Clerks Association), PERC No. 76-12 (December 9, 1975) that court clerks under New Jersey's presently constructed system of State and County government have, in fact, 'joint employers'. When court clerks' terms and conditions of employment directly relate to the administration of the courts, they may, under invocation of properly constituted administrative authority, be mandated by the Judiciary. However, ancillary issues with respect to court clerks' employment rights under Article 1, Paragraph 19 of the Constitution are cognizable before PERC. Thus are the issues in the instant matter distinguishable from those in Passaic and Ocean, as they do not relate to employees' terms and conditions of an employment integral to the functioning of the courts, but rather, to the right of representation under Article 1, Paragraph 19 of the Constitution."

The County further stated that it did not agree with the finding in Ocean that the County is not an employer of the court clerks, objecting to this finding "as being too broad" and asserting that "court clerks are not employees of the Judiciary totally removed

from PERC's jurisdiction in all labor relations aspects, but only in those directly related to the functioning of the courts." The County also stated the position that the determination in E.D. No. 49 is res judicata in this matter.

The Commission did not receive a statement or brief from the County Assignment Judge in response to the undersigned's January 31, 1978 letter.

9. On June 28, 1978, the undersigned advised the parties of the above facts ascertained in the investigation and analyzed the various issues presented in the instant matter. The undersigned stated the following:

"The undersigned has carefully reviewed the statements and briefs filed in the matter herein. The undersigned determines that the disposition of the instant matter is governed by the principles set forth in the Ocean County Commission determination. The issue as to the applicability of the Passaic Probation Officers case was thoroughly considered in the Ocean County matter. The employees involved in the Ocean County matter were court clerks. The Commission determined in light of the Passaic Probation Officers decision that the public employer of court clerks, for labor relations purposes, is not a County but rather the County judiciary. Accordingly, the undersigned is bound by the Commission's most recent legal interpretation and policy determination of the principles involved directly herein." 2/

2/ In re Union County Board of Chosen Freeholders, E.D. No. 49 (1974), which both Council No. 8 and the County rely upon as governing the issues herein, the Commission's Executive Director addressed a claim by the court clerks that the county clerk was the employer rather than the Board of Chosen Freeholders. The Executive Director noted that the claim was not raised by the court clerks at hearing and was asserted initially in the court clerks' exceptions to the Hearing Officer's Report. The

10. In the undersigned's June 28 correspondence, all the parties were advised of their responsibilities pursuant to N.J.A.C. 19:11-2.6 to submit further statements and documentary or other evidence raising substantial and material factual issues herein. A period of ten days was provided for submission of such material. The parties were advised that upon the

2/ (Cont'd)

Executive Director found on the basis of the record that there was no evidence presented to support a finding that the court clerks were employees of other than the Board of Chosen Freeholders. No party filed a request to the Commission to review the Executive Director's determination. In the Bergen County matter, referred to by the County, the Commission's Executive Director in In re Bergen County Board of Chosen Freeholders, E.D. No. 76-7 (1975) severed court clerks from a broader collective negotiations unit of court employees represented by Council No. 5, New Jersey Civil Service Association. In this matter, the court clerks initially asserted that the Board of Chosen Freeholders was the public employer but later asserted that the Presiding Judge be considered the public employer. The Hearing Officer, noting the absence of evidence tending to establish the readiness or desire of the judges to function as the public employer, concluded that the purpose of the Act would not be served if the judicial district was burdened with negotiations responsibility absent any apparent desire and that the public employer be designated the County Board of Chosen Freeholders. The Executive Director agreed with the findings and recommendations of the Hearing Officer, noted that the contention of the Court Clerks Association that the judiciary be found to be the public employer was not pursued in its post-hearing brief, and adopted the Hearing Officer's finding that the Board of Chosen Freeholders was the public employer of the court clerks. However, the Executive Director noted that "It could be argued that the County and Judges within the district are joint employers of the court clerks." The Executive Director found that resolution of this issue was not necessary to the disposition of Bergen County. On December 9, 1978, the Commission, in P.E.R.C. No. 76-12, granted the Freeholders' request for review of the Executive Director's decision. The Commission affirmed the Executive Director's decision substantially for the reasons expressed therein.

expiration of said period of time a final determination would issue.

11. On July 6, 1978, the Deputy Attorney General, representing the Union County Court Judges, advised the undersigned that no further statements or evidence would be presented by the Judges.

On July 11, 1978, the undersigned received a statement from Council No. 8 which states in relevant part:

"For the reasons we have previously expressed, we feel that your decision violates, minimally, basic concepts of comity, particularly since the entire issue concerning inclusion of court clerks in the county wide unit represented by Union Council No. 8 has previously been litigated."

On July 14, 1978, the County provided a further statement of position which in relevant part states:

"...It is the position of the County of Union, which is, after all, responsible to raise the revenues from which the Court Clerks are paid, that the Court Clerks are effectively employees of the County of Union for purposes of their compensation and other terms and conditions of their employment which do not directly relate to the operations of the Courts. As a practical matter, the vast majority of the terms and conditions which would be negotiated between the County and Council 8 as the bargaining representative of other County employees would be applicable to the Court Clerks. Only restrictions on their duties as officers of the Court or matters bearing on the legitimate purposes for which the judiciary has been determined to be their direct supervisors would not be within the negotiated terms and conditions...."

"...The County should not be placed in the position of not being able to negotiate with nor to control the negotiations with employees which it must pay."

In the opinion of the undersigned, Council No. 8's positional statement does not raise issues which warrant further analysis. The undersigned previously addressed these considerations in his June 28 correspondence to the parties, supra, para. 9. Without belaboring the subject, the undersigned again observes that the Commission's most recent analysis and determination in the Ocean County matter regarding the identification of the public employer of county court clerks for the purposes of the Act is controlling in the context of court clerks in Ocean County or in any other county of the State. Any claim that a previous determination of the Commission or its Executive Director has resolved the identification issue in a manner which is contrary to the Ocean County determination fails to recognize the reality that such determination has now been de facto overruled.

With regard to the County's recent statement of position, the undersigned observes that court clerks, not unlike probation officers, are reimbursed for their services through county funding. Notwithstanding, court clerk services are provided to the judiciary, not to the County. While the undersigned is sympathetic to the County's concern that it may not be able to control negotiations of employees which it must pay, the responsibility to fund the offices and employees of the judiciary is thrust upon it by the Constitution and the statutes of the State. This responsibility to fund does not necessarily correlate to the County's belief that it must control the terms and conditions of employment of employees assigned to the judiciary. As a practical matter, the

terms and conditions of employment governing the court clerks cannot be fixed by the County in the context of the authority of the judiciary to substantially control these conditions. In several recent decisions, In re Mercer County Superintendent of Elections, D.R. No. 78-37, 4 NJPER 147 (¶4069 1978), request for review denied P.E.R.C. No. 78-78, 4 NJPER 221 (¶4111 1978); In re Bergen County Prosecutor, D.R. No. 78-34, 4 NJPER 104 (¶4047 1978), aff'd P.E.R.C. No. 78-77, 4 NJPER 220 (¶4110 1978); and In re Cape May County Guidance Center, D.R. No. 78-19, 3 NJPER 350 (1977), the undersigned observed that a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-3(c), is the entity which exercises substantial control over labor relations affecting the concerned employees. More specifically, in the Bergen County Prosecutors matter, the undersigned stated:

"In determinations relevant to the identification of public employer status, the undersigned has observed that the determination of the source of funding does not necessarily result in the identification of the employer for the purposes of collective negotiations. Rather, reliance is placed upon identifying the level of authority which exercises substantial control over labor relations affecting the concerned employees. See In re Cape May County Guidance Center, D.R. No. 78-19, 3 NJPER 350 (1977), and In re Passaic County Board of Freeholders, D.R. No. 78-29, 4 NJPER 8 (Para. 4006 1977). Accordingly, while fiscal control granted to the counties can be an important factor in determining which authority exercises substantial control over labor relations, this factor must be considered in context with other factors traditionally utilized to identify employer status." D.R. No. 78-34, p. 15.

In the Passaic Probation Officers case, the Supreme Court makes clear that employees who are "necessary and integral" to the functioning of the judiciary are employees of the judiciary and that the statutory framework of the collective negotiations statute, N.J.S.A. 34:13A-1 et seq., may not constitutionally be mandated upon the judicial branch of government. In view of the Supreme Court's determination it is clear to the undersigned that the judiciary has asserted its right to exercise substantial control over the labor relations affecting the employees who are "necessary and integral" to its functioning. The Ocean County determination also makes clear this Commission's findings that court clerks fall within the standard of employees who are "necessary and integral" to the functioning of the Courts.

Accordingly, for the reasons stated above and for the reasons previously expressed to the parties, the undersigned determines that the public employer of court clerks involved herein is the Union County Court Judges, and not the County of Union. Therefore, the undersigned hereby severs court clerks from the unit of County employees represented by Council No. 8.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: July 27, 1978
Trenton, New Jersey