

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

In the Matter of

ADMINISTRATIVE OFFICE OF THE COURTS,

Respondent,

-and-

DOCKET NO. CO-83-196

CERTIFIED SHORTHAND REPORTERS ASSOCIATION
OF NEW JERSEY,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to Charging Party's claim that the Administrative Office of the Courts unilaterally altered terms and conditions of employment without negotiations by eliminating Easter recess as a vacation period. After considering the submissions of the parties relating to these employees of the judiciary, the Director concludes that the charge fails to state a claim upon which relief can be granted.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on February 7, 1983, by the Certified Shorthand Reporters Association ("Charging Party") against the Administrative Office of the Courts ("Respondent") alleging that the Respondent had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically N.J.S.A. 34:13A-5.4(a)(1), (5) and (7). ^{1/}

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

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits public employers, their representative or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (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. (7) Violating any of the rules and regulations established by the Commission."

in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. ^{2/} 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 of the charging party, if true, may constitute an unfair practice within the meaning of the Act. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

The Charge relates to employees of the Judiciary. Charging Party asserts that the Administrative Office of the Courts has circulated a Memorandum which contains a revised Court Schedule that abolishes a one week Easter Recess period. The Respondent has declined to submit to the jurisdiction of the Commission, referring to Passaic County Probation Officers Assn. v. County of Passaic, 73 N.J. 247 (1977).

The undersigned has reviewed the allegations and matters involved in the instant Charge in accordance with the standard adopted by the Commission in In re County of Ocean, P.E.R.C. No. 78-49, 4 NJPER

^{2/} 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 designated agent thereof..."

^{3/} N.J.A.C. 19:14-2.1

^{4/} N.J.A.C. 19:14-2.3

92 (¶ 4042 1978). In that matter, an employee representative of certain court clerks filed unfair practice charges against the County and the Assignment Judge of the Superior Court alleging that the Assignment Judge violated past-practices and a specific contractual provision by unilaterally altering and eliminating certain benefits relating to hours of work and vacation and holiday practices. In its determination, the Commission formulated a standard of review in unfair practice matters concerning the Judiciary consistent with the Supreme Court's major pronouncement in Passaic Probation Officers, supra. The Commission held:

The Commission, upon receipt of an unfair practice filed by individuals employed within the court system or by majority representatives of such individuals, will first determine whether the actions challenged on their face, concern employees who may be considered to be an "integral and necessary" part of the judicial system. The Commission will then examine whether the Judiciary's constitutional administrative authority to "make rules governing the administration of all courts in the state" (Article 6, Section 2, Paragraph 3 of the 1947 N.J. Constitution) was relied upon in taking the actions that were the subject of a particular charge. The Commission will also consider whether there are pertinent statutory grants of authority over the particular class or classes of affected judicial employees involved in the proceeding or whether the Court Rules adopted by the New Jersey Supreme Court, pursuant to the above-cited constitutional directive, refer to specific authorities that members of the Judiciary have over these employees. The Commission will also investigate whether there were any Administrative Directives, such as those cited by the Supreme Court in Passaic, supra, that addressed themselves to issues germane to the unfair practice charge. If the Commission is satisfied that the factual and legal circumstances in a case closely

parallel those in the Passaic Probation Officers matter, we will refuse to further process that pending charge, will seek withdrawal of that case, and will, absent withdrawal, dismiss the charge for failure to state a claim upon which relief can be granted by the Commission.

The undersigned has applied the Ocean County test to the present matter. First, it is conceded that the employees herein, Court Reporters, are employed by the Judiciary. The Administrative Office of the Courts, in responding to the instant charge, has referred to Court Rule 1:30-5 as requiring that the reporters must align their schedules in accordance with the schedules of Judges. On November 4, 1982, the Administrative Office of the Courts issued a Memorandum to supervisors of court reporters concerning the scheduling of court reporter vacations. The memorandum, referring to Supreme Court Directive #1-82 and a Supreme Court Order concerning the Schedule for the Court Year, advises supervisors to insure that there are sufficient numbers of reporters scheduled to cover the courts during any given week in which they are in operation. The Supreme Court Directive, dated October 22, 1982, advised Assignment Judges that the Judiciary would be undertaking a policy, on an experimental basis, to provide for court operations throughout the year, with certain exceptions. The Directive permitted courts to schedule matters during Easter week. The Supreme Court Order eliminated Easter week as a recess period.

The undersigned is satisfied that the factual and legal circumstances of this matter closely parallel those in Passaic Probation Officers and Ocean County. In accordance with the Commission's

direction in Ocean County, the undersigned requested that the Charging Party withdraw the instant Charge. Absent such withdrawal, the undersigned is required to dismiss the Charge for failure to state a claim upon which relief can be granted. Accordingly, a complaint is not issued and the Charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: August 3, 1983
Trenton, New Jersey