

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

In the Matter of

JUDGES OF PASSAIC COUNTY,

Public Employer,

-and-

LOCAL 153, OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL UNION,

Petitioner,

-and-

DOCKET NO. RO-81-187

COUNCIL #3, NEW JERSEY CIVIL
SERVICE ASSOCIATION,

Intervenor,

-and-

PASSAIC COUNTY CLERKS ASSOCIATION,

Intervenor,

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, determines that certain employees assigned to the Passaic County Courts are employees of the County Judiciary, rather than employees of the County, for labor relations purposes. The Director finds that the Judiciary exercises substantial control over the labor relations affecting the employees, particularly in the areas of control and superintendence of employee work. The Director further finds that it is unnecessary to convene a hearing to examine the issue of whether the employees are necessary and integral to the functioning of the Courts.

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

In the Matter of

JUDGES OF PASSAIC COUNTY,

Public Employer,

-and-

LOCAL 153, OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL UNION,

Petitioner,

-and-

DOCKET NO. RO-81-187

COUNCIL #3, NEW JERSEY CIVIL
SERVICE ASSOCIATION,

Intervenor,

-and-

PASSAIC COUNTY CLERKS ASSOCIATION,

Intervenor,

-and-

COUNTY OF PASSAIC,

Party-at-Interest.

Appearances:

For the Public Employer
Michael L. Diller, Deputy Attorney General

For the Petitioner
Schneider, Cohen, Solomon & DiMarzio, attorneys
(Bruce D. Leder of counsel)

For the Intervenor Council #3, NJCSA
Charles Arangio, President

For the Intervenor Passaic County Clerks Association
Ravin, Katchen & Greenberg, attorneys
(Allan M. Harris of counsel)

For the Party-at-Interest
Aron, Till & Salsberg, attorneys
(Richard Salsberg of counsel)

DECISION

On February 9, 1981, a Petition for Certification of Public Employee Representative was submitted to the Public Employment Relations Commission (the "Commission") by Local 153, Office and Professional Employees International Union ("Local 153") with respect to a proposed negotiations unit to be comprised of certain clerical employees employed in the Passaic County Court House. Subsequently, the Petition was amended on March 10, 1981 to more specifically describe the petitioned-for unit as including "all clerical employees assigned to Register, Surrogate, Juvenile and Domestic Relations Court, District Court, Probation and County Clerk of the County of Passaic." The amendment was accompanied by an adequate showing of interest, and accordingly the Petition was deemed filed as of March 10, 1981.

As part of its Petition, Local 153 designated the County of Passaic and Passaic County Court Judges as the employer. Local 153 also named Council #3, New Jersey Civil Service Association ("Council 3") as a majority representative of certain employees who were the subject of the Petition. ^{1/}

With the filing of the Petition, the undersigned caused an investigation to be conducted into the matters and allegations involved therein. In the course of the investigation, the assigned staff agent convened a conference which was attended by representatives of the County, the Judiciary, and Local 153. Council 3 did

^{1/} In a recently expired collective negotiations agreement, dated December 12, 1979, the County recognized Council 3 as the exclusive representative of "all clerical employees assigned to the offices of the Register, Surrogate, Juvenile and Domestic Relations Court, District Court, Probation and County Clerk of the County of Passaic."

not appear at the conference. At the conference, representatives of the County Judiciary and Local 153 entered into an Agreement for Consent Election which provided for a secret ballot election among employees in a unit defined as: "Including: All white collar employees employed by the Passaic County Judiciary. Excluding: All other employees include [sic] Sheriffs Officers, Probation Officers, Secretaries to Judges, Confidential Employees, professionals, managerial executives, police, craftworkers, and supervisors within the meaning of the Act." The Agreement provided Council 3 with an opportunity to participate in the election. Accordingly, Council 3 was mailed a copy of the Agreement, which it executed on June 5, and returned to the Commission.

Shortly after the signing of the Agreement for Consent Election, on May 11, 1981, the County asked the undersigned for a stay of the proceedings. The County asserted that its agent consented to the Agreement under the "mistaken impression" that the employees were judiciary employees. After review by the County Personnel Department, "it was discovered that these employees always have been, and in fact are, employees of the County." On June 10, 1981, the County subsequently asserted that 231 of the 296 employees identified by the Judiciary as Judiciary unit members were "employed by the County, and not the Judiciary." The County requested that the undersigned convene a hearing, on the claim that the disputed employees "do not 'play an important and vital role in the administration of justice' and thus, they are not an integral part of the Court system."

On July 9, 1981, a representative of the Passaic County Court Clerks Association (the "Clerks Association") advised the Commission of its interest in the instant proceeding as it might affect Court Clerks. The Clerks Association and the County are parties to a collective negotiations agreement covering Court Clerks.

As a result of the developments following the execution of the Agreement for Consent Election, the undersigned withheld approval of the Agreement for Consent Election and invited the parties to provide positional statements.

On July 7, 1981, the representative of the Judiciary provided a positional statement, based upon its analysis of Passaic Cty. Probation Officers Assn. v. Cty. of Passaic, 73 N.J. 247 (1977), which urged the undersigned to proceed with the election. The statement set forth what the Judiciary perceived to be the County's position and responded to that position. The Judiciary stated inter alia:

The County's objections attempt to place in question the status of 231 of the 296 employees on the list of employees submitted by the Judiciary as eligible for representation. It contends that the 231 are "county" employees and not "judiciary" employees. The basis of the contention is twofold: (1) that the employees are appointed by the County, and not the Judiciary pursuant to the Rules Governing the Courts, and (2) that clerical employees "do not 'play an important and vital role in the administration of justice'" and therefore cannot be considered "an integral part of the Court system" as contemplated by the Supreme Court of New Jersey under the Passaic Cty. Probation Officers decision. As indicated above, the Judiciary has not ceded jurisdiction to P.E.R.C. to address such questions. However, even assuming for the sake of argument that P.E.R.C. did have jurisdiction to decide the issue, it could only conclude that the

listed employees belonged in a judicial unit of employees.

* * *

... The County does not challenge the Judiciary's statement that the employees in question perform services for, and functions within, the courts. Indeed, it cannot, since it lists all 296 employees as being on the County's judicial payroll. Moreover, its own list of employees accompanying its objections of June 10 organizes them on separate pages according to each particular court or judicial office in which they work. Thus, from a factual perspective, it is clear that the disputed employees work in the court system in Passaic County. The sole remaining questions then are whether the fact that they may have been appointed by the County, and not the Judiciary, would remove them for labor relations purposes from the category of "judicial employees," and whether clerical employees are a "necessary and integral" part of the court system.

There is no dispute that the persons in question are employees. From a labor relations point of view, determining whether a person is an employee of one entity rather than another must depend upon where the authority to direct and control his work activities lies. The location of that authority determines both an employer's prerogatives and conditions of employment for certain employees. As the Commission has concluded in its Ocean County decision, the authority must be located based upon the nature of the work performed and the identification of the entity supervising that work. 4 NJPER at 94.

In a reply statement dated July 24, 1981, the County, asserting that pursuant to Passaic Cty. Probation Officers PERC has jurisdiction to conduct a hearing, requested that a hearing be convened in order to litigate its claim that the employees in dispute are not integral and necessary to the court system. The County's position is that without such a determination, the Judiciary may not be deemed the public employer. The County states, in relevant part:

The Judiciary has interpreted Passaic Cty. Probation Officers Ass'n., supra, to require the classification of all employees as judicial if they are employed in the court system. There is absolutely no support for this broad proposition in the Court's decision. Justice Mountain framed the issue as "whether probation officers are so integral a part of our court system" as to bring them within the scope of the Court's authority with respect to the administration of the judiciary. 73 N.J. at 252-253 (emphasis added). In every employer status determination, a reviewing body must, therefore, analyze how important the employees in question are in the administration of justice. Id. at 253. If the employees do not play a vital role, they are not an integral part of the court system so as to require the judiciary to usurp the power of the county to deal with the employees it hires and pays with monies collected from the taxpayers. Negotiations over their terms and conditions of employment will not hinder the activity of the judiciary to administer the courts.

The County asserted that it "employs and pays" the employees in dispute, although it conceded that these factors are not dispositive of the issue of identifying employer status. Significantly, the County did not dispute the claim that the employees herein are assigned to positions which are superintended by judicial officers.

On September 10, 1981, the undersigned advised the parties of his analysis of the issues raised relating to the determination of the identity of the public employer. In In re Bergen Cty. Prosecutor, P.E.R.C. No. 78-77, 4 NJPER 220 (¶ 41110 1978), aff'd App. Div. Docket No. A-3410-77 (1/22/79), the Commission, and subsequently the Appellate Division, upheld the undersigned's determination that the Prosecutor, rather than the County, was

the employer of County detectives and investigators assigned to the Prosecutor's office. The undersigned rejected the County's claims of employer status, based upon its hiring, payment of detectives, and based upon its fiscal control over the Prosecutor's budget. See, D.R. No. 78-34, 4 NJPER 104 (¶ 4047 1978).

In Bergen Cty. Prosecutor, the undersigned observed that in determining the identity of the public employer, reliance is placed upon identifying the level of authority which exercises substantial control over labor relations affecting the concerned employees. The undersigned stated:

... 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. In a matter placed before the Commission, In re Monmouth County Board of Recreation Commissioners, E.D. No. 76-36, 2 NJPER 127 (1976) (Hearing Officer's opinion attached), the Executive Director adopted the findings and recommendations of the Hearing Officer which identified some of the factors relevant to employer status identification:

Courts and labor relations agencies of other states have also grappled with the problem of determining the appropriate employer when confronted with problems concerning the interrelationship of various governmental entities and constitutional appointees. Various indicia of employer attributes have been identified in many of those cases. These indicia have been identified as the supervisory control and authority to select, appoint, and pay employees, control over work, appointment, removal authority, duties and salaries within limits of available appropriation; day to day control of

personnel practice, final control of wages, personnel selection; and the right to select the employee, the power to discharge him, and the right to direct both the work to be done and the manner in which such work shall be done. (Citations omitted). 4 NJPER at 107.

The undersigned concluded, in balancing the above factors, that the county prosecutor was the employer since he controlled the functional operation of his office including the superintendence of the assigned personnel, and played a significant role in the final control of wages by exercising authority in making a Schragger application to the assignment judge. ^{2/}

... The undersigned finds, however, that the exercise on potential exercise by the prosecutor of this available means to supersede the county in matters acutely related to labor relations, combined with the prosecutor's control over employment terms and conditions, must lead to the conclusion that the prosecutor is the public employer of all employees assigned to his or her office.
Id.

Accordingly, the undersigned stated in his September 10, 1981 correspondence that, based upon the submissions of the parties it appeared that traditional factors relating to indicia of employer status were available to resolve the instant dispute between the County and the Judiciary, and that a hearing, for the purpose requested by the County, was not necessary. The determination of where substantial control over labor relations resides does not require an examination as to whether or not the employees in question are integral and necessary to the functioning of the

^{2/} In re Schragger, 58 N.J. 274 (1971).

Court system. Of relevance is the manner in which the employing entity superintends the terms and conditions of employment relative to the disputed employees. Accordingly, the County was provided an opportunity to proffer documentary and other evidence with respect to the issue of employee superintendence. The County was advised that in the absence of an evidentiary proffer raising substantial and material disputed issues, and thus requiring an evidentiary hearing, the undersigned would dismiss its objections to the consent agreement involving the Judiciary. The undersigned stated:

Given the assignment of the employees in question to agents of the judiciary, and the administrative authorities possessed by the Assignment Judge, pursuant to R. 1:33-1, it would appear to the undersigned that substantial control over labor relations affecting the disputed employees is vested in the Judiciary unless the contrary can be demonstrated by specific factual proffer and legal argument. The County has not responded to the Judiciary's assertion that various Court rules and case precedent establish beyond any doubt where the right of supervisory authority over the employees in question and their terms and conditions of employment lies, and this right of supervisory authority has been held to include not only supervision of day-to-day work activities of court personnel of the County but also of the organization and funding of those personnel and their work. (Judiciary statement, 7/7/81, p. 6).

The Judiciary's statement concerning employee control is supported, in part, by certain negotiations agreements which have been entered into by the County concerning personnel assigned herein. The Commission has been provided with copies of negotiated agreements which the County has entered into with organizations representing certain employees assigned to the Judiciary, i.e., probation employees and court clerks. These agreements contain management rights clauses which retain the

Assignment Judge's rights to direct and supervise employees, discipline employees, and to determine the methods, means and personnel by which judicial operations are to be conducted. The contracts also contain grievance procedures in which recourse to either the court administrator or the assignment judge is the final step, short of appeal to the Department of Civil Service. (footnote omitted)

On October 5, 1981, the County responded to the undersigned's correspondence. The County reiterated its position that the Commission should determine whether the employees in question are integral and necessary to the functioning of the Court system. Additionally, the County asserted that in applying a proper balance of relevant employer-identification factors, it "will be apparent" that substantial and material factual issues exist as to the question of which entity -- the County or the Judiciary -- exercises substantial control over the labor relations affecting the employees in question. With respect to the latter assertion, the County claims that it is the appointing authority for clerical employees, finalizes all employment decisions, conducts identification checks of job candidates, and "has final control over all permanent personnel changes." Further, the County states that it is a party to collective negotiations agreements covering the employees in question, which it negotiated, rather than the judiciary, and that the County is the final step in the employee grievance procedure prior to arbitration.

The undersigned has given careful consideration to the County's statement. The County has not disputed the judiciary's

claim that it exercises control over the functional operation of the courts and that it superintends the work of the employees in dispute herein, nor does the County dispute that the judiciary can exercise a significant, if not preemptory role, in the final control of wages concerning the employees herein. See In re Matter of Court Reorganization Plan of Hudson County, 161 N.J. Super. 483 (App. Div. 1978). In the Commission's earlier decisions involving the Ocean County court clerks ^{3/} and the Bergen/Mercer County prosecutors' employees the Commission took note of the County's statutory responsibility to provide personnel to agencies representing other branches of government and to pay these personnel, but made its conclusions concerning employer identification on the more compelling grounds of control and superintendence of the work of the employees in question. Similarly, the availability of Civil Service coverage through the County's personnel department and the designation of the County as the appointing authority for Civil Service purposes are insufficient factors to overcome the more significant and compelling factors of superintendence and control of the employees involved herein. Finally, since the County is not the public employer, prior negotiations agreements which may have delegated to the County a significant labor relations role are not material or relevant to the employer identification issues involved herein.


Accordingly, the undersigned finds, based upon application of traditional indicia of public employer status, that the Judiciary exercises substantial control over the labor relations affecting the employees in question and, therefore, the County may not

^{3/} In re Cty. of Ocean, P.E.R.C. No. 78-49, 4 NJPER 92 (¶ 4042 1978), aff'd. App. Div. Docket No. A-2419-77 (3/14/79)

dispute before PERC the composition of the negotiations unit agreed to by the employee representatives and the Judiciary.

The undersigned therefore dismisses the County's objections to the Agreement for Consent Election. The undersigned directs the conduct of a conference among representatives of the Judiciary, Local 153, Council 3 and the Clerks Association for the purpose of executing a new agreement for consent election. At this conference the Clerks Association may raise the issue regarding the inclusion or exclusion of court clerks from the petitioned-for unit. ^{4/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: December 3, 1981
Trenton, New Jersey

^{4/} In its October 5, 1981 correspondence the County concedes that the terms and conditions of employment of court clerks are substantially controlled by the Judiciary.