

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

In the Matter of

MERCER COUNTY SUPERINTENDENT  
OF ELECTIONS,

Public Employer,

-and-

MERCER COUNCIL #4, NEW JERSEY  
CIVIL SERVICE ASSOCIATION,

DOCKET NO. RO-77-191

Petitioner,

-and-

COUNTY OF MERCER,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, determines that the County Superintendent of Elections, rather than the County, is the public employer of the employees assigned to the Superintendent's office inasmuch as the Superintendent exercises substantial control over labor relations matters involving these employees. By statute, a Superintendent is empowered to hire, discharge, and fix the salaries of the employees in his/her office. The uncontroverted factual record indicates that the Superintendent in Mercer County performs the above functions, and, as well, assigns, directs, and disciplines his employees. The Director finds that the operations of the County under the Optional County Charter Law have not affected the Superintendent's authority to control labor relations. The Director additionally concludes that the office of the Superintendent is a state office, and that, therefore, the Charter Law does not grant the County the authority to assert control over labor relations in the Superintendent's office.

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Appearances:

For the Public Employer  
Hon. John Degnan, Attorney General  
(Gregory E. Nagy, Deputy Attorney General)

For the Petitioner  
Fox and Fox, Esqs.  
(Richard Greenstein, of Counsel)

For the Intervenor  
Harvey Stern, County Counsel  
(William L. Boyan, on the Brief)

DECISION

On June 13, 1977, as amended July 7, 1977, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission (hereinafter, the "Commission")

by Mercer Council #4, New Jersey Civil Service Association (hereinafter, "Council #4") with respect to a proposed "Voting Services Unit" consisting of the employees described below. <sup>1/</sup> Council #4 claims that the public employer is the Mercer County Superintendent of Elections (hereinafter, the "Superintendent"). The County of Mercer (hereinafter, the "County") has intervened in these proceedings claiming that it is the public employer of the employees described in the Petition.

The undersigned has caused an administrative investigation to be conducted into the matters and allegations involved in the Petition. During the initial investigatory stage, the parties agreed that the appropriate issue for initial determination was the identification of the public employer herein, and agreed to submit stipulations of fact and arguments of law with respect to this issue. When the parties failed to submit stipulations of fact, the Petitioner suggested that the parties proceed to submit argument on the "narrow legal issues" in the absence of

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<sup>1/</sup> As originally filed, Council #4's Petition designated the employer as the Mercer County Board of Elections. The amended Petition designated the employer as the Mercer County Superintendent of Elections, and described the proposed unit as:

"Included Assistant Supvr. Registration Clerk Deputy Supt. Clerk Supt. of Voting Machines Supervisor Street Foreman Supvr. of Addressograph Secretary Supvr. Registration Div. Senior Clerk Senior Registration Clerk Assistant Technician Senior Investigator [sic]

Excluded All other titles in Mercer County Government not identified with voting services in the Office of Superintendent of Elections."

stipulations of fact. The staff agent assigned to this matter advised the parties that it would be appropriate to submit both factual evidentiary proffers and legal argument simultaneously whereupon the undersigned would take appropriate action consistent with N.J.A.C. 19:11-2.6.

The parties filed factual submissions and briefs in accordance with a schedule suggested by the assigned staff agent. Although the County's brief was not filed until a month after the suggested deadline, the undersigned has considered the factual presentation and legal argument contained in the County's brief insofar as consideration thereof does not prejudicially affect the interests of the parties.

In their separate submissions Council #4 and the Superintendent claim that the Superintendent is the public employer for the purpose of collective negotiations of the employees of the Superintendent's office.

The Superintendent's factual submissions state that the Superintendent's office was created pursuant to N.J.S.A. 19:32-26, that employees of the Superintendent are paid by the County Treasurer at salaries fixed by the Superintendent, that office accommodations are provided by the County, and that employees of the Superintendent are hired, fired, directed and disciplined by the Superintendent exclusively. The Superintendent states that the above authorities and responsibilities are

mandated by N.J.S.A. 19:32-27 and 19:31-2. <sup>2/</sup> Council #4's submission essentially repeats the above, adding that the Superintendent establishes all policies and procedures, and assigns all duties to employees and that the employees are not classified in the Civil Service structure.

2/ N.J.S.A. 19:32-27 provides: "Each superintendent may appoint a chief deputy, a clerk, a secretary and any other assistants he considers necessary to carry out the provisions of this Title, and may remove the same whenever he deems it necessary. Those so appointed shall not be subject to any of the provisions of Title 11, Civil Service, but shall be in the unclassified service. Each superintendent shall fix the salaries of the persons so appointed and such salaries certified to and approved under his hand shall be paid semimonthly by the county treasurer of the county in which such persons are so engaged. All other necessary expenses incurred in carrying out the provisions of this Title when certified to and approved by the superintendent shall be paid by the county treasurer of the county in which the superintendent shall maintain his office."

N.J.S.A. 19:31-2 provides in part, "In all counties having a superintendent of elections, the superintendent of elections is hereby constituted the commissioner of registration and in all other counties the secretary of the county board is hereby constituted the commissioner of registration. The commissioner of registration in all counties having a superintendent of elections, and the county board in all other counties, shall have complete charge of the permanent registration of all eligible voters within their respective counties.

\* \* \*

...Persons appointed by the commissioner of registration in such counties [i.e., counties of the first class having more than 800,000 inhabitants] to serve for terms of 6 months or less in any 1 year and persons appointed by the commissioner of registration, or by the county board of elections, in other counties, shall not be subject to any of the provisions of Title 11, Civil Service, but shall be in the unclassified service.

\* \* \*

Subject to the limitations set forth in chapter 32 of this Title as hereby amended all necessary expenses incurred, as and when certified and approved by the commissioner of registration in counties having a superintendent of elections, and by the county board in all other counties, shall be paid by the county treasurer of the county..."

The County states that all employees are compensated by the County treasury, that salary paychecks are issued under centralized payroll procedures, that employees are housed in County facilities and supplied through the County, that they are treated in the same manner as County employees for pension purposes, and that employment records are maintained by the County Personnel division. The County's submissions, although filed approximately a month after service of the Superintendent's and Council #4's submissions, do not dispute the factual assertion that the Superintendent controls hire, fire, discipline, and work assignment of the employees, as well as the fixing of salaries.

Both the Superintendent and Council #4 argue that the Superintendent's office has been established by statute as a State office, citing Meredith v. Mercer County Board of Chosen Freeholders, 117 N.J. Super. 379 (Law Div. 1970), aff'd 117 N.J. Super. 368 (App. Div. 1971), aff'd 59 N.J. 530 (1971). The Superintendent, in relevant part, states:

"The courts of this State have been guided by the principal that the conduct of a fair and honest election in each county is 'a matter of the gravest importance to the people of the whole state...' McDonald v. Board of Chosen Freeholders, Hudson County, 99 N.J.L. 393, 397-398 (E&A 1924); cited in Meredith, supra, at pp 385-386. Removing from the Superintendent his statutory authority to employ and negotiate salaries and conditions of employment jeopardizes that principal because it removes from State authority and control the employment and discipline of the persons employed to carry out the provisions of Title 19. The employees of the Superintendent must be answerable for their actions to the Superintendent, as the Superintendent is ultimately answerable to the Governor."

The County argues that under the Optional County Charter Law, N.J.S.A. 40:41A-1 et seq., the labor relations function is centralized, with control vested in the chief executive and the Board of Chosen Freeholders. The County states that greater efficiency and taxpayer accountability "will be furthered by holding that the employer, for purposes of collective bargaining and the Public Employees [sic] Relations Act, of every person receiving compensation out of the county treasury, should be deemed to be the County itself." The County also points to a publication of the Department of Community Affairs <sup>3/</sup> which provides model codes suggested to implement the Optional County Charter Law and commentary as to the model codes. The County states that sections of the model codes provide that county boards of elections shall be subjected to all budgetary requirements, financial controls, personnel management and purchasing provisions of the code. The County also states that the language of the codes "clearly implies" that the County be the contracting party to every collective bargaining agreement affecting employees paid out of the county treasury. The County refers to Section 4.8 of its adopted code which provides in part: "The County Executive shall be the representative of the county government for collective bargaining with employees, pursuant to law."

The undersigned has carefully examined, in a labor relations context, the statutory provisions describing the activities of the office of the Superintendent of Elections and 3/ William Miller, Model County Administrative Codes (1974).

the authorities of the Superintendent, relevant court decisions concerning a Superintendent and his/her office, publications and judicial decisions concerning the Optional County Charter Law, and the factual submissions and arguments submitted by the parties herein. The submissions do not raise substantial and material disputed factual issues which would warrant the convening of an evidentiary hearing. Rather, the disposition of the narrow issue herein presented, i.e., the identification of the public employer for the purpose of collective negotiations, relates solely to the legal conclusions to be drawn from the factual submissions and the statutory provisions.

In matters recently before the undersigned, In re Bergen County Prosecutor, et al., D.R. No. 78-34, 4 NJPER \_\_\_\_ (1978), (hereinafter, "the Prosecutors matters") disputes existed in two counties as to whether the county boards of chosen freeholders or the county prosecutors were the public employers of employees employed in the county prosecutors' offices. The undersigned determined, after a review of the stipulated facts, the statutory provisions governing the operation of the prosecutor's office, various court decisions, and the arguments advanced by the parties, that the county prosecutors were the public employers for the purposes of collective negotiations. This conclusion was reached after an analysis of the indicia traditionally associated with the identification of a public employer for collective negotiations purposes, as applied to the record therein, **convinced** the



undersigned that the prosecutor exercised substantial control over labor relations affecting the employees in his/her office. <sup>4/</sup>

In the Prosecutors matters, the record demonstrated that there was a certain uniqueness ascribed to the prosecutor's office which differentiated it from other county offices, notwithstanding the fact that the prosecutor's office was housed in county facilities and that it was funded through county appropriations. The uniqueness of the county prosecutor's office invokes similar comparison to the office of the Superintendent of Elections.

The office of a Superintendent of Elections, in a county of the second class, as well as a prosecutor's office,

<sup>4/</sup> In the Prosecutors matters, the undersigned noted that, "In a matter placed before the Commission, In re Monmouth County Board of Recreation Commissioners, E.D. No. 76-36, 2 NJPER 127 (1975) (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 interrelations 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).'" 2 NJPER, at 132, 133.

performs a State function. <sup>5/</sup> To this end, the Superintendent is appointed by the Governor with the approval of the Senate. See N.J.S.A. 19:32-26. <sup>6/</sup> The Superintendent may be removed from office by the Governor. <sup>7/</sup> All employees of the Superintendent, as in the case of Prosecutor's investigators and legal assistants, are appointed by the Superintendent outside of the classified Civil Service system, and serve at the Superintendent's pleasure. <sup>8/</sup> By statute, the financial burdens of the Superintendent's office are imposed upon the County. <sup>9/</sup>

The imposition of financial burdens upon a county board of chosen freeholders was carefully examined in the Prosecutors matter. It was argued in the Prosecutors matter, as it is herein, that it is necessary that the County be deemed the public employer because it is the source of funding of the prosecutor's office, and, as such, is directly accountable to the taxpaying public. The undersigned stated therein:

"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

<sup>5/</sup> See Meredith v. Mercer County Board of Chosen Freeholders, supra, p. 5. The County prosecutor, however, is a constitutional officer.

<sup>6/</sup> Id.

<sup>7/</sup> See Allen v. Durand, 137 N.J.L. 30, (Sup. Ct. 1948).

<sup>8/</sup> N.J.S.A. 19:32-27; N.J.S.A. 19:31-2.

<sup>9/</sup> Id.

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 Chosen 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.

The undersigned thereafter proceeded to review the factual record therein and the statutory provisions, placing the issue relating to source of funding in context with other factors utilized to identify the public employer. The record revealed that the prosecutor and not the county, exercised substantial control over labor relations affecting prosecutor's employees. In addition, the examination as to the source of funding revealed that the County did not exercise entire fiscal control over the prosecutor's office notwithstanding its appropriations authority with respect to the prosecutor's office. The undersigned, noting the statutory reservation that allows a prosecutor to obtain a court order superseding county budgetary allocations, N.J.S.A. 2A:158-7, stated:

"The undersigned notes that in the face of the assignment judge's authority to set aside county budget allocations, neither the county nor the prosecutor exercise absolute fiscal control. However, since the prosecutor has the unique ability to initiate an application to the assignment judge, the more significant role is allotted to the prosecutor to secure funds necessary to implement a collective negotiations settlement." D.R. No. 78-34, p. 18.

It would appear that N.J.S.A. 2A:158-7 gives initial discretion to a county board of chosen freeholders to deny a prosecutor's request. In the instant matter, N.J.S.A. 19:32-27 and N.J.S.A. 19:31-2 do not appear to provide a county board of chosen freeholders with the initial discretion to deny an appropriate expense request of the Superintendent. <sup>10/</sup> At the very least, the county superintendent, similar to the prosecutor, may

<sup>10/</sup> N.J.S.A. 2A-158-7, provides that the expenses of the prosecutor, when certified by the prosecutor and approved by a judge, "shall...be paid by the county treasurer whenever the same shall be approved by the board of chosen freeholders of such county. The amount or amounts to be expended shall not exceed the amount fixed by the board of chosen freeholders in its regular or emergency appropriation, unless such expenditure is specifically authorized by order of the assignment judge of the superior court for such county."

In comparison, N.J.S.A. 32-27 and N.J.S.A. 31-2, supra, n. 2, governing expense requests by the Superintendent, provide that the county shall pay the expenses "as and when" certified and do not appear to reserve any discretion in the county to approve or reject the request. In Keenan v. Board of Chosen Freeholders of the County of Essex, 105 N.J. Super. 271 (Law Div. 1969), the court, construing N.J.S.A. 19:31-2, states at p. 282:

"Statutory provisions of this kind, whereby an agency is authorized to requisition operating revenue to be appropriated by a municipal or county governing body without corresponding responsibility on the part of the agency to the latter, are not uncommon. Under such arrangements it is settled that the appropriating body is not empowered to review and modify to its satisfaction the budgetary certifications of the requisitioning agency. It has a mandatory duty to provide the moneys requested. Nolan v. Fitzpatrick, 9 N.J. 477, 482-483 (1952); Grosso v. City of Paterson, 33 N.J. 477, 481 (1960). The rule is particularly apposite where, as here the Legislature obviously intended to confide to the requisitioning agency 'large and unusual determinative powers,' Barringer

(Cont'd)

obtain court review of a denial of expenses. See Keenan v. Board of Chosen Freeholders of the County of Essex, supra, n. 10, and Sewell v. Board of Chosen Freeholders of the County of Hudson, supra, n. 10. Accordingly, it appears to the undersigned that the County's role as a source of funding for the Superintendent is essentially non-discretionary, or at most is the type of fiscal oversight which could not interfere with the independence of the Superintendent's office.

The undersigned concludes as well from the statutory design, and from the facts herein which are consistent therewith, that it is the Superintendent who substantially controls the labor relations affecting employees of the Superintendent's office. This conclusion is based upon an analysis of the statute

10/ (Cont'd)

v. Miele, 6 N.J. 139, 143 (1951), 'to prevent the offices of the superintendent of elections and the commissioner of registration from being financially crippled by an unsympathetic or a hostile board.' Sewell v. Board of Chosen Freeholders of Hudson County, 126 N.J.L. 186, 189 (Sup. Ct. 1941); MacPhail v. Board of Chosen Freeholders, 6 N.J. Super. 613, 618 (Law Div. 1950).

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We are dealing, therefore, with a legislative policy clearly intent on guarding against any curtailment in the operation of the commissioner's office by an interruption of funds -- even at the risk of instances where some public moneys may be irregularly disbursed until court determination as to the legality thereof is secured. The demands of procedural correctness here required the county to perform its unequivocal duty to pay the certified necessary expenses and thereafter seek its revisions or deletions in an independently instituted action..."

which authorizes the Superintendent to appoint employees, remove employees, and fix their salaries, and the factual record which confirms that the Superintendent exercises authority over employees in his/her office in terms of hiring, tenure, discharge, discipline, work assignment, and salaries. This conclusion is also consistent with the judicial observation in Sewell, supra, n. 10, at p. 189, that the legislative purpose is to prevent the Superintendent's office from being financially crippled by an unsympathetic or a hostile county board.

Additionally, the undersigned does not view the provisions of the Optional County Charter Law as mandating a different conclusion. 11/ The test utilized by the undersigned

11/ Article 2 of the Optional County Charter Law, N.J.S.A. 40:41A-24 et seq., provides, in relevant part:

"N.J.S.A. 40:41A-25. Government of county after adoption of optional plan

Upon adoption by the registered voters of any county of any of the optional forms of government set forth in this act, the county shall thereafter be governed by the plan adopted by the provisions of this law applicable to all optional plans, and by all general laws, subject to the transitional provisions in article 7 of this act.

N.J.S.A. 40:41A-26. General law

For the purposes of this act, a "general law" shall be deemed to be such law or part thereof, heretofore or hereafter enacted, that:

- a. Is not inconsistent with this act; and
- b. Is by its terms applicable to or available to all counties, or;
- c. Is applicable to all counties or to any category or class of counties, and deals with one or more of the following subjects: the administration of the judicial system, education, elections, health, county public authorities, taxation, and finance, and welfare.

(Cont'd)

to determine a public employer for the purposes of collective negotiations under the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1.1 et seq., is identifying the level of authority exercising substantial control over

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11/ (Cont'd)

Nothing in this act shall be construed to prevent counties from abolishing or consolidating agencies the existence of which has heretofore been mandated by State statute providing that such abolition or consolidation shall not alter the obligation of the county to continue providing the services previously provided by such abolished or consolidated agency.

The intent of this act is to enable a county that has adopted a charter pursuant to this act to cause any duty that has been mandated to it by the Legislature to be performed in the most efficient and expeditious manner, and, absent a clear legislative declaration to the contrary, without regard to organizational, structural or personnel provisions contained in the legislation mandating such duty.

N.J.S.A. 40:41A-27. County powers generally

Any county that has adopted a charter pursuant to this act may, subject to the provisions of such charter, general law and the State Constitution:

a. Organize and regulate its internal affairs; create, alter and abolish offices, positions and employments and define the functions, powers and duties thereof; establish qualifications for persons holding offices, positions and employments; and provide for the manner of their appointment and removal and for their term, tenure and compensation.

b. Adopt, amend, enforce, and repeal ordinances and resolutions as defined in sections 100 and 101, notwithstanding the effect of any referendum conducted prior to the county's adoption of its charter pursuant to this act.

\* \* \*

N.J.S.A. 40:41A-30. General powers

The grant of powers under this act is intended to be as broad as is consistent with the Constitution of New Jersey and with general law relating to local government. The grant of powers shall be construed as liberally as possible in regard to the county's right to reorganize its own form of government, to reorganize its structure and to alter or abolish its agencies, subject to the general mandate of performing

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labor relations. No evidence has been submitted which indicates that the County Superintendent's office is currently operated in any other manner than under the specific applicable provisions of N.J.S.A. 19:31-1 et seq. and N.J.S.A. 19:32-1 et seq. These provisions vest substantial control over labor relations in the hands of the Superintendent. While there may be greater centralization of employee record keeping by the county under its reorganization pursuant to the Charter Law, the facts presented by the parties do not demonstrate that labor relations control is, in fact, administered in any way that dilutes the Superintendent's authorities.

Further, the undersigned is inclined to view the Superintendent's office as a state office. See McDonald v.

11/ (Cont'd)

services, whether they be performed by the agency previously established or by a new agency or another department of county government.

Based on the need to develop effective services to meet problems which cross municipal boundaries and which cannot be met effectively on an individual basis by the municipalities, the State, or other units of government, this act shall be construed as intending to give the county power to establish innovative programs and to perform such regional services as any unit that has the legal right to perform such services for itself may determine, in its own best interest, to have the county perform on a contractual basis."

The Act has been construed in several reported and unreported decisions, including Sypek v. Holloway, Ch. Div., Docket No. C-345-77E, decided Nov. 4, 1977, appeal pending App. Div. Docket No. A-1305-77; Board of Trustees, Mercer County Community College v. Sypek, 151 N.J. Super. 1 (1977); County of Union v. State of New Jersey, 149 N.J. Super. 399 (Law Div. 1977); Union County Park Commission v. County of Union, Law Div., Docket No. L-30949-75, decided May 7, 1976 (unpublished decision), affirmed, App. Div., A-4185-75, decided June 3, 1977, certif. den. September 27, 1977; A.F.S.C.M.E., Council 52 v. Hudson County Welfare Board, 141 N.J. Super. 25 (Ch. Div. 1976).



Board of Chosen Freeholders, Hudson County, 99 N.J.L. 393, (E&A 1924); Allen v. Durand, supra, n. 7; Meredith v. Mercer County, supra, n. 5; MacPhail v. Board of Chosen Freeholders of Hudson County, 6 N.J. Super. 613 (1950). It appears that the independence of the Superintendent's office as a state office has been recognized both by the Department of Community Affairs commentary to which the County has referred the undersigned, <sup>12/</sup> and a court decision involving an interpretation of the Charter Law. <sup>13/</sup>

The recent decision of the court in Sypek v. Holloway, supra, n. 11, indicates that the County is not empowered under the Charter Law to assert control over employees of a state agency. In Sypek v. Holloway, Mercer County, through its Executive, sought a declaratory judgment and injunctive relief challenging the right of the chief probation officer to assign clerical personnel within the Probation Department in light of the powers granted to the County under the Charter Law. The court recognized the probation office as an agency performing a state function as an arm of the state judicial system, and distinguished between the classification of an employee at one level of government for payroll purposes and at another level

<sup>12/</sup> The commentary on p. 107 to the Model County Administrative Codes publication provides: "The county board of elections is largely a state agency appointed by the Governor. The principle role of the general county government in this sense to pay the bill..."

<sup>13/</sup> In County of Union v. State of New Jersey, supra, n. 11, at p. 411, the court states: "The Legislature went to great lengths to be sure that county boards of elections and county boards of taxation were state agencies by providing that the members thereof be appointed by the Governor with the advice and consent of the Senate."

for control purposes. The Court concluded that in order for a County to assert control of an agency under the Charter Law, N.J.A.C. 40:41A-26 requires that the particular "duty" or governmental service in question must be of a type mandated to the County by the Legislature. The court states, in part, at p. 36,37:

"Now, once again, bearing in mind that it seems to me that it was never the intention of the Legislature to divest from the State any department as far as I'm concerned of State Government control over the employees who were in the State Government for purposes of control, I think that the optional Charter Act of the County becomes quite clear. And once again, and referring back to it, you have the concept that this particular service was not mandated to the County, but quite to the contrary, it seems to me, was mandated insofar as performance was concerned to the State.

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Once again, this means to me that in determining the thrust of the optional County Charter Act, that you look back to determine whether or not this service was being performed by County Government, and to the extent that it was being performed by County Government, albeit, the County Government might have been performing the type of services that you might think could be State-wide, such as education, things of that kind. If it was performed by the County Government, then, of course, you must construe the Statute quite broadly to allow the County great power as the Courts, indeed, have, and the Counties are having success in every single case, perhaps, till today with their litigation in these matters. But if it wasn't a County duty to start with,

then the Statute simply does not switch the duty from the State to the County." 14/

Based upon the statute governing the operations of the Superintendent's office, and the apposite court decisions regarding the status of the Superintendent's office as an agency of the State, and with a protected function, the undersigned concludes that the governmental service performed by the Superintendent is not a county function, but is in fact a state function mandated to the Superintendent by the Legislature.

Therefore, it does not appear that the County, under the Charter Law, could assert significant or substantial control of labor relations in the Superintendent's office.

Accordingly, for the above reasons, the undersigned determines that the Superintendent of Elections is the public employer of the employees described in the instant Petition. 15/

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: March 23, 1978  
Trenton, New Jersey

14/ See also, Attorney General, Formal Opinion #17, June 8, 1976, respecting the relationship of the County under the Charter Law to the County Board of Taxation. The Attorney General advises that the County may not reorganize the office of the Board of Taxation insofar as the office is designated as a state office and beyond the authority of the County to reorganize under the Charter Law.

15/ AFSCME Local 2922, the collective negotiations representative of all county white collar employees claims that the Superintendent's employees should be placed in its unit. In light of the above determination, the undersigned need not resolve this representational claim.