

D.R. NO. 82-29

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

In the Matter of

OCEAN COUNTY PROSECUTOR,

Public Employer,

-and-

OCEAN COUNTY PROSECUTOR'S CLERICAL
ASSOCIATION,

DOCKET NO. RO-81-258

Petitioner,

-and-

OCEAN COUNCIL #12, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Intervenor,

-and-

OFFICE OF PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL #14, AFL-CIO,

Intervenor,

-and-

COUNTY OF OCEAN,

Party-at-Interest.

OCEAN COUNTY PROSECUTOR,

Public Employer,

-and-

OCEAN COUNTY PROSECUTOR'S CLERICAL
ASSOCIATION,

DOCKET NO. RO-82-11

Petitioner,

-and-

OCEAN COUNCIL #12, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Intervenor,

-and-

OFFICE OF PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL #14, AFL-CIO,

Intervenor,

-and-

COUNTY OF OCEAN,

Party-at-Interest.

SYNOPSIS

The Director of Representation, finding that the Ocean County Prosecutor is the public employer of clerical employees in the County Prosecutor's office, directs an election among employees to determine whether they wish to be represented for the purposes of collective negotiation by the Ocean County Prosecutor's Clerical Association, by Ocean Council #12, New Jersey Civil Service Association, by Office of Professional Employees International Employees Union, Local #14, AFL-CIO, or by none of these organizations.

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

In the Matter of

OCEAN COUNTY PROSECUTOR,

Public Employer,

-and-

OCEAN COUNTY PROSECUTOR'S CLERICAL
ASSOCIATION,

DOCKET NO. RO-81-258

Petitioner,

-and-

OCEAN COUNCIL #12, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Intervenor,

-and-

OFFICE OF PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL #14, AFL-CIO,

Intervenor,

-and-

COUNTY OF OCEAN,

Party-at-Interest.

OCEAN COUNTY PROSECUTOR,

Public Employer,

-and-

OCEAN COUNTY PROSECUTOR'S CLERICAL
ASSOCIATION,

DOCKET NO. RO-82-11

Petitioner,

-and-

OCEAN COUNCIL #12, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Intervenor,

-and-

OFFICE OF PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL #14, AFL-CIO,

Intervenor,

-and-

COUNTY OF OCEAN,

Party-at-Interest.

Appearances:

For the Public Employer County of Ocean & Ocean County
Prosecutor
Berry, Summerill, Piscal, Kagan & Privetera, attorneys
(John C. Shradnik, of counsel)

For the Petitioner
Mark J. Blunda, attorney

For the Intervenor Ocean Council #12
Kapelson, Lerner, Reitman & Maisel
(Sidney Reitman, of counsel)

For the Intervenor Office of Professional Employees
International Union, Local #14, AFL-CIO
Ronald Unger, Business Representative

DECISION AND DIRECTION OF ELECTION

On July 15, 1981, a Petition for Certification of Public Employee Representative (Docket No. RO-81-258) was filed with the Public Employment Relations Commission (the "Commission") by the Ocean County Prosecutor's Clerical Association ("OCPCA") seeking a unit consisting of all clerical workers employed by the Ocean County Prosecutor's Office ("Prosecutor"). The Petition designated the Ocean County Prosecutor as the public employer of the employees. On August 26, 1981, Ocean Council #12, New Jersey Civil Service Association ("Council 12") filed a separate Petition for Certification of Public Employee Representative (Docket No. RO-82-11) for the same unit of employees, also designating the Prosecutor as the public employer. The County of Ocean (the "County") as well as the Office and Professional Employees International Union, Local #14, AFL-CIO (the "OPEIU") have intervened in the Petitions and assert that the County, rather than the Prosecutor, is the public employer.

The undersigned has caused an administrative investigation into the matters and allegations involved in the Petitions in order to determine the facts. The significant issue involved in these instant matters is the identification of the public employer of the clerical employees in the Prosecutor's Office, i.e., the Ocean County Prosecutor or the Ocean County Board of Chosen Freeholders.

Based upon the administrative investigation to date, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based on the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), 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. The County of Ocean is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act").

3. The Ocean County Prosecutor's Clerical Association, Ocean Council #12, New Jersey Civil Service Association and the Office and Professional Employees International Union, Local #14 AFL-CIO ("OPEIU") are employee representatives within the meaning of the Act and are subject to its provisions.

4. The clerical employees are currently included in a unit of County white collar employees which is represented by Council 12 and are covered by a collective negotiations agreement which is effective April 1, 1980 through March 31, 1983.

5. Both the County and the Prosecutor object to the OCPA and Council 12 Petitions, claiming that the County, rather than the Prosecutor, is the public employer of the petitioned-for employees.

6. On July 22, 1981, the OPEIU advised the Commission that it would imminently represent the white collar employees of Ocean County and the Ocean County Prosecutor's Office. OPEIU

stated that it expected to receive recognition from the County at the end of July as the exclusive representative for these employees. Based upon its anticipated recognition, OPEIU sought to intervene in the instant proceeding. ^{1/} OPEIU asserts that the County is the public employer of the petitioned-for employees and seeks the dismissal of the OCPCA and Council 12 Petitions.

7. On August 5, 1981, the assigned Commission staff agent convened a conference among all parties. The parties were advised by the Commission staff agent of several recent decisions of the Commission in which the County Prosecutor was found to be the public employer of employees assigned to the Prosecutor's Office. Following the conference, on August 13, 1981, the parties were directed to file statements of position relating to the public employer issue and to analyze the instant matter in light of In re Bergen Cty. Bd. of Freeholders v. Bergen Cty. Prosecutor et al., 172 N.J. Super. 363 (App. Div. 1980). In the above cited matter, the Court confirmed the Commission's holding that the public employer of Prosecutor's Detectives (superior officers) for the purpose of the Act, is the County Prosecutor and not the County. In a companion consolidated matter, involving clerical employees assigned to the Mercer County Prosecutor's Office, the Commission also concluded that the prosecutor was the public employer. The latter decision by the Commission was also confirmed

^{1/} Additionally, in a separate proceeding before the Commission, Docket No. RO-82-21, the OPEIU has presented a showing of interest among County employees (including the petitioned-for employees) sufficient to establish intervenor status in this matter pursuant to N.J.A.C. 19:11-2.7.

by the Appellate Division. See In re Mercer Cty. Bd. of Freeholders and Mercer Cty. Prosecutor, P.E.R.C. No. 78-77, 4 NJPER 220 (¶ 4110 1978) aff'd. 172 N.J. Super. 411 (App. Div. 1980).

In the Bergen Cty. matter, the Court summarized the findings and conclusions of the undersigned, as follows:

In reaching its determination, the Commission adopted the decision of the director of representation. The Director reached his conclusion based on an analysis, from a labor relations and collective negotiations perspective, of the relevant statutory enactments concerning prosecutors, court decisions construing the rights and responsibilities of prosecutors and counties, and various traditional labor relations indicia associated with identifying public employers for collective negotiations purposes. The Commission found that the prosecutor has the authority to hire, promote, evaluate, discipline, assign, set work rules for, and discharge the employees in question; that he had authority to obtain funding for office operations and personnel over and above the amounts allocated by the county; that the unique status of the office of county prosecutor has been judicially recognized; that the financial burdens related to the position are imposed on the county, and that county prosecutors are appointed by the governor and are answerable only to him through the attorney general for the conduct of their offices. The Commission thus concluded that the county prosecutor was the employer of the superior officers for the purposes of negotiations. [at 367].

In the Mercer Cty. decision, the Court also stated:

We recognize that the status of the clerical, stenographic and technical employees differs somewhat from that of the county detectives in that the appointment of the clerical employees is not specifically provided for by statute as is the appointment of county detectives and investigators. N.J.S.A. 2A:157-1 et seq. However, prosecutors are authorized by statute to incur necessary

expenses in the conduct of their offices and that if the freeholders do not honor the prosecutor's certification of those expenses they may be ordered to pay the sums authorized by the assignment judge of the county. N.J.S.A. 2A:158-7, saved from repeal N.J.S.A. 2C:98-3. See also N.J.S.A. 2A:157-18 and 19. The language of the statute indicated a legislative intent to place the prosecutor in a predominant position with relation to the freeholders for the purpose of maintaining his independence and effectiveness. In re Application of Bigley, 55 N.J. 53, 56 (1969). That case dealt with the employment of clerk stenographers as well as assistant prosecutors and investigators. We thus had no hesitation in concluding that the commission's determination was not arbitrary or unreasonable. We are wholly satisfied that the determination is consonant with the intent of the legislature in affording the prosecutor a dominant status in relation to the appointment of personnel and the establishment of salaries and the judicial recognition of that status. [at 413-414]

8. Statements of position were filed in response to the undersigned's request by OCPCA, Council 12, and OPEIU. The County and Prosecutor filed a joint statement.

OCPCA and Council 12 both assert that, consistent with the Bergen and Mercer decisions, the public employer is the Prosecutor. The County, the Prosecutor and OPEIU assert that the County is the employer and urge that the current negotiations unit structure in which the Prosecutor's clerical staff are included in a countywide white collar unit, should be continued in place. These parties, therefore, argue that the existing contract between the County and Council 12 bars the filing of the Petitions pursuant to N.J.A.C. 19:11-2.8(c)(2).

The County, Prosecutor and OPEIU submissions dispute the applicability of the Bergen and Mercer decisions to the

instant matter. The undersigned has carefully reviewed these positions.

It appears from the positions expressing opposition to the Petitions, particularly as expressed by the County and the Prosecutor in their joint statement, that in employment relations activities the Prosecutor's office functions in the same manner as any other county department, and consistent with county employee relations policy. The County and the Prosecutor list 17 facets of personnel activities and focus attention on the role of the County's employee relations department in these areas. It is submitted that the Prosecutor conforms his employment relations activities to the policy and review of the County as administered by the employee relations department, in such areas as, inter alia, employee selection and evaluation, employee discipline, promotional action and approval, contract and fringe benefit administration and personnel assignments. In their concluding analysis, the County and the Prosecutor state:

An analysis of the Bergen County case clearly indicates that it does not relate to clerical and secretarial employees at all. The Mercer County case however does relate to clerical and secretarial employees in a specific frame of reference and not in the same factual setting as the Ocean County case.

For example, the Mercer County form of government is different wherein an elected county executive is in operational control of the government, other than the County Board of Chosen Freeholders. In the Ocean County situation, the Ocean County Board of Chosen Freeholders and the Prosecutor agree that the Prosecutor is not the employer of secretarial and clerical personnel.

History of bargaining clearly support the position of the employer on this matter.

The employee relation system that operates in the County of Ocean is the same for all departments and since the County Prosecutor's office is a department of the County of Ocean, the Ocean County Board of Freeholders, as the employer, should continue to be the employer in the broad countywide unit of all secretarial and clerical employees and should continue to be the bargaining agent for this employer/employee relationship.

OPEIU, in its statement, asserts:

William McGinnis, labor representative for the Prosecutor's office and for Ocean County stated that these employees are employed by the County of Ocean, not by the Prosecutor's Office. To substantiate this claim, Mr. McGinnis points out that hiring, firing, promotions, salary scales and employer/employee relations are handled by the Ocean County Employee Relations Department. Also, transfers and bidding may be done from the Prosecutor's Office or vice versa. Clearly the employment conditions are dictated by the County, not the Prosecutor's Office. Furthermore, Mr. McGinnis stated that the Prosecutor's Office does not and will not handle such matters and grant any recognition.

Having reviewed these statements, the undersigned concludes that the factual proffers and arguments presented in support thereof do not, in light of the previous Bergen and Mercer determinations, raise substantial material issues which would lead to a contradictory result. As the Court in the Mercer decision emphasized, the language of N.J.S.A. 2A:158 indicates a legislative intent to place the Prosecutor in a dominant position with relation to the freeholders for the purpose of maintaining his independence and effectiveness. The Court further stated: "we are fully satisfied that the determination is consonant with the intent of the legislature in affording the prosecutor a

dominant status in relation to the appointment of personnel and the establishment of salaries and the judicial recognition of that status."

Notwithstanding the statutory independence of the Prosecutor's Office, it is not surprising that the Prosecutor may desire to harmonize his employee relations policies with those of the County as well as to integrate these functions through the employment relations arm of the County. However, the undersigned has not been referred to any authority, either statutory or decisional, which compels the Prosecutor to delegate or subjugate his authority to the County in personnel matters. In the absence of such a submission the undersigned cannot conclude, against weight of given statutory and decisional law, that the Prosecutor's conformance to County policies and that his utilization of the Employment Relations Department as a conduit for Civil Service and other personnel actions, indicates that his ultimate legal authority can in any way be diminished by the County.

Finally, the undersigned does not find that the form of County government is a distinguishing factor which should result in a different conclusion than in the Mercer decision, nor does the Prosecutor's agreement with the County's assertion that it is the employer change the appropriate conclusion concerning the identification of the public employer. While the Prosecutor's employees have previously been placed in a larger countywide unit, they now desire to negotiate with the actual public employer, as is their right under N.J.S.A. 34:13A-5.3.

On October 22, 1981, the undersigned advised the parties of the results of the administrative investigation, and of the above analysis of the issues presented. The parties were provided an additional opportunity to present documentary or other evidence raising substantial and material factual issues and/or additional statements of position. No additional proffers or statements have been received.

Accordingly, the undersigned finds that the Ocean County Prosecutor is a public employer and is the employer of the employees petitioned-for herein. The undersigned determines that the appropriate unit is: all clerical employees employed by the Ocean County Prosecutor, excluding managerial executives, confidential employees, craft and professional employees, police and supervisors within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted no later than thirty (30) days from the date set forth below.

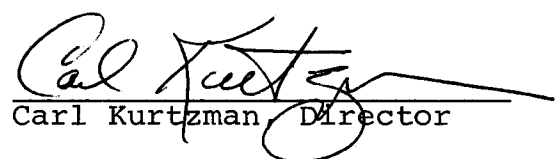
Those eligible to vote are employees set forth above, who were employed during the payroll period immediately preceding the date below including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause following the designated payroll period and who have not been rehired or reinstated prior to the date of the election.

Pursuant to N.J.A.C. 19:11-9.6, the County is directed to file with the undersigned and with OCPCA, Council 12 and the OPEIU, an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses. In order to be timely filed the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with OCPCA, Council 12 and the OPEIU with statements of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether they wish to be represented for purposes of collective negotiations by the Ocean County Prosecutor's Clerical Association, Ocean Council #12, New Jersey Civil Service Association, the Office and Professional Employees International Union, Local #14, AFL-CIO, or none of the above employee organizations.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman Director

DATED: December 14, 1981
Trenton, New Jersey