

D.U.P. NO. 79-3

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

In the Matter of
COUNTY OF MERCER,

Respondent,

-and-

DOCKET NO. CO-78-90

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO, COUNCIL NO. 73,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge alleging that the County of Mercer was engaging in unfair practices with respect to probation department clerical employees. The Director finds in light of Passaic County Probation Officers Association v. County of Passaic, et al., 73 N.J. 247 (1977), and In re County of Ocean, P.E.R.C. No. 78-49, 4 NJPER (94042 1978) that the public employer of the clerical employees of the probation department is the Mercer County Court Judges and not the County of Mercer. The Director ~~determines~~, therefore, that a complaint may not issue against the County of Mercer.

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Appearances:

For the Respondent,
Harvey L. Stern, Mercer County Counsel
(Paul Catanese, Assistant County Counsel)

For the Charging Party,
Jack Merkel, Executive Director

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on October 27, 1977, by the American Federation of State, County and Municipal Employees, AFL-CIO, Council No. 73 ("AFSCME") against the County of Mercer ^{1/} (the "County") alleging that the Respondent was engaging in unfair practices within the meaning of the

1/ In its filing AFSCME identified the public employer as the County of Mercer. The public employer of the employees described herein is determined for the reasons set forth, infra, to be the Judges of the County Court of Mercer County.

New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(1). ^{2/} More specifically, AFSCME states in its Charge that "The Employer, through its agent Mr. Hosea Williams, threatened employees with reprisals and acts of discrimination because of their participation in a Union activity which took place in protest of a management action."

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 in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. ^{3/} 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

^{2/} This subsection prohibits employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act."

^{3/} 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 charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof."

within the meaning of the Act. ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

For the reasons stated below the undersigned has determined that the Commission's complaint issuance standards have not been met.

During the processing of this matter, the parties were advised of the decision rendered by the New Jersey Supreme Court, Passaic Probation Officers Association v. County of Passaic, et al., 73 N.J. 247 (1977) and the decision of the Commission in In re County of Ocean, P.E.R.C. No. 78-49, 4 NJPER 92 (¶4042 1978). The parties were requested to provide legal briefs and statements of position detailing their positions regarding the instant matter in light of the above two decisions.

In the Passaic Probation Officers decision, supra, the Court determined that probation officers were a "necessary and integral" part of the judicial system. The Court addressed the question as to whether the County Judges, as the public employer of such employees, were required to negotiate certain matters under the New Jersey Employer-Employee Relations Act. In the Ocean County matter, an Unfair Practice Charge was filed by Ocean Council No. 12, New Jersey Civil Service Association against both the County of Ocean and the Assignment Judge of Ocean County regarding certain actions taken by the Assignment Judge which allegedly voided certain provisions of a collective

^{4/} N.J.A.C. 19:14-2.1.

^{5/} N.J.A.C. 19:14-2.3.

negotiations agreement between Council No. 12 and the County of Ocean governing a unit of employees including court clerks. During the proceedings involving the Ocean County matter, the County filed a Motion to Sever the Charge which was filed against the County. The Commission determined that the public employer of the court clerks was the county judiciary inasmuch as the court clerks were a "necessary and integral" part of the functioning of the judicial system. The Commission, in dismissing the complaint issued against the County, stated that "The County is not the employer of court clerks represented by the Council for the purposes of the New Jersey Employer-Employee Relations Act and such Charges filed by the Council therefore cannot stand."

The undersigned notes that the instant Unfair Practice Charge was filed against the County of Mercer. It is also noted that the claimed employer agent, Mr. Hosea Williams, is the head of the Domestic Relations Division of the Probation Department and serves under the Chief Probation Officer. It further appears that the employees involved in this Charge, probation department clerical employees, are a "necessary and integral" part of the judiciary of the County of Mercer. Cf. Atlantic County Probation Office, D.U.P. No. 78-14, 4 NJPER ____ (June 22, 1978). ^{6/}

^{6/} The status of the Mercer County Judiciary as the public employer of probation department clerical employees may have already been determined by a court proceeding and accepted by AFSCME. The County counsel has provided the undersigned with an opinion of Judge Greenberg, Sypek v. Holloway, Ch. Div., Docket No. C-345-77E, decided November 4, 1977, appeal pending App. Div. Docket No. A-1305-77. The undersigned is also in receipt of an agreement of the

By letter dated June 21, 1978, the parties were advised that the undersigned had determined that a complaint may not issue with respect to the instant Charge filed by AFSCME against the County of Mercer, and AFSCME was requested to withdraw the Charge. In the absence of the receipt of a withdrawal request the undersigned is constrained, for the reasons stated above and in accordance with the Commission's decision in the Ocean County matter, to now issue a determination refusing to issue a complaint with respect to the instant Charge by AFSCME against the County of Mercer since the County is not the public employer of the employees involved herein.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: August 14, 1978
Trenton, New Jersey

6/ (Cont'd)

County of Mercer and AFSCME, executed May 10, 1977 and effective January 1, 1977 which contains an additional "addendum" which provides, "pursuant to the decision of the Honorable Morton I. Greenberg in the case of Sypek v. Holloway, C-345-77E, the Judges of the County Court of Mercer County and Local 2922 of the American Federation of State, County and Municipal Employees AFL-CIO hereby agree that the agreement with an effective date of January 1, 1977, signed May 16, 1977 between Local 2922 and the County of Mercer be and is hereby accepted and ratified by the Judges of the County Court of Mercer County..." This addendum is executed by representatives of the Local, AFSCME Council No. 73, and the Judges.