

D.U.P. NO. 79-4

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

In the Matter of

BERGEN COUNTY COURT JUDGES,

Respondent,

-and-

DOCKET NO. CO-77-166

LOCAL 1979, COUNCIL 52,  
AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint alleging that the County Court Judges are in violation of the New Jersey Employer-Employee Relations Act by having refused to negotiate with the Charging Party with respect to a change in the title and salary compensation of a particular probation officer. The Director determines that the Charge involves an employee of the judiciary and that the Judges relied upon their constitutional authority and a specific Court Rule in taking the action which is the subject of the Unfair Practice Charge. Therefore, under the test established by the Commission in In re County of Ocean, P.E.R.C. NO. 78-49, 4 NJPER 92 (74042 1978), a complaint may not issue.

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Appearances:

For the Respondent,  
William F. Hyland, Attorney General of New Jersey  
(Melvin E. Mounts, Deputy Attorney General)

For the Charging Party,  
Rothbard, Harris & Oxfeld, Esqs.  
(Sanford R. Oxfeld, of Counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on December 22, 1976 and amended on January 7, 1977 by Local 1979, Council 52, American Federation of State, County and Municipal Employees AFL-CIO (the "Charging Party") against the Bergen County Court Judges (the "Respondent") alleging that the Respondent was engaging in unfair practices within the meaning of the 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)(3), (5) and (7). <sup>1/</sup>

The Charging Party states that it is the exclusive representative of probation officers, senior probation officers and principal probation officers employed by the County Judges, and claims that the County Judges unilaterally increased the salary of a particular probation officer and changed the title of said probation officer without negotiating same with it.

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. <sup>2/</sup> The Commission has delegated its authority to issue complaints to

<sup>1/</sup> These subsections prohibit employers, their representatives or agents from: "(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate 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."

<sup>2/</sup> 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 named designated agent thereof..."

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. <sup>3/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

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 particular matter, the parties were apprised of a decision of the Supreme Court, Passaic County Probation Officers Association v. County of Passaic, et al., 73 N.J. 247 (1977) and were requested to provide briefs regarding the issues raised by the Court decision as it related to the instant matter. Additionally, the parties were advised that the instant matter would be further held in abeyance pending Commission disposition of a related matter, In re County of Ocean, P.E.R.C. No. 78-49, 4 NJPER 92 (¶4042 1978). Subsequent to the issuance of that Commission decision the parties were again invited by the undersigned to submit any further statements of position and/or briefs detailing the applicability, if any, of the Passaic County and Ocean County cases to the instant matter.

On July 5, 1977, the County Judges submitted a motion to the undersigned urging the dismissal of the Charge. Neither

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

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

party has submitted any material subsequent to the undersigned's January 31, 1978 letter requesting briefs as to the applicability of the Ocean County matter.

The undersigned has carefully reviewed the allegations of the Charge and has determined that the continued processing of this Charge is controlled by the procedure set forth in the Ocean County determination. In this determination the Commission after analyzing the Passaic County Probation Officers case, stated the following test:

"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 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 the 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." (Footnote designation omitted).

In applying the above test, the undersigned finds that the employees involved herein, probation officers, are an "integral and necessary" part of the judicial system. Such employees, probation officers, were the subject of the dispute brought before the Supreme Court in the Passaic Probation Officers case. The Motion to Dismiss the instant charge, filed by the County Judges, states that the Judges relied upon their constitutional authority and a Rule of the Court in taking the action which is the subject of the Unfair Practice Charge. More specifically, the County Judges state:

"In the instant matter there can be little doubt that the action herein under challenge was, on its face, taken pursuant to the constitutional authority of the Court. Charging Party alleges violation of the EERA as a result of the designation of Howard Williams as Director of the Pretrial Intervention Program of Bergen County. This designation was made by Court order as issued by the Assignment Judge of the County. The order specifically cites the authority upon which it purports to be based as it is captioned:

In the matter of designation of a  
Bergen County employee under  
R.1:33-3 (b). (Ra38)

The cited rule states that:

The Assignment Judge, subject to the approval of the Chief Justice, may delegate to any trial judge sitting in the county or to any officer or employee of the courts of the county such of the responsibilities, duties and functions imposed upon him by this rule as, in his discretion, he shall consider necessary or desirable. To assist him, he may designate to serve at his pleasure, from among the court clerks and other employees of the courts in the county such assignment clerks and other assistants as he may deem necessary or desirable.

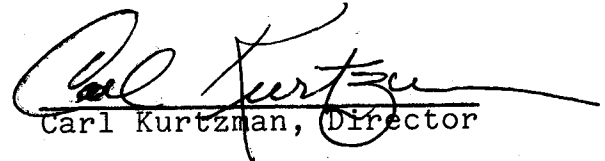
It is undisputable, therefore, that the action herein challenged is purported to have been taken pursuant to the courts constitutional administrative authority..."

From the above it is clear to the undersigned that the exclusive representative represents employees who are an "integral and necessary" part of the judicial system, and that in taking action the County Judges relied upon their constitutional authority and a Court Rule.

On June 21, 1978, the undersigned, in accordance with the Commission's directive, requested that the Charging Party withdraw the instant Charge. The Charging Party has not responded to this request, nor has it provided the undersigned with reasons why a complaint should issue. Therefore, the undersigned must at this time decline to issue a complaint for failure to state a claim upon which relief can be granted by the Commission.

Accordingly, for the reasons set forth above, the undersigned declines to issue a complaint in the instant matter.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Carl Kurtzman, Director

DATED: August 18, 1978  
Trenton, New Jersey



COVERED JOBS BY MUNICIPALITY

SEPTEMBER 1977

MONMOUTH COUNTY

<u>Municipality</u>	<u>Covered Jobs</u>	<u>Municipality</u>	<u>Covered Jobs</u>
Allenhurst	634	Wall	3,065
Allentown	294	West Long Branch	2,406
Asbury Park	5,703		
Atlantic Highlands	1,107	County Total	110,056
Avon-By-The-Sea	465		

Belmar	1,668
Bradley Beach	501
Brielle	791
Colts Neck	636
Deal	455
Eatontown	6,072
Englishtown	1,230
Fair Haven	285
Farmingdale	2,001
Freehold (Boro)	4,843
Freehold (Twsp.)	5,111
Hazlet Twsp.	2,348
Highlands	664
Holmdel	8,534
Howell	2,489
Interlaken	12
Keansburg	698
Keyport	2,195
Little Silver	744
Loch Arbour	65
Long Branch	7,682
Manalapan	1,432
Manasquan	1,766
Marlboro	1,262
Matawan (Boro)	1,924
* Aberdeen Twsp.	2,988
Middletown	6,026
Millstone	311
Monmouth Beach	214
Neptune City (Boro)	2,023
Neptune (Twsp.)	7,507
Ocean	3,330
Oceanport	2,339
Red Bank	7,449
Roosevelt	20
Rumson	678
Sea Bright	636
Sea Girt	550
Shrewsbury (Boro)	2,008
Shrewsbury (Twsp.)	222
South Belmar	147
Spring Lake	670
Spring Lake Heights	697
** Tinton Falls	2,200
Union Beach	796
Upper Freehold	163

\* Formerly Matawan Twsp.  
\*\* Formerly New Shrewsbury Boro.

MORRIS COUNTY

<u>Municipality</u>	<u>Covered Jobs</u>
Boonton (Town)	3,179
Boonton (Twsp.)	2,205
Butler	2,023
Chatham (Boro)	2,366
Chatham (Twsp.)	818
Chester (Boro)	920
Chester (Twsp.)	633
Denville	3,529
Dover	7,334
East Hanover	7,174
Florham Park	6,861
Hanover	10,879
Harding	325
Jefferson	813
Kinnelon	615
Lincoln Park	1,802
Madison	3,809
Mendham (Boro)	595
Mendham (Twsp.)	216
Mine Hill	69
Montville	3,345
Morris	5,876
Morris Plains	6,226
Morristown	16,982
Mountain Lakes	647
Mount Arlington	143
Mount Olive	1,338
Netcong	1,151
Parsippany Troy Hills	13,930
Passaic	1,365
Pequannock	3,013
Randolph	2,425
Riverdale	1,068
Rockaway (Boro)	2,358
Rockaway (Twsp.)	3,173
Roxbury	4,046
Victory Gardens	4,046
Washington	517
Wharton	2,240
County Total	126,008

COVERED JOBS BY MUNICIPALITY

SEPTEMBER 1977

OCEAN COUNTY

<u>Municipality</u>	<u>Covered Jobs</u>	<u>Municipality</u>	<u>Covered Jobs</u>
* Barnegat Twsp.	234	Pompton Lakes	2,228
Barnegat Light	244	Prospect Park	407
Bay Head	228	Ringwood	645
Beach Haven	1,074	Totowa	9,333
Beachwood	392	Wanaque	1,256
** Berkeley	1,269	Wayne	27,028
Brick	6,316	West Milford	1,746
Dover	16,497	West Paterson	2,915
Eagleswood	109		
Harvey Cedars	96	County Total	153,133
Island Heights	86		
Jackson	3,189		
Lacey	1,268	<u>SALEM COUNTY</u>	
Lakehurst	567		
Lakewood	9,494	<u>Municipality</u>	<u>Covered Jobs</u>
Lavallette	376	Alloway	87
Little Egg Harbor	124	Elmer	834
Long Beach	530	Elsinboro	23
Manchester	1,010	Lower Alloways Creek	1,705
Mantoloking	83	Mannington	1,241
Ocean	347	Oldmans	610
Ocean Gate	39	Penns Grove	1,439
Pine Beach	122	Pennsville	8,013
Plumsted	328	Pilesgrove	38
Point Pleasant Boro.	3,387	Pittsgrove	559
Point Pleasant Beach	2,173	Quinton	172
Seaside Heights	1,335	Salem	5,089
Seaside Park	565	* Carneys Point	728
Ship Bottom	659	Upper Pittsgrove	198
South Toms River	158	Woodstown	1,045
Stafford	1,495		
Surf City	323	County Total	21,781
Tuckerton	803		
County Total	54,920	* Formerly Upper Penns Neck	

\* Barnegat Twsp. formerly Union

\*\* Island Beach included with Berkeley Township

PASSAIC COUNTY

<u>Municipality</u>	<u>Covered Jobs</u>
Bloomington	626
Clifton	33,378
Haledon	1,865
Hawthorne	5,562
Little Falls	5,490
North Haledon	781
Passaic	19,067
Paterson	40,806

SOMERSET COUNTY

<u>Municipality</u>	<u>Covered Jobs</u>
Bedminster	3,597
Bernards	3,613
Bernardsville	1,651
Bound Brook	5,145
Branchburg	1,359
Bridgewater	11,618
Far Hills	404
Franklin	8,026
Green Brook	1,602
Hillsborough	1,505

COVERED JOBS BY MUNICIPALITY

SEPTEMBER 1977

SOMERSET COUNTY

<u>Municipality</u>	<u>Covered Jobs</u>	<u>Municipality</u>	<u>Covered Jobs</u>
Manville	3,089	Clark	7,462
Millstone	368	Cranford	9,350
Montgomery	4,444	Elizabeth	45,202
North Plainfield	2,685	Fanwood	965
Peapack Gladstone	519	Garwood	2,574
Raritan	4,306	Hillside	8,479
Rocky Hill	188	Kenilworth	8,788
Somerville	9,332	Linden	29,192
South Bound Brook	572	Mountainside	5,197
Warren	2,242	New Providence (Boro)	9,155
Watchung	4,264	Plainfield	11,325
County Total	70,529	Rahway	12,161

SUSSEX COUNTY

<u>Municipality</u>	<u>Covered Jobs</u>
Andover (Boro)	763
Andover (Twsp.)	443
Branchville	930
Byram	152
Frankford	258
Franklin	1,094
Fredon	129
Green	87
Hamburg	1,235
Hampton	112
Hardyston	236
Hopatcong	369
Lafayette	207
Montague	407
Newton	3,647
Ogdensburg	266
Sandyston	42
Sparta	1,433
Stanhope	742
Stillwater	106
Sussex	1,253
Vernon	1,999
Walpack	49
Wantage	206
County Total	16,165

UNION COUNTY

<u>Municipality</u>	<u>Covered Jobs</u>
Berkeley Heights	3,412

Roselle	5,495
Roselle Park	2,189
Scotch Plains	2,853
Springfield	9,203
Summit	10,621
Union	30,694
Westfield	6,227
Winfield	21
County Total	220,565

WARREN COUNTY

<u>Municipality</u>	<u>Covered Jobs</u>
Allamuchy	210
Alpha	524
Belvidere	1,863
Blairstown	532
Franklin	287
Frelinghuysen	210
Greenwich	126
Hackettstown	5,565
Hardwick	41
Harmony	76
Hope	100
Independence	67
Knowlton	323
Liberty	257
Lopatcong	617
Mansfield	513
Oxford	290
Pahaquarry	---
Phillipsburg	9,188
Pohatcong	84
Washington (Boro)	1,529
Washington (Twsp.)	1,272
White	98
County Total	23,772