

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

In the Matter of

BERGEN COUNTY PROBATION DEPARTMENT,

Respondent,

-and-

BERGEN COUNTY FREEHOLDER BOARD,

DOCKET NO. CO-80-81

Respondent,

-and-

COUNCIL 52, LOCAL 1970, AMERICAN
FEDERATION OF STATE, COUNTY &
MUNICIPAL EMPLOYEES, AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed against the Bergen County Probation Department by AFSCME since the Charge involves employees of the judiciary. Pursuant to Passaic Cty. Probation Officers Assn. v. Cty. of Passaic, et al., 73 N.J. 247 (1977), judiciary employees who are necessary and integral to the functioning of the system are not afforded, as a matter of right, the protections of the New Jersey Employer-Employee Relations Act. The Bergen County Assignment Judge declined to consent to the Commission's jurisdiction with respect to the alleged unfair practice and relied upon his administrative authority in taking the actions raised in the Charge. The Assignment Judge is provided specific appointed authority for court employees pursuant to Court Rules. Since Bergen County is not the employer of the employees involved in the Charge, the Director also declines to issue a complaint against the County.

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Appearances:

For the Respondent Probation Department
Michael Diller, Deputy Attorney General

For the Respondent Freeholder Board
Leon B. Savetsky, attorney

For the Charging Party
Rothbard, Harris & Oxfeld, attorneys
(Barry A. Aisenstock of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on October 2, 1979 by Council 52, Local 1979, American Federation of State, County & Municipal Employees, AFL-CIO (the "Charging Party")

against the Bergen County Probation Department and Bergen County Freeholder Board ("Respondents") alleging that the Respondents were engaging in unfair practices within the meaning of the New Jersey Employer Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically, N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (5) and (7). ^{1/}

The Charging Party states that it is the negotiations representative of pretrial counselors and other employees employed by the Bergen County Probation Department. Charging Party alleges that an individual assigned to the Department has essentially been performing as a pretrial counselor but has not been treated as a unit employee.

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

^{1/} These subsections prohibit employers, their representatives and agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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 in good faith 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."

to issue a complaint stating the unfair practice charge. ^{2/}
 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 within the meaning of the Act. ^{3/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{4/}

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

The New Jersey Supreme Court in Passaic Cty. Probation Officers Assn. v. Cty. of Passaic, et al., 73 N.J. 247 (1977), held that judicial employees who are necessary and integral to the functioning of the State's court system are not afforded, as a matter of right, the protections of the New Jersey Employer-Employee Relations Act. Subsequently, in In re Cty. of Ocean, P.E.R.C. No. 78-49, 84 NJPER (¶ 4042 1978), aff'd App. Div. Docket No. A-2419-77

^{2/} 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 designated agent thereof ... "

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

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

(Mar. 14, 1979), the Commission held that where the Judiciary asserts Passaic as a defense to an unfair practice charge filed by judicial employees, the Commission will: (1) determine whether the actions challenged concern employees who may be considered to be an "integral and necessary" part of the judiciary; (2) examine whether the Judiciary's constitutional administrative authority was relied upon in taking the actions raised in the charge; (3) consider whether there are pertinent statutory grants of authority over the affected judicial employees involved in the proceeding or whether the Court Rules refer to specific authority that members of the Judiciary have over these employees; and, (4) investigate whether there were any administrative directives that addressed themselves to issues germane to the unfair practice charge. The Commission further held in Ocean County, supra, that if it were satisfied that the factual and legal circumstances in a charge under review closely parallel those in the Passaic Cty. Probation Officers case, it would seek withdrawal of the matter and, absent withdrawal, it would dismiss the charge for failure to state a claim upon which relief can be granted by the Commission.

On February 19, 1980, the Bergen County Court Administrator, on behalf of the Assignment Judge, declined to consent to the Commission's jurisdiction with respect to the alleged unfair practice. Thereafter, on March 6, 1980, the undersigned advised the parties of the apparent applicability of the Ocean County

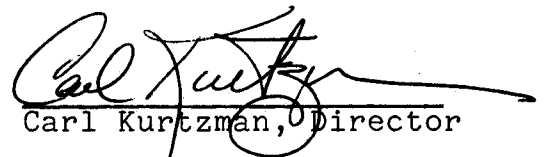
standards to this matter, and advised the Charging Party that absent a withdrawal of the Charge, the undersigned would be required to decline to issue a complaint.

Initially, the undersigned determines that pretrial counselors employed in the Probation Department are employees who are "integral and necessary" to the functioning of the judiciary. Passaic Cty. Probation Officers Assn., supra. ^{5/} Second, the judiciary has relied upon its constitutional administrative authority to appoint individuals to judicial department positions, and the Assignment Judge is provided specific appointing authority for his employees pursuant to Court Rules.

The Assignment Judge has declined to consent to the Commission's jurisdiction. AFSCME has not withdrawn its Charge 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 may 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: April 1, 1980
Trenton, New Jersey

^{5/} Accordingly, the County is not the employer of the employees herein, nor a part or joint employer as urged by AFSCME. See Cty. of Ocean, supra. The undersigned, therefore, declines to issue a complaint against the County.