

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

In the Matter of
COUNTY OF HUDSON,

Respondent,

-and-

DOCKET NO. CO-80-342

HON. THOMAS S. O'BRIEN, A.J.S.C.

Respondent,

-and-

FRATERNAL ORDER OF POLICE,
LODGE NO. 36A, B & C,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge filed against the County and the Assignment Judge alleging that the Assignment Judge unilaterally changed the employee's working conditions. The Assignment Judge asserted that his actions were taken pursuant to constitutional authority to administer the courts, that his actions affected judicial employees, and that, pursuant to Passaic County Probation Officers Ass'n v. County of Passaic, et al, 73 N.J. 247 (1977), he would not recognize the jurisdiction of the Commission to entertain the charge.

D.U.P. NO. 81-20

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Appearances:

For the County of Hudson, John Gillen Sheriff

For Hon. Thomas S. O'Brien, A.J.S.C.,
Michael Diller, Deputy Attorney General

For the Fraternal Order of Police,
Schneider, Cohen, Solomon & DiMarzio, Esqs.
(David S. Solomon, of Counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission on May 21, 1980 by the Fraternal Order of Police, Lodge No. 36A, B and C, against the County of Hudson and against the Assignment Judge in the County of Hudson 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").^{1/}

^{1/} Charging Party alleges that the County is in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5). These subsections prohibit public employers, their representatives or agents from: "(1)
(continued)

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.^{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.

1/ (continued)

Interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by this Act and (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."

Charging Party alleges that the Assignment Judge has violated N.J.S.A. 34:13A-5.4(a)(1).

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.

The FOP states that it is the majority representative of a negotiations unit comprised of Sheriff's Officers, Court Attendants, Process Servers and certain other employees employed by the County. The FOP states that this negotiations unit was certified by the Commission and that the County was named as the employer of the employees in question.

The FOP states that on May 12, 1980, the Court Administrator, on behalf of the Assignment Judge, instructed the County Sheriff to change the method by which compensation time may be utilized by unit members. The FOP states that the implementation of this alleged unilateral change conflicts with past practices concerning the use of compensation time and overtime.

The FOP claims that the Respondents have thus interfered with, restrained and coerced employees in the exercise of rights guaranteed to them under the Act and that the County in particular has refused to negotiate in good faith by permitting "public employers, other than itself, to administer the collective negotiations agreement between the parties...." The Charging Party requests that the Commission order the County to negotiate in good faith with the FOP and restrain the Sheriff and the Assignment Judge from interfering with contractual relations between the County and the FOP.

The Commission has previously considered unfair practice charges which alleged that the Assignment Judge had unilaterally implemented changes to contractual terms and conditions of employment concerning employees who perform functions for the

Court system. In re County of Ocean, P.E.R.C. No. 78-49, 4 NJPER 92 (¶4042 1978). The Commission in the Ocean County matter held that its consideration of such charges was governed by Passaic County Probation Officers Ass'n v. County of Passaic, et al, 73 N.J. 247 (1977).

Passaic County Probation Officers involved the issue as to the applicability of the New Jersey Employer-Employee Relations Act vis-a-vis employees who "come within the regulatory control and superintendence of this Court." The Court stated:

Thus we reach the important issue as to whether, while subject to judicial supervision resting upon a constitutional mandate, probation officers can also be subject to N.J.S.A. 34:13A-1 et seq., the New Jersey Employer-Employee Relations Act. Stated more generally, can the control of probation officers and of the whole statewide system of probation, seemingly entrusted to the Judiciary by the terms of the Constitution, be in any way diluted or modified by legislation? Subject to what is set forth below, we think it clear that it cannot.

Accordingly, the Commission found in Ocean County that when the judiciary was asserting its regulatory control and superintendence over Court employees and when those employees are deemed to be judiciary employees, an unfair practice charge may not be maintained against a County as the asserted employer of such employees. Further, with respect to an unfair practice charge filed against the judiciary, the Commission stated that it would first determine whether the actions challenged on their face concern employees who may be considered an "integral and necessary" part of the judicial system and would further examine

whether the judiciary was acting in reliance upon its constitutional administrative authority to "make rules governing the administration of all courts in the State." The Commission advised that it would investigate whether the judiciary's actions were taken pursuant to any administrative directive. The Commission stated that if the actual and legal circumstances in a case closely parallel those in the Passaic County Probation Officers matter it would refuse to further process the pending charge, seek withdrawal of the case, and in the absence thereof dismiss the charge for failure to state a claim upon which relief can be granted by the Commission.

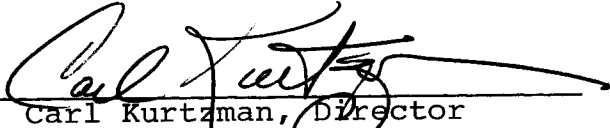
In the instant unfair practice charge, the undersigned solicited the position of the Assignment Judge. The representative of the Assignment Judge advised that "the employees in question are an 'integral and necessary' part of the judicial system and that the memorandum of May 12, 1980 issued by the Court Administrator was issued pursuant to the judiciary's constitutional administrative authority to administer the Courts." ^{5/} The Judiciary's representative further advised that while it was willing to engage in informal conferences held by the Commission in this matter, its participation "does not constitute recognition of jurisdiction in the Commission to entertain the charges made herein nor to issue a complaint against the judiciary based upon them."

^{5/} The memorandum referred to is the May 12, 1980 memorandum cited by the FOP in its charge, which was issued by the Court Administrator to the Sheriff and purportedly ordered the compensation time changes.

In a recent matter before the Commission, In re State of New Jersey, D.R. No. 81-34, 7 NJPER ____ (¶ ____ 1981), req. for rev. den. P.E.R.C. NO. 81-127, 7 NJPER ____ (¶ ____ 1981), the undersigned, considering an assertion by the Administrative Director of the Court that the judiciary was the public employer of certain employees, stated "...neither he nor the Commission possesses the authority to dispute the judiciary's position that it is the employer of these employees...." Accordingly, the undersigned must accept the judiciary's assertion that it is the employer of those unit members who were affected by the Court Administrator's memorandum.

In accordance with the Ocean County decision, supra, the undersigned has requested that the FOP withdraw the instant unfair practice charge. The FOP orally advised the undersigned that it would not withdraw the charge. Therefore, the undersigned must decline to issue a complaint against the County pursuant to the Ocean County decision and must decline to issue a complaint against the Assignment Judge for failure of the Charging Party to state a claim upon which relief can be granted by the Commission.

BY ORDER OF THE DIRECTOR


Carl Kurtzman, Director
of Unfair Practices

DATED: May 19, 1981
Trenton, New Jersey