

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS COUNTY PROSECUTOR'S OFFICE,

Respondent,

-and-

Docket No. RO-99-10

MORRIS COUNTY ASSISTANT PROSECUTOR'S  
ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies the request of the County of Morris for review of the Director of Representation's decision approving the withdrawal of a representation petition. The petition was filed by the Morris County Assistant Prosecutor's Association seeking to represent assistant prosecutors employed by the Morris County Prosecutor's Office. When the Prosecutor voluntarily recognized the Association as the exclusive representative of all assistant prosecutors except the First Assistant Prosecutor, the Association withdrew the petition. The County asserts that it is the co-employer of the assistant prosecutors and that the case was closed before the co-employer status issue could be resolved. The Commission finds that recognition has been granted and under N.J.S.A. 34:13A-5.3 "the Commission shall not intervene in matters of recognition." Withdrawal of the representation petition does not prejudice or alter the County's statutory right to determine salaries of these employees after receiving a recommendation from the Prosecutor. The Commission encourages the County and the Prosecutor to resolve their dispute over the co-employer issue. If necessary, the County may initiate a separate proceeding to have the Commission resolve that issue.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 99-103

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Appearances:

For the Respondent, John B. Dangler, Morris County  
Prosecutor

For the Petitioner, Robert A. Weber, Assistant Prosecutor

For the County of Morris, Lewis & McKenna, attorneys  
(John A. Napolitano, of counsel)

DECISION

On July 20, 1998, the Morris County Assistant  
Prosecutor's Association filed a petition seeking to represent  
assistant prosecutors employed by the Morris County Prosecutor's  
Officer. On March 23, 1999, the Prosecutor voluntarily recognized  
the Association as the exclusive representative of a negotiations  
unit of all assistant prosecutors except the First Assistant  
Prosecutor. On April 9, the Association withdrew its petition.  
On April 12, the Director approved the withdrawal.

On April 27, 1999, the County of Morris requested review  
of the decision approving the withdrawal request. It asserts that

it is a co-employer of the assistant prosecutors based on its statutory right to set their salaries. See N.J.S.A. 2A:158.15.3. It further asserts that the case was closed before the co-employer status issue could be resolved and that this issue raises a substantial question of law that should be resolved in this proceeding. It asserts that this legal issue was fully briefed below.

On May 3, 1999, the Association filed a statement opposing review. It argues that it is a matter of settled law that a County prosecutor is the exclusive employer of his or her staff for purposes of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. It relies on In re Middlesex Cty. Prosecutor, 255 N.J. Super. 333, 338-339 (App. Div. 1992).

On May 5, 1999, the Prosecutor filed a statement relying on his previous submissions asserting that the Prosecutor is the employer.

Review will be granted only for one or more of these compelling reasons:


1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered. [N.J.A.C. 19:11-8.2]

There is no dispute that the Prosecutor is at least an employer of the assistant prosecutor. While there is a dispute between the County and the Prosecutor over whether the County is a co-employer, there is no basis for us to require the Association to maintain its petition seeking a representation election. Recognition has been granted and, under N.J.S.A. 34:13A-5.3, "the Commission shall not intervene in matters of recognition." Cf. Borough of Fair Lawn, P.E.R.C. No. 98-160, 24 NJPER 352 (¶29167 1998), app. pending App. Div. Dkt. No. A-007064-97T50. Further, permitting withdrawal of this representation petition does not appear to prejudice or alter the County's right to determine salaries under N.J.S.A. 2A:158-15.3 upon receiving a recommendation from the Prosecutor. We encourage the parties to try to resolve their dispute over the County and Prosecutor's shared statutory role in the area of employee salaries. If necessary, and if the County still believes that its rights are prejudiced, it may initiate a separate proceeding seeking to have this agency resolve the co-employer issue.

ORDER

The request of the County of Morris for review is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn and Ricci voted in favor of this decision. None opposed.

DATED: May 27, 1999  
Trenton, New Jersey  
ISSUED: May 28, 1999