P.E.R.C. NO. 79-47

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Respondent,

-and-

Docket No. CO-79-82

COUNCIL 52, LOCAL 2306,
AFSCME, AFL-CIO,

Charging Party.

SYNOPSIS

In an Interlocutory Decision the Special Assistant to the Chairman denies Council 52's application for interim relief in an unfair practice proceeding. Council 52 had alleged that the County had violated the New Jersey Employer-Employee Relations Act by unilaterally imposing a County residency requirement for all individuals employed by the County, in part affecting employees employed within the Hudson County Department of Welfare and represented by Council 52, without negotiating this issue with Council 52. In its request for interim relief Council 52 sought to restrain the County from effectuating its residency requirement or in any way adversely affecting the jobs of Welfare Board employees not presently residing within the County during the pendency of the unfair practice proceeding. The Special Assistant to the Chairman determined that although Council 52 clearly established that a residency requirement was a required subject for collective negotiations certain factors mitigated against the granting of the requested relief. The Special Assistant determined that the impact of N.J.S.A. 11:22-7 and Chapter 63, Laws of 1974, read in para materia, in terms of providing a legitimate statutory basis for the County's actions in this case raised enough doubt as to Council 52's likelihood of success before the Commission on the ultimate merits of this case so as to require the determination that Council 52's application for interim relief be denied. In addition it was pointed out in the decision that a dispute existed as to whether, for the purpose of mandating county residency pursuant to N.J.S.A. 11:22-7, Welfare Board employees were County employees.

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Charging Party.

Appearances:

For the Respondent, Francis X. Hayes, Esq.
Murray, Granello & Kenney, Esqs.
(Bruce J. Ackerman, on the Brief)

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

INTERLOCUTORY DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on October 11, 1978 by Council 52, Local 2306, AFSCME, AFL-CIO ("Council 52") alleging that the County of Hudson (the "County") had engaged in certain unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act").

The Charge essentially alleged that the County had violated N.J.S.A. 34:13A-5.4(a)(1), (2), (3) and (5) [1/] by unilaterally

1/ These subsections prohibit 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) (continued)

imposing a county residency requirement for all individuals employed by the County, in part affecting employees employed within the Hudson County Department of Welfare and represented by Council 52, without negotiating the issue with Council 52. In correspondence dated November 10, 1978 Council 52 perfected its earlier request for "Ad Interim and Immediate Relief" by submitting a proposed order to show cause along with 24 affidavits submitted in support of Council 52's request for interim relief. Council 52 sought to restrain the County from effectuating its residency requirement or in any way adversely affecting the jobs of Welfare Board employees not presently residing within the County of Hudson during the pendency of the instant unfair practice proceeding. The undersigned, as Special Assistant to the Chairman, having been delegated the authority to act upon requests for interim relief on behalf of the Commission, executed a modified Order to Show Cause, dated November 15, 1978 that was made returnable on December 7, 1978. This Order to Show Cause was subsequently amended on November 16, 1978 and on November 22, 1978 to correct transcription errors.

Both parties, represented by counsel, appeared at the Order to Show Cause hearing conducted on December 7, 1978 and

1/ (continued)
Discriminating in regard to hire or tenure of employment or any term and 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.

At a show cause hearing conducted on December 7, 1978 Council 52 withdrew its allegation that subsections (a)(2) and (3) had been violated by the County.

argued orally at that time. The parties submitted letter memoranda or briefs and affidavits in support of their respective positions, all of which were received by December 27, 1978. At the conclusion of the hearing the undersigned reserved judgment on Council 52's application for interim relief. This Interlocutory Decision is therefore being prepared in accordance with N.J.A.C. 19:14-9.5 to set forth the undersigned's determination relating to Council 52's request for interim relief.

Council 52 in its submissions alleges in essence that the County was legally obligated to negotiate with it concerning the issue of residency for County Welfare Board employees since this requirement was not, as contended by the County, a continuing prerequisite or qualification for employment, i.e. a managerial prerogative, but was a term and condition of employment which the County was required to negotiate prior to implementation. Council 52 cited several pertinent public sector administrative and judicial decisions in support of its contention that residency was a mandatory subject for collective negotiations. In response to the County's contention that residency requirements for civil service employees such as those represented by Council 52 are mandated by a preemptive statute and therefore are not negotiable, Council 52 asserts that the statute cited by the County is not relevant to the instant matter in part because it has been repealed by Chapter 63, Public Laws of 1978 [N.J.S.A. 40A:9-1.3 to

N.J.S.A. 40A:9-1.10] which provides that any local residency ordinance that is passed and first made effective after June 30, 1978 shall only affect employees hired after the effective date of Chapter 63, i.e. June 30, 1978.[2/] Lastly, Council 52 submitted numerous affidavits in support of its contention that certain employees in the unit would be irreparably harmed if the requested interim relief was not granted by the Commission.

The County asserts that the adoption of a residency requirement does not relate to a term and condition of employment and involves the exercise of managerial prerogatives which directly relate to governmental policy making. The County maintains that a residency requirement is a prerequisite to eligibility for employment in the sense of "qualifying criteria" which have been determined by the Commission not to be required subjects for collective negotiations. The County also contends, assuming arguendo that residency is determined by the Commission to be a term and condition of employment, that N.J.S.A. 11:22-7, controls the disposition of this case since that statute was still in effect when the County passed its residency ordinance and since Chapter 63, Public Laws of 1978, states that it does not affect any local residency requirement extant at the time Chapter 63

2/ Council 52 also raises questions concerning whether Welfare Board employees are legally under the control of County officials for purposes of establishing a residency requirement.

became effective.[3/] The County submits that N.J.S.A. 11:22-7 was a specific statute which expressly set particular terms and conditions of employment, which could not be contravened by negotiated agreements.[4/] The County emphasizes that this statute as interpreted by the State judiciary imposed a mandatory residency requirement in part for all county employees, not only as a precondition to initial employment, but also as a mandatory prerequisite to maintaining that public employment. The County also asserts that there has not been a unilateral change in the County's residency policy at all since the County has always limited its hiring to residents of Hudson County, except in exceptional circumstances. The County states that the recent County residency ordinance was merely a codification of existing practices and did not change the terms and conditions of employment of Welfare Board employees represented by Council 52. In response to one of the arguments raised by Council 52 the County maintains that pertinent judicial decisions have supported its contention that the County is the appropriate employer entity to establish and enforce a

3/ N.J.S.A. 11:22-7 reads as follows:

> For all positions and employments in the classified service, where the service is to be rendered in a particular county, municipality or school district, or any judicial district of such county, and payment therefor is made from the funds of such county, municipality or school district, or judicial district of the county, the commission shall limit the eligiblity of applicants to the qualified residents of the county, municipality or school district, or judicial district of such county, in which the service is to be rendered and from the funds of which the employee is to be paid.

Chapter 63, Public Laws of 1978 is appended to this decision and marked as Exhibit "A".

4/ The County cited State v. State Supervisory Employees Assn, 78 N.J. 54 (1978).

residency requirement. Lastly, the County objects to the assertion that any harm that may be suffered by employees as the result of implementing the ordinance is irreparable in nature since the County submits that any harm could be remedied at the conclusion of the case by monetary damages.[5/]

After careful consideration of the written submissions of the parties, and in further consideration of the oral arguments proffered at the show cause hearing, the undersigned has concluded that Council 52 has not satisfied the Commission's standards that have been developed for evaluating the appropriateness of interim relief. It must first be borne in mind that this is an interim proceeding seeking extraordinary relief pursuant to N.J.A.C. 19:14-9.1 et seq. and is not a substitute for the Commission's normal unfair practice procedures. The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are stringent in nature and are quite similar to those applied by the courts when confronted with similar applications. Basically the test is twofold: the substantial likelihood of success on the legal and factual allegations in the final Commission decision, and the irreparable nature of the harm that will occur if the requested

5/ The undersigned has been informed by County representatives that although non-County residents were initially warned that they had to comply with the residency requirement by December 31, 1978 unless an extension had been granted by the County Executive, no Welfare Board employees were terminated as of that date.

relief is not granted.[6/] Both standards must be satisfied before the requested relief will be granted.

Although the undersigned concludes, for the reasons to be set forth hereinafter, that Council 52 has clearly established that a residency requirement is a required subject for collective negotiations, certain factors mitigate against the granting of the requested relief. The impact of N.J.S.A. 11:22-7 and Chapter 63, Laws of 1974, read in pari materia, in terms of providing a legitimate statutory basis or perhaps mandate for the County's actions in this case raises enough doubt as to Council 52's likelihood of success before the Commission on the ultimate merits of this case so as to require the determination that Council 52's application for interim relief be denied. In addition a dispute exists as to whether, for the purpose of mandating County residency pursuant to N.J.S.A. 11:22-7, Welfare Board employees are County employees. Given the particular facts in this case and the judicial decisions cited by the parties concerning this point, it would not be appropriate to predict what the Commission's decision would be on this yet undecided point of law.

6/ See for example In re Township of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); In re State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); In re Township of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); In re City of Jersey City, P.E.R.C. No. 77-13, 2 NJPER 293 (1976); In re Ridgefield Park Board of Education, P.E.R.C. No. 78-1, 3 NJPER 217 (1977); In re Newark Redevelopment and Housing Authority, P.E.R.C. No. 78-15, 4 NJPER 52 (¶4024 1978); In re Union County Regional High School Board of Education, P.E.R.C. No. 78-27, 4 NJPER 11 (¶4007 1978) and In re Willingboro Education Association, P.E.R.C. No. 78-64, 4 NJPER 168 (¶4083 1978).

A more complete discussion and analysis of the above conclusions of law is in order and these conclusions will be discussed seriatum.

The New Jersey Supreme Court in State v. State Supervisory Employees Assn, supra, enunciated the balancing test to be applied by the Commission in determining whether a particular issue was a required subject for collective negotaitions or an illegal subject. The Supreme Court stated that mandatorily negotiable terms and conditions of employment are "those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy." 78 N.J. 54 at 67. The undersigned concludes, consistent with administrative and judicial decisions in other states, that the imposition of a residency requirement has a direct and profound effect on the work and welfare of public employees.[7/] The implementation of the County's residency requirement in the instant case could effectively terminate the employment relationship vis-a-vis certain employees in the unit represented by Council 52 without which there would be no wages, hours or conditions of

7/ See for example In re Ambridge Area School District, 9 PPER ¶9034 (1978); In re City of Erie School District, 9 PPER ¶ 9031 (1978); Police Officers Assn v. City of Detroit, 85 LRRM 2540 (1974); City of Brookfield v. Wisconsin Employment Relations Commission, 87 LRRM 2099 (1974); Boston School Committee and Boston Teachers Union, Local 66 (Mass. Labor Relations Commission) Decision No. MUP-2503, MUP-2528, MUP-2541 (decided April 15, 1977) and In re City of Auburn, 9 PERB ¶3085 (1976).

employment. Simply stated the failure to comply with the County's residency requirement could result in a forfeiture of employment. Compliance with the County's ordinance would in many cases necessitate severe financial and personal hardship as enunciated in the affidavits submitted by Council 52. Any interest that the County may have in enacting a residency ordinance -- interests that have not yet been specifically enunciated by the County in this proceeding -- must be outweighed by the effect the implementation of this residency requirement may have on many Welfare Board employees. A fundamental, primary concern of an employee is job security which would be severely jeopardized by the implementation of this County residency requirement.

In summary the undersigned concludes that a residency requirement is a mandatorily negotiable term and condition of employment which could not be effectuated unilaterally in the absence of applicable preemptive legislation enabling a public employer to so act.

The key factor in this case, as alluded to earlier, is that the ordinance in question, a copy of which is appended to this decision as Exhibit "B", was adopted by the County on February 9, 1978. On that date N.J.S.A. 11:22-7 was still in effect, although Chapter 63, Public Laws of 1978 later repealed this statute, effective June 30, 1978. Our State judiciary in the past has consistently determined that N.J.S.A. 11:22-7

imposed a mandatory residency requirement on municipal and county employees not exempted by other statutes, not only as a pre-condition to initial employment, but also as a mandatory prerequisite to maintaining that public employment.[8/] The Appellate Division in the Skolski, case, supra, held as follows:

> We are of the view that the statutory specification of residency established by N.J.S.A. 11:22-7 as a condition for eligibility of an applicant for government employment is a of a continuing nature and must exist not only at the time of the initial appointment or employment but must continue during such employment...A fair reading of this statute in the light of the purposes of the residency requirement compels such a construction. It would make little sense to impose a residency requirement as a qualification for eligibility for appointment or employment and not require the same qualification for continued employment. If such were the case, any applicant, after satisfying the residency requirement for intitial employment, could immediately remove from the political subdivision or unit and successfully claim the right to continued governmental employment. We cannot conceive that our Legislature intended such a result when it enacted N.J.S.A. 11:22-7.... (footnote omitted)

The New Jersey Supreme Court in State v. State Supervisory Employees Assn, supra, when it determined that specific statutes or administrative regulations which specifically set terms and conditions of employment, i.e. N.J.S.A. 11:22-7 with reference to residency as a condition of employment, could not be contravened by negotiated agreement, also emphasized that a public employer was mandated to comply with the relevant statute or regulations and to act consistently with their prescriptions.

8/ See Lavitz v. Civil Service Commission, 52 N.J. Super. 158 (App. Div. 1958), cert. denied, 25 N.J. 508 (1959); Skolski v. Woodcock, 149 N.J. Super. 340 (App. Div. 1977).

Chapter 63, in repealing N.J.S.A. 11:22-7, made residency requirements an option of a county or a municipality; no longer were these requirements mandated. The Senate County and Municipal Government Committee in a statement attached to Chapter 63 [9/] stated that it "has no quarrel with a local unit's decision to require officers and employees to be residents but... believes such a decision is purely a local matter and should not be made on the basis of a State mandated requirement." However, section 7 of Chapter 63 states as follows:

> The provisions of this act shall apply to all residency requirements adopted on and after the effective date of this act. Nothing herein shall be construed as to alter, abrogate, repeal or otherwise affect any residency requirement in effect in any local unit by ordinance or resolution, or rule or regulation of a local unit, on the effective date of this act; provided, however, that any amendment, modification or other change in any such residency requirement shall be subject to all the relevant provisions of this act.

The County in the instant matter maintains that since the County residency ordinance was adopted prior to the effective date of Chapter 63 and was "in effect" on the effective date of Chapter 63, i.e. June 30, 1978, section 7 clearly establishes that the County's ordinance remains viable and is not subject to collective negotiations, at least until the ordinance at issue is amended or modified. Council 52 in its December 29,

9/ See Exhibit "A".

1978 letter memorandum maintains that the County ordinance was not "in effect" on June 30, 1978 within the meaning of section 7 of Chapter 63 since employees affected by the terms of the County ordinance were not forced to move into the County until January 1, 1979 at the earliest. Council 52 therefore submits that Chapter 63, not N.J.S.A. 11:22-7 is the dispositive piece of legislation and requires that the County negotiate in good faith with Council 52 relating to residency requirements affecting employees hired prior to June 30, 1978.10/

In light of the aforementioned factors, the undersigned concludes that it cannot be said that there is a substantial likelihood that Council 52 will prevail on both its factual and legal allegations in the final Commission decision. It is inappropriate to predict what the Commission's decision will be on particular issues when there is no pertinent Commission precedent and when those issues are as important to the resolution

10/ Paragraph 16 of the County residency ordinance (see Exhibit "B") states that "This ordinance shall take effect at the time and in the manner prescribed by law." As stated before this ordinance was passed, apparently after the statutorily mandated second reading (N.J.S.A. 40:41A-101(3)) on February 9, 1978. N.J.S.A. 40:41A-101(c) states that "No ordinance shall take effect less than 20 days after its final passage by the board and approval by the county executive, or supervisory or board chairman or president, where such approval is required, unless the board shall adopt a resolution declaring an emergency and at least two-thirds of all the members of the board vote in favor of such resolution."

of an unfair practice charge as they are in this case.[11/] The legal issues in this case are further clouded by the dispute between the parties concerning whether Welfare Board employees can be considered as County employees for the purposes of mandating County residency in light of their unique employment status.[12/]

There is little doubt in the undersigned's mind that Council 52 would have satisfied the "substantial likelihood of success test" if it was uncontroverted that the County adopted the residency ordinance at issue after the effective date of Chapter 63, for the reasons stated hereinbefore. The particular timing of the passage of the County residency ordinance, however, so complicates the legal issues involved that the requested relief cannot be granted in light of the previously enunciated standards developed by the Commission for considering applications for interim relief.

Before concluding the undersigned would like to emphasize again that this Interlocutory Decision relates to Council 52's request for interim relief and is not a Commission decision on

11/ It is possible that the Commission could find a violation of the Act in this case even if it agrees with the County's analysis of the relationship between N.J.S.A. 11:22-7 and Chapter 63. The Commission may disagree with the earlier cited judicial decisions decided prior to the State Supervisory Employees case, supra, and find that N.J.S.A. 11:22-7 related solely to qualifications for initial employment.

12/ Compare Lavitz v. Civil Service Commission, supra, with State, etc. v. County of Hudson, etc., 390 A.2d 720 (1978). Also see Am. Fed. of State, Cty and Municipal Employees v. Hudson Cty. Welfare Bd., 141 N.J. Super. 25 (1976) and Communication Workers v. Union Cty Welfare Bd., 126 N.J. Super. 517 (1974).

the ultimate merits of Council 52's allegations as set forth in its unfair practice charge.

For the foregoing reasons, Council 52's application for interim relief is hereby denied.[13/]

BY ORDER OF THE COMMISSION

Stephen B. Hunter

Stephen B. Hunter
Special Assistant to the Chairman

DATED: Trenton, New Jersey
January 17, 1979

13/ In light of the undersigned's determination that the Commission's substantial likelihood of success standard has not been satisfied, it is unnecessary to determine whether the Commission's "irreparable harm test" is satisfied in this matter.

EXHIBIT "A"

RESIDENCY REQUIREMENTS—MUNICIPAL AND COUNTY EMPLOYEES

CHAPTER 63 [7]

ASSEMBLY NO. 110

An Act concerning residency requirements for municipal and county employees, supplementing Title 40A of the New Jersey Statutes and repealing R.S. 11:22–7 and N.J.S. 40A:9–1.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1.

Unless otherwise provided by law, the governing body of any local unit may by resolution or ordinance, as appropriate, require, subject to the provisions of this act, all officers and employees employed by the local unit after the effective date of this act to be bona fide residents therein. A bona fide resident for the purpose of this act is a person having a permanent domicile within the local unit and one which has not been adopted with the intention of again taking up or claiming a previous residence acquired outside of the local unit's boundaries. Any local unit wherein the provisions of Title 11 (Civil Service) of the Revised Statutes are operative, shall transmit a copy of the adopting ordinance or resolution, as the case may be, to the Civil Service Commission.

2.

Any local unit having adopted the provisions of Title 11 (Civil Service) of the Revised Statutes, which has also adopted the provisions of section 1 of this act by ordinance or resolution, as appropriate, may therein limit the eligibility of applicants for positions and employments in the classified service of such local unit to residents of that local unit. Upon receipt of a copy of such ordinance or resolution, as the case may be, the Civil Service Commission thereafter shall not open such local unit's eligibility lists to anyone who is not a bona fide resident of the local unit at the time of the closing date following the announcement of examination; provided, however, that if the commission, after ample advertisement, determines that an insufficient number of qualified residents exist for available positions or employments in a particular local unit, it may open eligibility lists for such positions or employments to qualified nonresidents.

3.

The governing body of a local unit which has adopted a resolution or ordinance, as the case may be, pursuant to section 1 of this act shall require therein that all nonresidents subsequently appointed to positions or employments shall become bona fide residents of the local unit within 1 year of their appointment, except as otherwise provided in such ordinance or resolution pursuant to sections 4 and 5 of this act.

It shall be the duty of the hiring authority to insure that all employees hired after the effective date of this act remain bona fide residents of the local unit in which they are employed. Failure of any such employee to maintain residency in a local unit shall be cause for removal or discharge from service. In the event such employee does not maintain bona fide residency, the hiring authority shall notify said employee that failure to again take up bona fide residency in the local unit within 6 months of such notification will result in removal or discharge from service. Such removal or discharge shall take effect on the date specified in such notice, but any em-

7. N.J.S.A. 40A:9–1.3 to 40A:9–1.10.

ployee so removed or discharged shall have the right to such appeals as are available pursuant to law.

4.

Any local unit which has adopted an ordinance or resolution, as the case may be, pursuant to section 1 of this act, shall provide therein that whenever the governing body, or appointing authority, shall determine that there cannot be recruited a sufficient number of qualified residents for available specific positions or employments, the local unit shall advertise for other qualified applicants. The local unit, or the hiring authority thereof, shall thereupon classify all qualified applicants for such positions or employments so determined in the following manner:

a. In the case of municipalities:

(1) Other residents of the county in which the municipality is situate.

(2) Other residents of counties contigous to the county in which the municipality is situate.

(3) Other residents of the State.

(4) All other applicants.

b. In the case of counties:

(1) Other residents of contiguous counties.

(2) Other residents of the State.

(3) All other qualified applicants.

The hiring authority shall first appoint all those in class 1 and then those in each succeeding class in the order above listed and shall appoint a person or persons in any such class only to a position or positions, or employment or employments, remaining after all qualified applicants in the preceding class or classes have been appointed or have declined an offer of appointment The preference established by this section shall in no way diminish, reduce or affect the preferences granted pursuant to any other provisions of the law. A local unit which has recruited and hired officers and employees under the provisions of this section may require such officers and employees, as a condition of their continued employment, to become bona fide residents thereof. Such a requirement shall be specified at the time of appointment and a reasonable amount of time granted for such officers and employees to become bona fide residents of the local unit. The Civil Service Commission shall, upon any subsequent notice of the determination of the governing body or the hiring authority of any such local unit wherein Title 11 (Civil Service) of the Revised Statutes is operative that such preference schedule shall be applicable for any specific position or employment, classify all applicants for such position or employment accordingly.

5.

Any local unit adopting the provisions of section 1 of this act shall provide in the adopting ordinance or resolution, as the case may be, that whenever the governing body, or the hiring authority of the local unit, shall determine that there are certain specific positions and employments, requiring special talents or skills which are necessary for the operations of the local unit and which are not likely to be found among the residents of the local unit, such positions or employments so determined shall be filled without reference to residency. Any such provision shall set forth the formal criteria pursuant to which such positions and employments shall be so determined.

6.

Any local unit which has adopted a resolution or ordinance, as the case may be, pursuant to section 1 of this act shall give preference in promotion to officers and employees who are bona fide residents of the local unit. When promotions are based upon merit as determined by suitable promotion tests or other objective criteria, a resident shall be given preference over a nonresident in any instance when all other measurable criteria are equal. The preference granted by this section shall in no way diminish, reduce, or affect the preference granted pursuant to any other provision of law.

7.

The provisions of this act shall apply to all residency requirements adopted on and after the effective date of this act. Nothing herein shall be construed as to alter, abrogate, repeal or otherwise affect any residency requirement in effect in any local unit by ordinance or resolution, or rule or regulation of a local unit, on the effective date of this act; provided, however, that any amendment, modification or other change in any such residency requirement shall be subject to all the relevant provisions of this act.

8.

Any requirements concerning eligibility, appointment or promotion contained in any ordinance or resolution adopted pursuant to this act shall be subject to any order issued by any court, or by any State or Federal agency pursuant to law, with respect to a requirement of action to eliminate discrimination in employment based upon race, creed, color, national origin, ancestry, marital status or sex, except that any requirement contained in any such ordinance or resolution pursuant to the provisions of section 3 of this act shall continue to apply notwithstanding any such order.

9. R.S. 11:22-7 and N.J.S. 40A:9-1 [8] are repealed.

10.

This act shall take effect immediately.

Approved and effective June 30, 1978.

Senate County and Municipal Government Committee Statement

The Senate committee includes herein for purposes of establishing Legislative intent the text of the Assembly Committee Statement setting forth the purposes of the bill:

"The committee, at the request of the sponsor, adopted a committee substitute for Assembly Bill No. 110. Assembly Bills Nos. 110 and 111 were two companion bills which dealt with residency requirements for county and municipal officers and employees. The committee believes that the problems created by residency requirements for local government workers could be resolved in one bill, which would cover county and municipal workers in both the classified and unclassified service.

The substitute measure is a permissive bill which permits counties and municipalities to adopt residency requirements for local government officers and employees if they choose to do so. It establishes a mechanism whereby local units which adopt residency requirements may hire nonresidents when they cannot recruit qualified applicants for available positions and to hire nonresidents for jobs that require highly specialized skills not likely to be found in a single county or municipality. It requires that any county or municipality which has adopted a residency requirement pursuant to this act shall give preference in promotion to residents of the local unit.

The bill repeals N.J.S. 40A:9-1 which requires that all county and municipal officers be residents of the local unit for which they work. It also repeals R.S. 11:22-7 which prohibits the Civil Service Commission from opening eligibility lists for county and municipal jobs to nonresidents. In 1977, the Superior Court, Appellate Division, found that R.S. 11:22-7 mandated durational residency for all county and municipal workers in the classified service. Following this decision several counties initiated actions to dismiss nonresident workers on the basis of the court's interpretation of R.S. 11:22-7. The committee has no quarrel with a local unit's decision to require officers and employees to be residents but it believes such a decision is purely a local matter and should not be made on the basis of a State-mandated requirement.

8. N.J.S.A. 11:22-7, 40A:9-1.

The substitute measure makes residency requirement an option of the county and the municipality. It does, however, establish broad guidelines which are designed to insure that residency requirements, if adopted, will be fair to all concerned parties and that they can be equitably enforced. The bill would only affect officers and employees hired after the act's effective date and would not affect any residency requirement already in effect. It also does not cover any local government officers and employees exempted from residency requirements by other statutes."

The Senate committee amended the bill to clarify certain provisions and to tighten certain procedural aspects of the bill. The committee was particularly concerned to assure that the powers granted to local units to waive adopted residency requirements in certain cases (under section 4 of the bill as amended, whenever the local unit determines that an insufficient number of recruits are available within the local unit to fill specific positions; and, under section 5 of the bill as amended, whenever the local unit determines that certain positions or employments requiring special talents or skills shall be filled without regard to residency) shall be set forth in the ordinance or resolution adopting residency, so that the citizens of the local unit may be aware of the existence and provisions of these waiver powers.

The Senate committee amendments would also assure that section 3 of the bill as amended, providing for persons appointed after the effective date of the act to become residents within 1 year of appointment of a local unit adopting a residency ordinance or resolution, shall apply to all local units adopting residency under the act, and not only to local units under civil service. Such is the purpose of setting off these provisions as a separate section.

The other major provision of the Senate committee amendments is to provide that the requirements of any residency ordinance or resolution shall be subject to any court order, or any State or Federal agency order, requiring affirmative action on the part of a local employer. The committee, however, intends that the provisions of section 3 of the act, discussed above, shall continue to apply to any persons appointed subject to any such order.

In addition to the above, the Senate committee was particularly concerned to establish whether or not a residency ordinance or resolution adopted by a civil service county or municipality, shall apply to unclassified positions, as well as classified positions, within such local unit. The committee determined that the provisions of section 1 of the act are sufficiently general as to assure that any such residency ordinance or resolution shall also apply to unclassified positions, notwithstanding the fact that the bill contains no provision relating explicitly to such unclassified positions. The committee, therefore, determined that no amendment was necessary in this regard.

EXHIBIT "B"

BOARD OF CHOSEN FREEHOLDERS

COUNTY OF HUDSON

C O P Y O F O R D I N A N C E

No. 63-2-1978

On motion of Freeholder Mocco
Seconded by Freeholder O'Malley

AN ORDINANCE ESTABLISHING RESIDENCY REQUIREMENTS FOR EMPLOYEES OF HUDSON COUNTY

WHEREAS, it is in the public interest to require public employe of the County of Hudson to reside within the County which provides their salaries.

NOW, THEREFORE, BE IT ORDAINED by the Board of Chosen Freeholde of the County of Hudson, that:

1. Except as otherwise provided by law, or in the case of thos persons specifically exempt under the provisions of N.J.S.A. 40A:9-1, every person holding an office, position or employment, the authority and duties of which relate to the County of Hudson, shall be a bona fide resident of the County of Hudson during the term of his employmen

2. All officers and persons employed by the County of Hudson or hereafter to be employed by the County of Hudson are hereby required as a condition of their continued employment to have their place of abode in the County and to be bona fide residents therein.

3. A bona fide resident, for the purpose of this ordinance, is a person having a permanent domicile within the County of Hudson and one which has not been adopted with the intention of again taking up or claiming a previous residence acquired outside of the County limits.

4. The responsibility and duty to enforce this Ordinance shall be with the County Executive. The County Executive or his designee shall have the power to investigate and perform any and all acts necessary to carry out the provisions of this Ordinance. The County Executive shall have the power to require any or all officers and employees to execute Affidavits, certifications, written verifications or furnish such information as may be necessary or proper to carry out the provisions of this Ordinance.

5. The County Executive shall notify any officers or employees of the County of Hudson, not now residents of the County of Hudson, that unless they establish a bona fide residence in the County of Hudson within six (6) months from the date of the notice forwarded to them requiring them to establish said residence, that they will be dismissed as an officer or employee of the County of Hudson.

COUNTY OF HUDSON

COPY OF ORDINANCE

No.

On motion of Freeholder_____
Seconded by Freeholder_____

6. The County Executive is hereby authorized, upon application by the officer or employee and for good cause, to extend the aforement six (6) month time period for compliance with this ordinance for an additional time period up to but not exceeding an additional six (6) months.

a. Under no circumstances can the time period from the date of the notice to establish a bona fide residence in the County of Hudson to the date of the actual establishment of that residence excee more than twelve (12) months.

b. No application for an extension of time shall be grante unless it is submitted to the County Executive, in writing within five (5) months of the date of the notice described in paragraph 5 above.

c. No application for an extension of time shall be grante unless the applicant states, in writing his or her intention to become a bona fide resident of Hudson County within the time period, as extended.

d. In considering good cause for an extension of time, the County Executive shall take into consideration the length of time the applicant has been a non-resident; problems related to the sale of a home or in the purchase of a home within Hudson County; financial problems concerning existing leases; difficulties in locating suitable quarters or facilities within the County of Hudson; completion of scho terms of the applicant's children; financial hardships and such other matters that may create an undue burden on the applicant or immediate members of the applicants family if an extension of time is not grante

7. Nothing herein shall be applied so as to prohibit or prevent any employee from spending any portion of his duly authorized leave outside of the County of Hudson.

8. Failure of any officer or employee to comply with this Ordinance shall be sufficient cause for his removal or discharge from the service of the County of Hudson.

9. Should any portion of this Ordinance be declared illegal or invalid by any court of competent jurisdiction, the remainder of said ordinance shall remain in full force and effect, the provisions thereof being fully severable.

10. In the interpretation or enforcement of this Ordinance, in any case where the masculine gender is used, said use shall be solely

BOARD OF CHOSEN FREEHOLDERS

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On motion of Freeholder_____
Seconded by Freeholder_____

for purposes of simplification, and the same regulations shall apply as if words or pronouns of the feminine gender were used.

11. All prior resolutions or ordinances or parts thereof inconsistent with the provisions of this ordinance are hereby repealed as to such inconsistency only.

12. Pursuant to N.J.S.A. 40:41A-101, this ordinance shall be published at least once in The Dispatch and The Jersey Journal at leas one week prior to February 9, 1978, at which time there shall be a public hearing on the within ordinance in the Assembly Chambers, Room 505, of the Administration Building, 595 Newark Avenue, Jersey City, New Jersey, at 7:30 P.M., on said date.

13. A copy of the within ordinance shall be sent by regular mail to the Clerk of each municipality within the County of Hudson not less than one week prior to the aforementioned date of hearing.

14. A copy of the within ordinance shall be posted on the bulletin board provided for public notices in the Administration Building and a copy thereof shall be made available to members of the general public who shall request such copies.

15. Upon passage of the ordinance, the Clerk of the Board of Freeholders is authorized and directed to publish in The Dispatch and The Jersey Journal, a notice concerning the approval and date of passage of this ordinance, and shall file one (1) certified copy of this ordinance with the Clerk of each municipality within its County within ten (10) days of final passage.

16. This ordinance shall take effect at the time and in the manner prescribed by law.

I, FRANK E. RODGERS, Clerk of the Board of Chosen Freeholders of the County of Hudson in the State of New Jersey, DO HEREBY CERTIFY the attached Ordinance to be a true copy of an Ordinance finally adopted at a meeting of said Board held on February 9, 1978

Frank E Rodgers