

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JUDGES OF PASSAIC COUNTY,

Public Employer,

-and-

LOCAL 153, OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL UNION,

Petitioner,

-and-

Docket No. RO-81-187

COUNCIL #3, NEW JERSEY CIVIL
SERVICE ASSOCIATION,

Intervenor,

-and-

PASSAIC COUNTY CLERKS ASSOCIATION,

Intervenor,

-and-

COUNTY OF PASSAIC,

Party-at-Interest.

SYNOPSIS

The New Jersey Public Employment Relations Commission affirms the Director of Representation's denial of objections which the County of Passaic had filed to an Agreement for Consent Election and remands for further processing in accordance with the Director's decision. The Agreement for Consent Election was entered into between the Passaic County Judiciary, OPEIU, Local 153, and New Jersey Civil Service Association, Council #3 with respect to a unit including all Passaic County Judiciary employees. The County objected to the election because it believed that it, not the Judiciary, was the employer of certain employees in the petitioned-for unit and that these employees were not necessary and integral to the functioning of the Courts. The Commission granted the County's Request for Review. The Commission now holds that absent a grant of authority, as discussed in Passaic County Probation Officers v. County of Passaic, 73 N.J. 247 (1977), it is unable to serve as the forum for the litigation of a claim that the Judiciary has erroneously determined that certain employees are within its regulatory control and superintendence.

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COUNTY OF PASSAIC,

Party-at-Interest.

Appearances:

For the Public Employer, Michael L. Diller, Deputy
Attorney General

For the Petitioner, Schneider, Cohen, Solomon &
DiMarzio, Esqs. (Bruce D. Leder, of Counsel)

For the Intervenor, Council #3, NJCSA
Charles Arangio, President

For the Intervenor, Passaic County Clerks Association
Ravin, Katchen & Greenberg, Esqs. (Allan M. Harris, of
Counsel)

For the Party-at-Interest, Michael Glovin, Assistant
County Counsel

DECISION

On January 26, 1982, the County of Passaic requested

review of our Director of Representation's determination that it was not the employer of certain personnel involved in a representation Petition. In re Judges of Passaic County, D.R. No. 82-26, 7 NJPER ____ (¶ ____ 1982). As a result, the Director denied the County's objections to the approval of an Agreement for Consent Election entered into between the Passaic County Judiciary (the "Judiciary"), OPEIU, Local 153 ("OPEIU"), and New Jersey Civil Service Association, Council #3 ("Council #3") with respect to a unit including all employees employed by the Judiciary.

The Director applied the traditional standard to ascertain employer status -- whether the particular entity exercises substantial control over the labor relations affecting the questioned employees -- in reaching his conclusion. We granted the County's Request for Review to consider its claim that the Director, in the instant matter, should have permitted a hearing to resolve disputed facts relative to this determination. The County had further requested a hearing to develop facts as to whether the questioned employees were "necessary and integral" to the functioning of the Courts. The County has asserted that this is the standard adopted by our Supreme Court to determine whether employees are employed by the Judiciary in Passaic County Probation Officers vs. County of Passaic, et al, 73 N.J. 247 (1977).

The Judiciary has advised the Commission that it considers the questioned individuals to be its employees. Although the Judiciary disputes the merits of the County's claim, it has preserved its claim before us that it has the sole authority to decide which employees are within its superintendence and control.

Additionally, neither the OPEIU nor Council 3 seek reversal of the Director's decision. An additional employee representative, the Passaic County Court Clerks Association, which purports to be the existing representative of court clerks, has objected to the unit described in the consent agreement. The Clerks Association has also participated in the consideration of the within matter and asserts that the Judiciary is the employer.

We have previously adopted the standard utilized by the Director to ascertain public employer status. In re Bergen County Prosecutor, P.E.R.C. No. 78-77, 4 NJPER 220 (¶41110 1978), aff'd sub nom Bergen Cty Freeholders Bd. v. Bergen County Pros., 172 N.J. Super. 363 (App. Div. 1980). We continue to endorse the use of this standard. However, we believe it appropriate to expand upon the limited holding of the Director and to further consider the additional issues advanced by the parties. These issues raise matters of broad import concerning personnel who may be identified as employees of the Judiciary and the rights of parties in a representation proceeding before this administrative agency.

Our inquiry herein focuses upon the County's position that the Commission should be a forum for litigation of its claim contesting the position of the Passaic County Judiciary which deems the concerned employees to be employees of the Judiciary under the standards adopted by the Supreme Court in Passaic, supra.

In Passaic, the question placed before the Court was the application of the mandate of the New Jersey Employer-Employee Relations Act that terms and conditions of employment must be negotiated with the employees' representative to a change in hours

of work of probation officers to conform to a change in Court hours. The Court first set forth the analysis that the Judicial branch of government "possesses plenary authority with respect to all matters touching upon the administration of the court system of New Jersey," 73 N.J. at 252. The Court then identified the issue presented:

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 [the Act].

Finding the answer to be in the negative, the Court held:

The conclusion is quite inescapable that the constitutional mandate given this Court to "make rules governing the administration of all courts in the State" transcends the power of the Legislature to enact statutes governing those public employees properly considered an integral part of the court system.

As we have noted above, the Judiciary in this matter has determined that the concerned personnel are its employees. Given the "plenary authority" vested in the court system, we fail to comprehend the basis of the County's assertion that we have the authority to subject the determination of the Judiciary to the proofs of an administrative hearing.

We have recently denied review of a decision of our Director of Representation denying a hearing for the purpose of litigating a virtually identical claim as that raised herein. In re State of New Jersey, D.R. No. 81-34, 7 NJPER 209 (¶12093 1981), req. for rev. den. P.E.R.C. No. 81-127, 7 NJPER 256 (¶12115 1981). The Director therein stated:

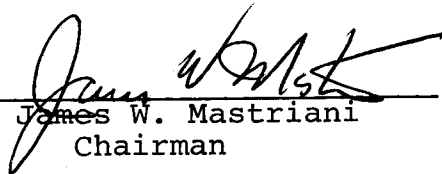
The position statements and documents submitted by the State and the representative of the Administrative Office of the Courts confirm that both the State and the Judiciary maintain that all employees paid from the 750 budgetary account are employees assigned to the administration of the court system and that the Judiciary considers itself to be the employer of these employees. This position is asserted by the Judiciary as part of its mandate to control and supervise the administration of the court system of New Jersey, and the Judiciary does not accept the jurisdiction of PERC to make a unit determination with regard to these employees. This position was confirmed by an oral communication from a representative of the Administrative Office of the Courts after consultation with the Administrative Director of the Courts.

Based on the above, and the holding in Passaic County Probation Officers, the undersigned must conclude that even if the material submitted did present a legitimate question concerning representation as to whether these employees had been within the units in question, which it has not, neither he nor the Commission possesses the authority to dispute the Judiciary's position that it is the employer of these employees and they should not be in these units. Therefore given the unique legal status of these employees, as well as the information submitted, the undersigned orders that the ballots cast by the employees of the judiciary shall be voided. (emphasis added)
7 NJPER, at 210.

Based upon the above, we find that we are without the authority to adjudicate the County's claim contesting the Judiciary's assertion that it is the public employer of the employees in question. Therefore, we find that, absent a grant of authority, as discussed in the Passaic County decision, this Commission is unable to serve as the forum for the litigation of a claim that the Judiciary has erroneously determined that certain

employees come within their regulatory control and superintendence. Accordingly, for the above reasons, we affirm the Director's denial of the County's objections to the Agreement for Consent Election and the matter shall be further processed in accordance with the Director's decision.^{1/}

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Hartnett, Hipp, Newbaker and Suskin voted in favor of this decision. Commissioner Butch voted against the decision.

DATED: Trenton, New Jersey
March 9, 1982
ISSUED: March 10, 1982

^{1/} In In re County of Ocean, P.E.R.C. No. 78-49, 4 NJPER 92 (¶4042 1978), we stated our policy of assisting the judiciary and the representatives of judicial employees by affording them use of our representation mechanisms. We are satisfied herein that the approval of the consent election agreement in this matter is not inconsistent with any of our statutory mandates. Although the unit definition issue raised by the Clerks Association has not been placed before us by the County's Request for Review, it would appear that the disposition of this issue would be governed by the application of the principles expressed in this decision. Apparently, the Clerks Association was not present at the consent election conference to express its views to the Judiciary. It may wish to request the Judiciary to consider its claims prior to the convening of the conference ordered by the Director.