

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF OCEAN,

Respondent,

-and-

HON. SAMUEL D. LENOX, JR., A.J.S.C.,

Docket No. CO-77-102-62

Respondent,

-and-

OCEAN COUNCIL NO. 12, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice proceeding initiated by the Council on the basis of stipulated facts and briefs submitted by the parties without a hearing and without a Hearing Examiner's Recommended Report and Decision, the Commission granted motions filed by representatives of Judge Lenox and the County and dismissed the complaints against both respondents in this matter in their entirety. The Council had alleged that the County of Ocean and Judge Lenox had violated the New Jersey Employer-Employee Relations Act by unilaterally altering and eliminating certain benefits enjoyed by court clerks employed within the Ocean County Court system, pursuant to past practices and a specific contractual provision, relating to hours of work and vacation and holiday practices.

The Commission finds that in light of the New Jersey Supreme Court decision, Passaic County Probation Officers Association v. County of Passaic, et al, 73 N.J. 247 (1977), and the Commission's finding that the court clerks are "necessary and integral" to the functioning of the State's court system, the County cannot be considered to be an employer of the court clerks represented by the Council for the purposes of the Act. The Commission concluded that the charges filed by the Council against the County cannot therefore stand.

The Commission further finds that the factual and legal circumstances in the instant case do closely parallel those in the Passaic Probation Officers decision, thus requiring the dismissal of the complaint against Judge Lenox. The Commission determines in this regard that Judge Lenox, in voiding Article XXVI of the contract

between the County and the Council concerning court related employee benefits, relied upon constitutional administrative authority, court rules establishing that the Assignment Judge shall be responsible for the administration of all courts in the county or counties for which he is the Assignment Judge including the supervision of all court clerks, and a June 10, 1971 administrative directive in support of his decision concerning Article XXVI.

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OCEAN COUNCIL NO. 12, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Charging Party.

Appearances:

For the County of Ocean, McGinnis Associates
(Mr. William McGinnis, Special Labor Relations
Consultant)

For the Hon. Samuel D. Lenox, Jr., William F. Hyland,
Attorney General
(Guy Michael, Deputy Attorney General)

For Ocean Council No. 12, New Jersey Civil Service
Association, Fox and Fox, Esqs.
(Mr. David I. Fox, Of Counsel)

DECISION AND ORDER ON MOTIONS

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") by Ocean Council No. 12, New Jersey Civil Service Association (the "Council") on October 21, 1976 and said Charge was amended by the Council on November 8, 1976. The Council alleged that the County of Ocean (the "County") and the Hon. Samuel D. Lenox, Jr., A.J.S.C., ("Judge Lenox") had engaged in conduct in violation of N.J.S.A. 34:13A-5.4 (a) (1), (2), (3), (5) and (7)^{1/} by unilaterally altering and

^{1/} These subsections prohibit employers, their representatives or agents from: "(1) Interfering with, restraining or coercing
(Continued)

eliminating certain benefits enjoyed by court clerks employed within the Ocean County integrated court system, pursuant to past practices and a specific contractual provision relating to hours of work and vacation and holiday practices without any prior negotiations.

This Charge was processed pursuant to the Commission's rules, and it appearing to the Director of Unfair Practices, acting as the named designee of the Commission, that the allegations of the charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on December 3, 1976. Informal conferences were thereafter held on January 13, 1977 and on June 8, 1977, at which time the Commission appointed-Hearing Examiner, Stephen B. Hunter,^{2/} explored settlement alternatives with the parties and proffered proposed stipulations relating to the instant case to the parties for their consideration. At the June 8, 1977 conference the parties agreed that inasmuch as there appeared to be no substantial and material disputed factual issues and in the interest of a more expeditious resolution of the charge, they would mutually agree to execute

1/ (Continued) 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."

2/ Mr. Hunter is now the Special Assistant to the Chairman.

a Stipulation of Facts relating to this case, and would waive their right to an evidentiary hearing and an intermediate Hearing Examiner's Recommended Report and Decision.^{3/} The parties agreed that this matter would be submitted directly to the Commission itself for its determination to be based upon the pleadings, briefs and motions to be submitted by the parties,^{4/} and the following stipulations:^{5/}

"1. The Ocean County Board of Chosen Freeholders ("the County") is a public employer within the meaning of the New Jersey Employer-Employee Relations Act ("the Act"), as amended, and is subject to its provisions. The Hon. Samuel D. Lenox, Jr., A.J.S.C., is the Assignment Judge of Ocean County. As such, he is charged with the responsibility for the administration of the judicial system in Ocean County in accordance with the Rules of the Court and other appropriate directives as promulgated and issued by the Supreme Court of New Jersey. Ocean Council No. 12, New Jersey Civil Service Association ("the Council") is an employee representative within the meaning of the Act, as amended, and is subject to its provisions.

2. The Council is the certified exclusive majority representative for purposes of collective negotiations of all white collar employees, as set forth in the Certification of Representative dated August 9, 1974, employed by the County, excluding supervisory, confidential and part-time employees. Ocean County courtroom clerks are included in the negotiating unit represented by the Council.

3. Attached hereto and made a part hereof is the Collective Negotiations Agreement between the County and the Council covering the period between April 1, 1975 and March 31, 1978. This contract was entered into on or about March 5, 1975. Article XXVI

^{3/} The parties agreed that additional background information not referred to in the Stipulation of Facts, that was not deemed to be substantial and material with regard to a resolution of the charge, could be referred to in the briefs to be submitted by the parties after the execution of the Stipulation of Facts.

^{4/} On December , 1977, the Council requested oral argument before the Commission. Representatives of both Judge Lenox and the County disagree that there is a need for oral argument as this matter has been fully briefed as to the law and the facts are not in dispute. We agree. The request for oral argument is hereby denied.

^{5/} The exhibits referred to in the Stipulation of Facts designated as Exhibits A through G are attached to this decision and are made a part hereof. However, only the relevant provisions relating to the court clerks of the 1975-1978 contract between the County and the Council have been attached to this decision.

is entitled "Special County Related Employee Benefits" and specifically refers to benefits accorded in part to court clerks employed within the Ocean County court system. /See Exhibit A/

4. Attached hereto and made a part hereof is a copy of an August 18, 1976 letter memorandum prepared by Judge Lenox in response to an anonymous complaint alleging discriminatory treatment of judicial employees in the Ocean County clerk's office. /See Exhibit B/

5. Attached hereto and made a part hereof is a copy of a letter opinion from Judge Lenox to E. Kenneth Burdge, the Ocean County Clerk, dated October 6, 1976. /See Exhibit C/

6. Attached hereto and made a part hereof is a letter memorandum from E. Kenneth Burdge to all court clerks dated October 8, 1976. /See Exhibit D/

7. Attached hereto and made a part hereof are copies of correspondence from David I. Fox, Esq., to Judge Lenox and from Judge Lenox to David I. Fox with regard to the instant proceeding. These letters are dated October 20, 1976, October 26, 1976 and November 4, 1976, respectively. It is stipulated that there were no communications or contacts between Judge Lenox and his representatives and the representatives of the Council with regard to the promulgation and implementation of his directive set forth in his letter opinion of October 6, 1976 prior to its issuance and the implementation of that directive on October 8, 1976. /See Exhibits E, F and G/

8. Since October 8, 1976, the working hours and vacation time of court clerks have, in fact, been determined by the County in accordance with Judge Lenox's directive of October 6, 1976, as set forth in the Burdge memorandum dated October 8, 1976. The specific provisions of Article 26 as it affects court clerks have not been followed, since Judge Lenox's directive was handed down.

9. At all operative times, there have been eight court clerks in Ocean County, seven of whom were assigned to a judge. The eighth court clerk functioned as a "floater," in part, and was assigned other duties.

10. An unfair practice charge was amended by the Council on October 21, 1976. This unfair practice charge was filed by the Council on November 8, 1976. A Complaint and Notice of Hearing with regard to this above-captioned matter was issued by Carl Kurtzman, Director, Unfair Practice Proceedings, on December 3, 1976.

11. The parties agree to brief the applicability of the recent New Jersey Supreme Court decision entitled Passaic County Probation Officers Association v. The County of Passaic, et al (decided May 16, 1977) to this instant proceeding. The parties will specifically address themselves in part to the question of whether the Commission has jurisdiction to process, investigate and hear any of the alleged unfair practices as set forth in the Council's unfair practice charges. If any or all the parties contend that the Commission has jurisdiction to continue the further processing of this instant charge those parties should direct themselves to the question of whether any specific limitations were placed on the Commission's authorities over unfair practice proceedings, as generally enunciated in N.J.S.A. 34:13A-5.4(c) and (f), in the aforementioned Passaic Probation Officers decision. If any or all the parties contend that the Commission has no jurisdiction to further process this instant charge, those parties are requested to set forth their position as to what procedures can be utilized concerning allegations of improper conduct relating to judicial personnel. These briefs will be submitted by all the parties to this proceeding on or before Tuesday, July 5, 1977. Reply briefs may be submitted on or before July 19, 1977."

A Motion to Dismiss Complaint and a brief in support of said motion was filed by the Deputy Attorney General representing Judge Lenox on July 5, 1977. The Council submitted a brief dated July 21, 1977. The County on July 29, 1977 filed a Motion to Sever and a brief in support of that motion. Additional reply submissions were thereafter sent in by representatives of Judge Lenox and the Council, all of which were received by September 12, 1977. The Commission was thereafter informed that settlement discussions relating to the instant matter and other cases concerning the status of judicial employees under the New Jersey Employer-Employee Relations Act were taking place between representatives of the State Judiciary and the Council. This instant decision has been delayed pursuant to the request of

the Council to give the parties an opportunity to resolve this matter without the need for a Commission decision.

The Deputy Attorney General representing Judge Lenox asserted in his motion papers that the actions taken by Judge Lenox in directing changes in the working hours of Ocean County Court Clerks could not constitute an unfair practice, pursuant to the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"), since such actions were taken in accordance with Judge Lenox's constitutional administrative authority, which authority transcended the power of the Legislature to govern the employment relationship of the employees considered to be an integral part of the court system through statutes such as the Act. The New Jersey Supreme Court decision, Passaic County Probation Officers Association v. County of Passaic, et al, 73 N.J. 247 (1977) is cited as mandating the conclusion that the Commission is without jurisdiction to adjudicate the propriety of the directive issued by Judge Lenox pursuant to his administrative authority, relating to working hours and "leave" provisions of county court clerks, and, therefore, it is contended that the Complaint filed against Judge Lenox should be dismissed. The Deputy Attorney General submitted that in situations where the Judiciary has directed that particular actions be taken concerning the terms and conditions of employment of employees, such as court clerks, and these actions are thereafter challenged by the affected employees, the sole issue for resolution is whether

the court has exceeded the parameters of the constitutional provision (Article 6, Section 2, Paragraph 3)^{6/} granting the Supreme Court primary authority over the administration of all the courts in the State -- an issue that can only be adjudicated by the State Judiciary and not by the Commission. The Deputy Attorney General maintained that upon receipt of an unfair practice filed by judicial employees, the Commission had to determine only whether the actions challenged, on their face, were taken pursuant to constitutional administrative authority. Application of this standard, it is contended, would require the dismissal of the Complaint filed against Judge Lenox.

The County in its motion papers asserts that the essence of the Council's charge relates to actions of Judge Lenox vis-a-vis the terms and conditions of employment of the court clerks represented by the Council. The County maintains that it is not even alleged in the Council's charge that the County was involved in the commission of an unfair practice when its agents implemented Judge Lenox's directive altering the working conditions of court clerks within the County. The County submits that, in addition, it never refused to negotiate the impact of Judge Lenox's pronouncements on the terms of the contract entered into between the County and

^{6/} This provision provides that: "The Supreme Court shall make rules governing the administration of all courts in the state and, subject to law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law, and the discipline of persons admitted."

the Council regarding judicial employees. The County concludes that it is "an innocent third party in a dispute regarding court administration rather than contract administration," and should therefore be severed from the proceedings before the Commission.

The Council contends that Judge Lenox, as the assignment Judge, had neither the jurisdiction nor the authority to act as he did, and that, even if he did in the abstract, he could not exercise this authority by reason of the Judiciary's failure to assert its jurisdiction over judicial employees such as court clerks during the negotiations between the County and the Council, by reason of its failure to object to the inclusion of Article XXVI into the contract at that time, and by reason of the Judiciary's adoption or acquiescence in the contract between the County and the Council from March 1975 to October 1976. The Council does not agree that the Assignment Judge is the employer of court clerks and refers to several judicial decisions in support of this statement. It is argued that the Assignment Judge's authority is that of a supervisor of the clerks, not that of employer.

The Council maintains that the Passaic Probation case, supra, is distinguishable from the instant matter for the following reasons: (1) There is a clear statutory grant of authority given to the Judiciary over probation officers concerning the employment relationship /N.J.A.C. 2A:168-77; while a similar grant of authority is absent regarding court clerks; (2) the Supreme Court placed considerable reliance in the Passaic Probation case on directives

of the Administrative Director of the Courts that established that fixed hours of work for probation officers was a non-negotiable issue; there were no similar specific directives in the instant matter; (3) court clerks, unlike probation officers, could not be considered to be an integral part of the judicial system; (4) the Supreme Court in Passaic limited its decision to the facts before it concerning the status of probation officers; and (5) contrary to the situation in the Passaic Probation Officers case the relevant employment contract between the County and the Council did mention hours of work and special fringe benefits for judicial employees employed within the County and Judge Lenox's actions resulted in breaking an existing agreement.

The Council, in referring to background information not set forth in the Stipulation of Facts,^{7/} states that certain members of the Judiciary were present at a February 14, 1975 conference between representatives of the County and the County Judges and did not question existing practices concerning the hours of judicial personnel such as court clerks that were discussed, nor were objections raised to Article XXVI as proposed by the Association to the County (and that was later agreed upon by the County). The Council asserts that Judge Lenox should be legally estopped from voiding the contractual provision in dispute in light of the aforementioned factors.

After careful consideration of the County's motion papers it is evident to the Commission that the County's Motion to Sever

^{7/} See note 4.

should be construed as a Motion for Summary Judgment for the purposes of this decision. The essence of the County's papers requests a dismissal of the charges against the County for failure to state a claim upon which relief can be granted regarding the County's actions in the instant case. In addition, we find that the charge relating to the County can be disposed of by a Motion for Summary Judgment in that there appear to be no genuine issues of material fact in dispute and that the issues are solely legal in nature. In light of the Supreme Court's decision in the Passaic Probation Officers case, supra, it is our determination that the County's motion, considered as a Motion for Summary Judgment, should be granted and the Complaint against the County dismissed.

The Commission in In re Bergen County Board of Chosen Freeholders (Bergen County Court Clerks Association), P.E.R.C. No. 76-12, 1 NJPER ____ (1975), affirming E.D. No. 76-7, 1 NJPER ____ (1975) adopted the Executive Director's^{8/} conclusion that the Bergen County Board of Chosen Freeholders was the public employer of all court clerks assisting judges in the Superior, General County and County District Courts of Bergen County for the purposes of the New Jersey Employer-Employee Relations Act. The Executive Director, however, in this decision noted that it was acknowledged, as stated by the Commission's Hearing Officer in that matter, that many attributes of the court clerks' employment were in fact controlled

^{8/} The then Executive Director, Jeffrey B. Tener, is now the Commission's first full time Chairman.

by the Judges within the "judicial district." The Executive Director added that it could be argued that the County and the Judges within the district were in fact joint employers of the court clerks. It was pointed out at that juncture that a resolution of this particular issue was not necessary for the disposition of that particular case.

The New Jersey Supreme Court in the Passaic Probation Officers matter has now determined that judicial employees who are "necessary and integral" to the functioning of the State's court system, e.g. probation officers, are clearly employees of the Judiciary from a labor relations perspective, not employees of the Freeholders of a particular county, notwithstanding that attributes of fiscal control as to an employee normally associated with being an employer may reside in a board of freeholders.

The Commission concludes that it cannot be seriously disputed that court clerks who enter abstracts of each judgment or order for the payment of money in their respective courts (R.4:101-1); make entires of all judgments, orders and attachments in civil proceedings (R.4:101-2); accept surety bonds in appropriate cases (R.1:13-3); grant motions and applications for entering default judgments and for other proceedings which do not require an order of the court (R.1-6-8); take bail in the amounts fixed by a Judge (R.5:7-4); keep such books and records as the Administrative Director of the Courts, with the approval of the Chief Justice, may prescribe (R.1:32-3); maintain all court calendars and dockets (R.5:10-5 and R.4:100); certify copies of orders for discovery

(R.6:7-2); inform parties of trial dates (R.6:5-2); receive summons (R.6:2-2); transmit court papers on transfers of actions to the Superior Court (R.6:4-1); transmit copies of judicial opinions to the appropriate parties (R.1:36-1); enter satisfactions of judgments (R.4:48-2); issue subpoenas and summons (R.1:9-1 and R.4:4-1); swear in juries; administer oaths; and perform numerous other administrative duties for the Judges to whom they are assigned are "necessary and integral" to the functioning of the state judicial system. New Jersey Court Rule 1:34-2 moreover specifically states the following:

"The clerk of every court, except the Supreme Court and the Superior Court, shall be responsible to and under the supervision of the judge or presiding judge of the court of which he is the clerk, the Assignment Judge of the county, and the Administrative Director of the Courts. The clerks of the Supreme and Superior Courts shall be responsible to and under the supervision of the Administrative Director of the Courts and the Chief Justice. The clerk of the county court shall be the deputy clerk of the Superior Court with respect to Superior Court matters pending in his county and may issue writs out of the Superior Court. Deputy clerks in the juvenile and domestic relations courts and the county district courts and all other employees of such courts shall be responsible to and under the supervision of the clerk of the court."

It is in light of the above mentioned factors and the Passaic Probation decision that the Commission concludes that the Complaint against the County should be dismissed. The County is not an employer of the court clerks represented by the Council for the purposes of the New Jersey Employer-Employee Relations Act and charges filed by the Council against the County therefore cannot stand.

After careful review of the motion papers submitted by the Deputy Attorney General on behalf of Judge Lenox the Commission further determines that the Motion to Dismiss Complaint, which again may be considered to be a Motion for Summary Judgment,^{9/} must be granted and the relevant complaint against Judge Lenox dismissed.

The Deputy Attorney General representing Judge Lenox submits that upon receipt of an unfair practice filed by judicial employees against a member of the Judiciary the Commission must determine only whether the actions challenged, on their face, were taken pursuant to constitutional administrative authority. It is contended that if the Commission determined that they were, the Commission's function is completed and it must dismiss the relevant charge. It is then left up to the employees or employee organizations, if they so choose, to pursue the matter in court for a determination of whether the challenged actions are constitutionally based. The Commission believes that this test does not accurately reflect the posture taken by the Supreme Court in the Passaic Probation Officers case. The Commission, upon receipt of an unfair practice filed by individuals employed within the court system or by majority representatives of such

^{9/} The Commission's function in unfair practice proceedings is quasi-judicial in nature and the Commission is justified in looking for guidance in analagous situations which arise in judicial proceedings under the New Jersey Court Rules. It is noted that the court rules allow a motion to dismiss (for failure to state a claim upon which relief can be granted) to be treated as a Motion for Summary Judgment (R.4:6-2).

individuals, will first determine whether the actions challenged on their face, concern employees who may be considered to be an "integral and necessary" part of the judicial system. The Commission will then examine whether the Judiciary's constitutional administrative authority to "make rules governing the administration of all courts in the state" (Article 6, Section 2, Paragraph 3 of the 1947 N. J. Constitution) was relied upon in taking the actions that were the subject of a particular charge. The Commission will also consider whether there are pertinent statutory grants of authority over the particular class or classes of affected judicial employees involved in the proceeding or whether the Court Rules adopted by the New Jersey Supreme Court, pursuant to the above-cited constitutional directive, refer to specific authorities that members of the Judiciary have over these employees. The Commission will also investigate whether there were any Administrative Directives, such as those cited by the Supreme Court in Passaic, supra, that addressed themselves to issues germane to the unfair practice charge. If the Commission is satisfied that the factual and legal circumstances in a case closely parallel those in the Passaic Probation Officers matter, we will refuse to further process that pending charge, will seek withdrawal of that case, and will, absent withdrawal, dismiss the charge for failure to state a claim upon which relief can be granted by the Commission.^{10/}

^{10/} We are not stating that before we determine that we are without jurisdiction to further investigate or adjudicate the propriety of judicial actions taken vis-a-vis certain employees we must be satisfied that all of the above-mentioned factors must be present. We do believe, however, that the Court's decision in
(Continued)

The Commission is satisfied that the factual and legal circumstances in the instant case do closely parallel those in the Passaic Probation Officers decision, thus requiring the dismissal of the complaint against Judge Lenox. For the reasons stated hereinbefore, we find that the duties of court clerks, as delineated by the New Jersey Court Rules, make them a "necessary and integral" part of the state court system. It is also clear that Judge Lenox, in voiding Article XXVI of the contract between the County and the Council concerning court related employee benefits relied upon constitutional administrative authority (Article 6, Section 2, Paragraph 3 of the 1947 N. J. Constitution), Court Rules establishing that the Assignment Judge shall be responsible for the administration of all courts in the county or counties for which he is the Assignment Judge including the supervision of all court clerks (R.1:33-3 and R.1:34-2), and a June 10, 1971 Administrative Directive (A.D. No. 19-70) in support of his determination.^{11/} We believe that we are thus required, consistent

^{10/} (Continued) Passaic requires that consideration of work performed by the judicial employees involved in the unfair practice charge, i.e., whether their duties made them a "necessary and integral" part of the state court system, as well as some consideration of the authority relied upon, whether constitutional, statutory or administrative, by the Judiciary for the actions taken that were the focal point of the charge, is necessary before the Commission's processes will be denied to particular employees.

^{11/} The 1971 Administrative Directive provides that: "...Assignment Judges should establish vacation schedules for court personnel, including Judges' secretaries, and law secretaries, that are consistent with vacations authorized for County and State employees generally." In addition, the specific Administrative Directive relied upon by the Supreme Court in the Passaic Probation Officers case (A.D. dated August 28, 1972) that noted that "fixed hours of work or overtime pay" were non-negotiable items as a matter of Supreme Court policy vis-a-vis negotiations with the probation officers implicitly relates to negotiations with other judicial employees, such as court clerks, who are also a "necessary and integral" part of the court system.

with the Passaic case, to dismiss the unfair practice complaint against Judge Lenox. For the reasons stated above, we cannot distinguish the instant case from the Passaic Probation Officers decision.

The Council devoted considerable attention in its brief to estoppel arguments which go to the merits of the instant charge. Given our determination that we lack jurisdiction over this particular matter, we believe that we cannot reach the specifics of these arguments.

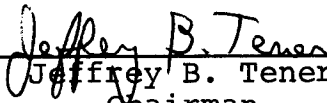
In rendering this decision, we wish to emphasize that we understand, as set forth in Passaic, that the Supreme Court fully recognizes the rights of public employees to organize as set forth in Article 1, paragraph 19 of the New Jersey Constitution. Additionally, the Court has indicated that as a matter of comity, it recognizes that public employees have been accorded certain statutory rights and it also recognizes the public policy expressed by the Legislature regarding public employees including employees of the Judiciary. Therefore, the Commission deems it to be part of its responsibility as set forth in the public policy of the Act to assist the Judiciary and its employees in their attempts to resolve negotiations and other disputes which might arise and we will, in that connection, continue to appoint mediators and fact-finders and to assist in the resolution of questions concerning representation. Moreover, as stated above, we believe that the Supreme Court in the Passaic case recognized that there may be situations where the Commission would have the appropriate authority to adjudicate unfair practice charges against members of the

Judiciary that fall outside this Supreme Court decision. The Commission is constrained by the Passaic decision, however, to dismiss the complaint against Judge Lenox for the reasons previously stated.

ORDER

In light of the stipulated facts and the issues presented and in accordance with the above discussion, the Commission hereby dismisses the Complaint against the respondents in this matter in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hurwitz and Parcells voted for this decision. Commissioners Hartnett and Hipp were not present.

DATED: Trenton, New Jersey
January 19, 1978
ISSUED: January 24, 1978

EXHIBIT A

ARTICLE XXVI
SPECIAL COURT RELATED EMPLOYEE BENEFITS

All employees currently classified as judicial secretaries will be placed in the salary scale set forth below:

	1	2	3	4	5	6	7
9	\$7964.32	8434.40	8930.48	9458.80	10034.96	10647.52	11295.44

All employees will be placed on step 5 of the scale set forth above.

All these employees will receive the four percent (4%) across the board increase previously agreed to and enumerated in Article seven (7) - Wages.

The judicial secretaries will continue to arrange for coverage among themselves regarding correspondance, telephone calls and emergency matters when their respective judges are not available on declared judicial holidays. This coverage will consist of a rotation system among the private secretaries that will guarantee coverage for the critical matters noted above.

In lieu of compensatory time off for overtime worked, courtroom clerks shall be allowed time off when their respective judges discharge them each day and when their respective judges are not in attendance at the courthouse. This privilege does not apply to instances in which a judge is taken ill or during the period of a judicial vacancy.

SUPERIOR COURT OF NEW JERSEY

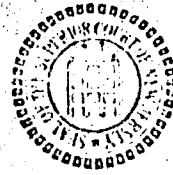
LAW DIVISION

BURLINGTON AND OCEAN COUNTIES

EXHIBIT B

Re: Stipulation # 4

CHAMBERS OF
SAMUEL D. LENOX, JR.
ASSIGNMENT JUDGE
PATRICK J. GALLAGHER
COURT ADMINISTRATOR



COUNTY OFFICE BUILDING
MOUNT HOLLY, N. J.
08060

August 18, 1976

MEMORANDUM TO: ALL JUDGES IN BURLINGTON
AND OCEAN COUNTIES

FROM: JUDGE LENOX

The Administrative Office of the Courts has sent me an anonymous complaint apparently written by a court clerk or member of the County Clerk's staff. It reads in part:

" Those Court Clerks assigned to a Judge, in this County are not required to report for work when their Judge is off on recess, vacation, Jewish holidays, Bar meetings, etc. For most of the clerks, this means 19 extra days off each year, over and above legal holidays and vacations. Also they are permitted to home early if their Judge is out of work, which happens quite frequently. They work overtime on only rare occasions. None of the other court personnel are allowed to do this. Why the discrimination."

I am sure each of you understands that no judge is authorized to inform a court clerk or sheriff's officer that such person need not report to work or may leave the courthouse early. Court clerks are under the control of the County Clerk and sheriff's officers and court attendants are under the control of the Sheriff. At any time they are excused from court they are expected to report back to their office to work there or receive other assignment.

Administrative Directive No. 19-70, dated 6/10/71, provides that:

Wm

Wm

"Assignment Judges should establish vacation schedules for court personnel, including judges' secretaries, and law secretaries, that are consistent with vacations authorized for county and State employees generally!"

Court personnel are entitled to no additional privileges by reason of their special assignment.

By copy of this memorandum I am requesting the County Clerks and Sheriffs to take steps to insure that this policy is carried out.

SDL, Jr:kma

cc: Edward A. Kelly, Jr., County Clerk, Burlington
E. Kenneth Burdge, County Clerk, Ocean
Francis P. Brennan, Sheriff, Burlington
James N. Rutter, Sheriff, Ocean

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BURLINGTON AND OCEAN COUNTIES

EXHIBIT C

SAMUEL D. LENOX, JR.
ASSIGNMENT JUDGE
PATRICK J. GAFFICAN
COURT ADMINISTRATOR



Re:
Stipulation
#5
COUNTY OFFICE BUILDING
MOUNT HOLLY, N.J.
08060

October 6, 1976

E. Kenneth Burdge, County Clerk
Ocean County Courthouse
Toms River, New Jersey 08753

Dear Ken:

I have received a complaint of discriminatory treatment of judicial employees in the Ocean County Clerk's Office. In my investigation of this complaint my attention has been directed to Article XXVI of an Agreement dated March 5, 1975 between the County of Ocean and the Civil Service Employees Association, Council 12, which reads:

"In lieu of compensatory time off for overtime worked, courtroom clerks shall be allowed time off when their respective judges discharge them each day and when their respective judges are not in attendance at the courthouse. This privilege does not apply to instances in which a judge is taken ill or during the period of a judicial vacancy."

This contractual provision of Article XXVI relates to a matter which is not negotiable by the County of Ocean, since it relates to a subject within the exclusive jurisdiction of the Assignment Judge. Article XXVI is void, and it is my direction that you inform all affected employees of this fact and take the necessary action to eliminate this discriminatory treatment among judicial employees.

I submit the following by way of explanation of the authority under which I take this action. The starting point for this discussion must be N.J. Const. (1947), Art. VI, §II, par. 3 which provides as follows:

"The Supreme Court shall make rules governing the administration of all courts in the State and, subject to law, the practice and procedure in all such courts. The Supreme Court shall have the jurisdiction over the admission to the practice of law and the discipline of persons admitted."

As noted in Lichter v. County of Monmouth, 114 N.J. Super. 343, 349 (App. Div. 1971), this section was intended "to vest the Supreme Court with the broadest possible administrative authority", encompassing "all facets of the internal management of our courts." See too, In re Brennan, 126 N.J. Super. 368, 374 (App. Div. 1974).

Based upon this constitutional directive, the Supreme Court has adopted certain rules and regulations applicable to judicial employees. Insofar as court clerks are concerned, your attention is first directed to R. 1:33-3 which reads:

"The Assignment Judges shall, subject to the direction of the Chief Justice or rule of the Supreme Court, be responsible for the administration of civil and criminal justice and for the administration of all courts in the county for which he is the Assignment Judge. His duties shall include the following:

(1) The supervision of all trial judges sitting in the county and of all court clerks and other officers and employees of or serving the trial courts in the county."
(Emphasis supplied).

And then to R. 1:34-2 which provides:

"The clerk of every court, except the Supreme Court and the Superior Court, shall be responsible to and under the supervision of the judge or presiding judge of the court of which he is the clerk, the Assignment Judge of the county, and the Administrative Director of the Courts. The clerks of the

Supreme and Superior Courts shall be responsible to and under the supervision of the Administrative Director of the Courts and the Chief Justice. The clerk of the county court shall be the deputy clerk of the Superior Court with respect to Superior Court matters pending in his county and may issue writs out of the Superior Court. Deputy clerks in the juvenile and domestic relations courts and the county district courts and all other employees of such courts shall be responsible to and under the supervision of the clerk of the court." (Emphasis supplied).

Therefore, "with respect to court personnel such as a court clerk, the 'employer' ... is the judiciary and not the board of chosen freeholders, even though a court employee is paid by the county." In re John Brennan, supra, at 374.

granted - see Benjamin G. McMullen 4/27

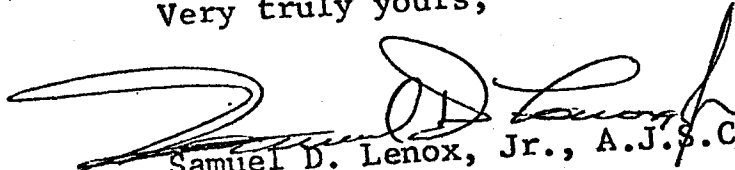
In the case of Passaic Cty, Probation Officers' Assn. v. Passaic Cty., 132 N.J. Super. 248 (Ch.1975), certif; granted 68 N.J. 497 (1975), it was held that an administrative directive expanding daily office hours by 30 minutes was a reasonable exercise of the administrative and supervisory authority of the county judges. More specifically, with respect to court clerks, see Pros., Det., Essex Cty. v. Hudson Bd. Freeholders, 130 N.J. Super. 30, 44 (App.Div.1974) for the proposition that an "increase in hours is a hazard to which all personnel involved in administering the judicial system are subject." If necessary, you may consider this to be an "increase" in the hours of those court clerks who have heretofore been leaving early by requiring them to remain in the courthouse until the end of the day, and by ordering that they report for reassignment on those days on which their judges may be on vacation. However, I do not consider it to be an increase as such but merely a requirement that they work a full day. "Every contract is made subject to the implied condition that its fulfillment may be frustrated by a proper exercise of the police power." McMullen v. Conforti & Eisele, 67 N.J. 416, 418 (1975).

An analogous situation arose last year in Hudson County during the Prison Tour Program. Pursuant to a contract entered

into between the Hudson County Board of Freeholders and the Sheriff's Officers, Court Clerks, and other court attendants in the county, the aforementioned personnel were to receive a paid holiday whenever court was in recess. In that instance the court ruled that regardless of the absence of the judge court employees should report to work as scheduled. In further amplification of this position, it has long been the policy of the Supreme Court that vacation schedules for court personnel be "consistent with vacations authorized for county and State employees generally." This was established by Administrative Directive No. 19-70, dated June 10, 1971 by the Administrative Director of the Courts to all judges.

Article XXVI clearly contravenes the principle of equal treatment for all employees, and as such is inconsistent with the former and present policy of the Supreme Court. I shall be pleased to afford you any further explanation you may require, but my directive is not negotiable and I request that you enforce it.

Very truly yours,


Samuel D. Lenox, Jr., A.J.S.C.

SDL, Jr:kna

cc: Patrick Gaffigan, Court Administrator
Ocean County Board of Freeholders,
Attention of Ernest A. Buhr, Director.
All Ocean County Judges

FILED

OCT 7 1973

E. KENNETH BURDGE, CLERK
COUNTY OF OCEAN

County of Ocean
MEMORANDUM

EXHIBIT D

Re:
Regulation
6

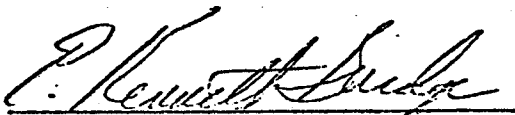
To: ALL COURT CLERKS
From: E. KENNETH BURDGE, COUNTY CLERK
Date: October 8, 1976
Subject: Work Hours
Copy To:

This past summer, Hon. Samuel D. Lenox, Jr., Assignment Judge, for Ocean County, received a complaint of discriminatory treatment of Judicial employees in the Ocean County Clerk's office. He investigated same, and has ruled Article XXVI of an agreement dated March 5, 1975, between the County of Ocean and the Civil Service Employees Association Council 12, void, and has directed me to notify all affected employees, and to take the necessary action to eliminate the discriminatory treatment among Judicial employees.

Effective immediately, the working hours and vacation time will be enforced as directed by Judge Lenox. More specifically, the working hours will be from 8:30 A.M. to 4:00 P.M., or until Court adjourns for the day. However, if the Court adjourns before 4:00 P.M., the Clerks are expected to do other assigned work until 4:00 P.M.

No Clerk shall take days off in the Judge's absence unless it is scheduled vacation or holidays. Vacation time will be earned and shall be consistent with vacation authorized for County employees.

Your full cooperation is expected, and will be greatly appreciated.



E. KENNETH BURDGE
OCEAN COUNTY CLERK

EKB:bk

cc: Samuel D. Lenox, Jr., Assignment Judge
Robert Pharo, Chief Court Clerk
Frank D. Holman, Director Employee Relations
Paul Haley
Robert Bedell
James Fullin
Edmund Hilkman
William Giddes
Jaan Panksepp
Jeanne Kehoe
Elizabeth Reiner, Pres. Civil Service Employees Assoc., Council 12

PRT.#101

EXHIBIT E

*Re
Stipulation
#7*

October 20, 1976

Honorable Samuel D. Lenox, Jr.
Assignment Judge
Burlington and Ocean Counties
County Office Building
Mount Holly, New Jersey 08060

Dear Judge Lenox:

We represent Ocean Council No. 12, New Jersey Civil Service Association, which represents certain employees in Ocean County. Herewith is a copy of an Unfair Practice Charge along with a copy of the directive of the County Clerk changing the contractual commitment of the County regarding certain employees and their hours of work. This directive means that these employees must work increased hours in violation of the contract. This directive was issued without negotiations with Ocean Council and even without discussions regarding the change in policy. Perhaps if the discussions and negotiations can take place, the matter may be resolved amicably. Since the County Clerk is the individual who has taken the action in question on behalf of the Board of Freeholders. We are sending a copy of this letter to him.

Respectfully yours,

DAVID I. FOX

DIF:lk

cc: Mr. E. Kenneth Burge, County Clerk
Ocean County Court House
Toms River, New Jersey 08753

Ms. Emily L. Carter, Clerk
Board of Freeholders
Ocean County Court House, Toms River, N.J. 08753

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

BURLINGTON AND OCEAN COUNTIES

EXHIBIT F

SAMUEL D. LENOX, JR.
ASSIGNMENT JUDGE
PATRICK J. GAFFIGAN
COURT ADMINISTRATOR



Re: Stipulation #7
COUNTY OFFICE BUILDING
MOUNT HOLLY, N.J.
08060

October 26, 1976

Fox & Fox, Esquires
570 Broad Street
Newark, N. J. 07102

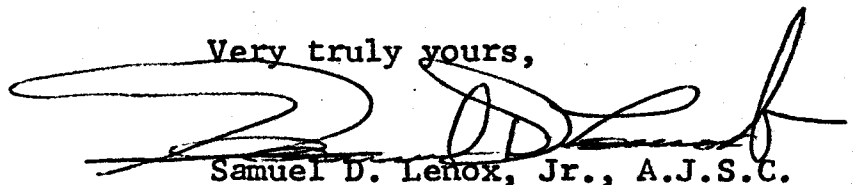
Attention of David I. Fox, Esquire

Gentlemen:

I have for acknowledgement your letter of October 20, 1976 regarding the Unfair Practice Charge filed by you with the Public Employment Relations Commission on behalf of Ocean Council No. 12, New Jersey Civil Service Association. I am forwarding your letter with the enclosures to the Administrative Office of the Courts, where it undoubtedly will be referred to the Attorney General for assignment of a Deputy Attorney General to defend the matter on behalf of the Judiciary.

I have noted your request for "discussions and negotiations" to be directed toward an amicable resolution of this matter. If inherent in this request is any challenge to the authority of the Assignment Judge to enter the directive which forms the basis of your complaint, I decline to engage in such discussions. Prior to entering this directive I was in consultation with my superiors and a policy decision was made in this regard. If this right is to be challenged, that issue will be heard before the Commission and will thereafter undoubtedly be decided by the Courts. If you are prepared to recognize the authority under which this directive was entered and wish to discuss the reasonableness thereof, I shall be pleased to entertain consideration of your views in a conference at a mutually convenient time.

Very truly yours,



Samuel D. Lenox, Jr., A.J.S.C.

SDL, Jr: kma

cc: E. Kenneth Burdge, County Clerk
Judge Arthur J. Simpson, Jr.
Patrick Gaffigan

EXHIBIT G

*Re
Stipulation
#7*

November 4, 1976

Honorable Samuel D. Lenox, Jr.
Assignment Judge Burlington & Ocean Cos.
County Office Building
Mount Holly, New Jersey 08060

Re: Ocean Council No. 12, NJCSA
and Ocean County
Docket No. CO-77-102

Dear Judge Lenox:

Herewith is a copy of an amendment to the unfair practice charge re the above.

Thank you for your letter dated October 26, 1976. The only purpose of my suggestion for discussions was to see if some kind of satisfactory interim arrangement could be worked out with the employees in question pending a determination by the Public Employment Relations Commission and perhaps, thereafter, the courts, of the fundamental issues involved in the situation. The court employees in question feel that the change in their working conditions imposes unnecessary hardship upon them.

We are unable to concede that the courts have the exclusive authority which the administrator of the courts seems to feel they have with regard to these employees. We presently have a number of petitions pending before PERC involving similar issues in connection with large numbers of court employees in New Jersey.

Respectfully yours,

DAVID I. FOX

DIF:DC

BEHO
7/11/51 2 35 H 11