

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN COUNTY PROSECUTOR,  
Public Employer,

-and-

SUPERIOR OFFICERS OF COUNTY DETEC-  
TIVES ASSOCIATION OF BERGEN COUNTY,  
Petitioner,

-and-

Docket No. RO-76-43

BERGEN COUNTY BOARD OF CHOSEN  
FREEHOLDERS,  
Intervenor,

-and-

STATE OF NEW JERSEY,  
Intervenor.

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MERCER COUNTY PROSECUTOR,  
Public Employer,

-and-

TEAMSTERS UNION LOCAL 102,  
Petitioner,

-and-

Docket No. RO-76-72

MERCER COUNTY BOARD OF CHOSEN FREE-  
HOLDERS,  
Intervenor,

-and-

AMERICAN FEDERATION OF STATE, COUNTY,  
AND MUNICIPAL EMPLOYEES, AFL-CIO,  
Intervenor.

Appearances:

For the Bergen County Prosecutor  
Robert W. Breslin, Jr., Esq., Prosecutor

For the Superior Officers of County Detectives  
Association of Bergen County, Captain Raymond Morrissey

For the County of Bergen, Leon B. Savetsky, Esq.

For the State of New Jersey, Honorable John J. Degnan, Attorney General (Melvin E. Mounts, Deputy Attorney General, Of Counsel)

For Mercer County Prosecutor, Anne E. Thompson, Esq., Prosecutor

For Teamsters Union Local 102, Sipser, Weinstock, Harper, Dorn & Weinstock, Esqs. (Michael Schnipper, of Counsel)

For County of Mercer, Harvey L. Stern, Esq., County Counsel (William L. Boyan, Assistant County Counsel, Of Counsel)

For American Federation of State, County and Municipal Employees, AFL-CIO (John J. Merkel, Executive Director)

#### DECISION

On September 30, 1975, the Superior Officers of County Detectives Association of Bergen County (the "Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission (the "Commission") Docket No. RO-76-43, seeking to represent a proposed collective negotiations unit consisting of superior officers of county detectives in the Bergen County Prosecutor's office. On October 28, 1975, Teamsters Union Local 102 ("Local 102") filed a Petition for Certification of Public Employee Representative, Docket No. RO-76-72, with the Commission seeking to represent a proposed collective negotiations unit consisting of clerical, stenographic and technical employees in the Mercer County Prosecutor's office. In each Petition the County Prosecutor was claimed to be the public employer for the purposes of collective negotiations under the New Jersey Employer-Employee Relations Act (the "Act").

The Bergen County Board of Chosen Freeholders and the State of New Jersey (the "State") have intervened in the Bergen County

matter. The Mercer County Board of Chosen Freeholders, the American Federation of State, County, and Municipal Employees, AFL-CIO ("AFSCME"), and the State have intervened in the Mercer County matter.

By agreement of the parties, these matters were consolidated for the purpose of resolving the issue of the identity of the public employer or employers. Pursuant to an Order Scheduling Hearing, a hearing was held on September 17, 1976 in the consolidated matters before Commission Hearing Officer J. Sheldon Cohen. The record of that hearing reflects that the parties agreed to attempt to enter into a stipulation of facts in the consolidated matters, and that upon such stipulation of facts and opportunity for the submission of briefs the parties further agreed to submit this matter to the Director of Representation for a decision limited to the issue of the identity of the public employer.

Subsequently, with the aid of the Hearing Officer, a complete stipulation of facts was reached among the parties. Briefs were filed by the State, Local 102 and the Bergen County Prosecutor; a letter memorandum in lieu of brief was filed by the Mercer County Prosecutor.

The Association and Local 102, as well as the Bergen County Prosecutor and the State, contend that the County Prosecutor is the public employer within the meaning of the Act. Bergen County, Mercer County, and AFSCME state that the County is the public employer of the instant employees. The Mercer County

Prosecutor does not assert that she is the public employer of the clerical employees in her office for the purposes of the Act.

On February 2, 1978, the Director of Representation issued a decision in this consolidated representation proceeding. In re Bergen and Mercer County Prosecutors, D.R. No. 78-34, 4 NJPER 105 (Para. 4047 1978). On March 9, 1978, the County of Bergen filed with the Commission a Motion for Extension of Time and a Request for Review of the Director's decision. Subsequently, the County of Mercer joined in this request for review. On March 20, 1978, the Commission granted the Counties' requests for review in reliance upon N.J.A.C. 19:11-8.2 and 19:10-3.1 (a) and (b), and in part because of the statewide implications of the Director's decision and the legal issues involved.<sup>1/</sup>

None of the parties chose to file additional briefs with the Commission, instead relying upon briefs they had previously submitted to the Director of Representation.

In D.R. No. 78-34, the Director of Representation, based upon the stipulated record and briefs submitted by the parties, determined that the County Prosecutors, rather than the Counties,

<sup>1/</sup> The County of Bergen, on February 21, 1978, prior to filing its Request for Review with the Commission, filed a Motion in the New Jersey Superior Court, Appellate Division for leave to appeal the decision of the Director of Representation. On March 10, 1978, the County of Bergen filed a Motion to Stay Decision on its February 21, 1978 Motion for Leave to Appeal, pending the Commission's decision on its Request for Review. On March 20, 1978, the Commission's General Counsel, by letter addressed to the Clerk, informed the Appellate Division of the fact that the Commission had granted the County's Request for Review. On April 3, 1978, Halpern P.J.A.D. denied both the February 21 and March 10 Motions filed by the County of Bergen.

were the public employers, for the purposes of labor relations and collective negotiations, of public employees working in the County Prosecutors' offices. The Director reached his conclusion based on an analysis, from a labor relations and collective negotiations perspective, of the relevant statutory enactments concerning County Prosecutors, court decisions construing the rights and responsibilities of prosecutors and counties, and various traditional labor relations indicia associated with identifying public employers for collective negotiations purposes.

Based upon a careful consideration of the entire record in this matter including the stipulation of facts, briefs, the request for review, and relevant statutes and court decisions (fully set forth in the decision of the Director of Representation) the Commission adopts the decision of the Director of Representation, substantially for the reasons cited by him. More specifically, we find that extent of the prosecutor's authority to hire, promote, evaluate, discipline, assign, set work rules, discharge the employees in question;<sup>2/</sup> the authority to obtain funding for office operations and personnel over and above the amounts allocated by the County;<sup>3/</sup> and judicial recognition of the unique status of the Office of County Prosecutor and the fact that the financial burdens

<sup>2/</sup> See N.J.S.A. 2A:157-1 et seq.; N.J.S.A. 2A:158-19,20; Brennan v. Byrne, 31 N.J. 333 (1960); Petrillo v. Byrne, 31 N.J. 320 (1960); In re Bigley, 55 N.J. 53 (1969); In re Schragger, 58 N.J. 274 (1971); Prosecutor's Det. and Investig. Assn. of Hudson Cty v. Hudson Cty, 130 N.J. Super. 30 (App. Div., 1974); Muccio v. Cronin, 135 N.J. Super. 315 (Law Div., 1975); and generally the stipulation of facts entered into by the instant parties.

<sup>3/</sup> N.J.S.A. 2A:158-7; In re Bigley and In re Schragger, supra at note 2.

related to the position are imposed on the County;<sup>4/</sup> and the fact that County Prosecutors are appointed by the Governor of the State, and are answerable only to him, through the Attorney General of the State, for the conduct of their offices,<sup>5/</sup> all affirm the validity of the decision of the Director of Representation. These unique rights and responsibilities constitute the exceptions contemplated in N.J.S.A. 40:20-1 and 40:9-10, which provide, respectively, that except where otherwise provided by law, County officials shall manage the finances of that County and fix the amount of compensation to be paid to County officials and employees.

We note, in agreement with the Director of Representation, that our conclusion is not diluted by the fact that the Counties fund the Prosecutors' budgets or the arguments of the Counties that their input in collective negotiations between the prosecutors and employee organizations is vital due to their accountability to the taxpaying public. These arguments are properly refuted by Dunne v. Fireman's Fund, supra, at note 5; The Final Report to the Governor and the Legislature of Public and School Employees Grievance Procedure Study Commission, January 9, 1968 (Quoted at pg. 18 of D.R. No. 78-34, supra.); and In re Bigley and Schragger which direct the County Prosecutor to present his initial request to the Freeholders before applying to the Assignment Judge of the Superior Court for an order increasing expenditures, personnel, or equipment. In addition, the Bigley decision requires that the

<sup>4/</sup> Dunne v. Fireman's Fund Insurance Co., 69 N.J. 244 (1976).

<sup>5/</sup> N.J.S.A. 2A:158-1 and N.J.S.A. 52:17B-103 et seq.

Prosecutor notice the County before applying to the Assignment Judge for an appropriate order, so that the County may communicate its view of the matter to the Court.

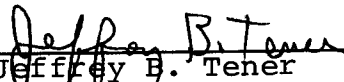
Finally, the argument of the County of Mercer that owing to the fact that that County has adopted the Optional County Charter Law, N.J.S.A. 40:41A-1 et seq., it is the County rather than the Prosecutor who is the employer of the employees in question, is found to be without merit. We note that the identical argument was recently proffered to the Appellate Division of the Superior Court in a dispute involving the fixing of the salaries of county probation officers, In re Salaries for Probation Officers of Hudson County, 1976-1977 (A-1945-76 and A-1946-76, consolidated; decided March 29, 1978).<sup>6/</sup> In that decision, the Appellate Division rejected the County's contention that the Optional County Charter Law constituted an implied repealer of N.J.S.A. 2A:168-8, which, in similar fashion to the role of the County Assignment Judge vis-a-vis County Prosecutor's employees, allows county court judges to fix the salaries of county probation officers. We are of the opinion that the logic of the court is equally applicable to the within matters.

Stays of Elections necessitated by our review herein are hereby vacated. Based upon the foregoing determinations, we

<sup>6/</sup> The County of Mercer, the County of Hudson, and the County of Essex are the only three counties in the State of New Jersey who have adopted this form of county governance to date. The County of Union has adopted a variation of this plan. All other counties presently are governed by Boards of Chosen Freeholders.

affirm and adopt the decision of the Director of Representation in D.R. No. 78-34 and hereby remand these matters to him for appropriate action consistent with our decision herein.

BY ORDER OF THE COMMISSION

  
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JEFFREY B. TENER  
Chairman

Chairman Tener, Commissioners Hartnett, Hipp, Schwartz, Graves and Parcells voted for this decision. None opposed.

DATED: Trenton, New Jersey  
May 25, 1978  
ISSUED: May 26, 1978