

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

The Special Assistant to the Chairman issues a decision concerning a Motion for Reconsideration filed by Council 52 in an unfair practice proceeding. The Special Assistant had earlier issued a decision denying a request made by Council 52 for interim relief in an unfair practice proceeding. Council 52 had alleged that the County of Hudson had violated the New Jersey Employer-Employee Relations Act by unilaterally imposing a County residency requirement for all County employees including employees represented by Council 52 without negotiating this term and condition of employment with Council 52. The Special Assistant in an Interlocutory Decision determined that although a residency requirement was a required subject for collective negotiations, specific factors mitigated against the granting of the requested interim relief. In part it was determined that the interrelationship between N.J.S.A. 11:22-7 and Chapter 63, Public Laws of 1978 arguably provided a statutory basis for the County's actions relating to the enactment of a residency ordinance and raised sufficient 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.

Council 52 filed a Motion for Reconsideration asserting that the legal effect of an additional statute, Chapter 422, Public Laws of 1977, mandated a reconsideration of the conclusions arrived at in the earlier Interlocutory Decision and required the granting of interim relief. The Special Assistant, after analyzing the parties' papers with reference to Council 52's motion, granted the motion for the purpose of considering the parties' submissions concerning the effect of Chapter 422, but again denied Council 52's application for interim relief. The Special Assistant concluded that a substantial legal dispute persisted concerning the critical issues in this case and that it was inappropriate to predict how the Commission would resolve the underlying legal disputes in this case.

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Appearances:

For the Respondent, Francis X. Hayes, Esq.
Murray, Granello & Kenney, Esqs.
(Robert E. Murray, on the Memorandum)

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

DECISION ON MOTION

On January 17, 1979 an Interlocutory Decision was issued by the undersigned denying a request made by Council 52, Local 2306, AFSCME, AFL-CIO ("Council 52") for interim relief in an unfair practice proceeding. In re County of Hudson, P.E.R.C. No. 79-47, 5 NJPER __ (¶ 1979). Council 52 had alleged that the County of Hudson ("County") had violated the New Jersey Employer-Employee Relations Act ("Act") by unilaterally imposing a County residency requirement for all County employees, in part affecting employees employed within the Hudson County Department of Welfare and represented by Council 52, without negotiating this term and condition of employment 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 job security of Welfare Board employees by insisting on County residency during the pendency of the instant unfair practice proceeding.

The undersigned in the aforementioned Interlocutory Decision determined that although a residency requirement was a required subject for collective negotiations, certain factors mitigated against the granting of the requested relief. In part I determined that the interrelationship between N.J.S.A. 11:22-7 and Chapter 63, Public Laws of 1978 arguably provided a statutory basis for the County's actions in this case and 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. More specifically in this regard the County maintained that its residency ordinance was adopted prior to the effective date of Chapter 63, i.e. June 30, 1978; was therefore "in effect" on that date; and in light of section 7 of Chapter 63 remained fully operative after June 30, 1978 and was not subject to collective negotiations in light of the Supreme Court's decision in State v. State Supervisory Employees Assn, 78 N.J. 54 (1978). In sharp contrast Council 52 argued 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 that

ordinance were not required to move into the County until January 1, 1979 at the earliest. I found that it would be inappropriate to predict what the Commission's decision would be on the important above-stated "statutory construction" issue since there was no pertinent Commission precedent that could resolve the divergent legal contentions of the parties. I thus concluded that it could not be said that there was a likelihood that Council 52 would prevail on both its factual and legal allegations in the final Commission decision.

In correspondence dated January 19, 1979 Council 52 filed a Notice of Motion for Reconsideration with the undersigned along with a letter memorandum in support of that motion. Council 52 asserted that the legal effect of an additional statute, Chapter 422, Public Laws of 1977, which had not previously been cited by the parties or considered by the undersigned, mandated a reconsideration of the conclusions arrived at in the Interlocutory Decision and required the granting of the requested interim relief. Chapter 422, Public Laws of 1977, reads as follows:

1 Notwithstanding the provisions of N.J.S. 40A:9-1 or any other law to the contrary, any officer or employee of a county who was employed by a county on the effective date of this act shall be exempt from the requirement of residency within a respective county until June 30, 1978.

2 This act shall take effect immediately.
Approved and effective February 25, 1978.

Council 52 states that pursuant to N.J.S.A. 40:41A-101(c), which was cited in the Interlocutory Decision, the earliest date that the County's residency ordinance could have taken effect was

February 29, 1978. Council 52 concludes that since Chapter 422 took effect immediately with its passage on February 25, 1978 the County ordinance never had any legal effect, i.e. it was superseded by Chapter 422 prior to its effective date. Council 52 maintains that reading Chapter 422 in pari materia with Chapter 63, Public Laws of 1978 mandates the finding that there is a substantial likelihood of success that it will be successful in the final Commission decision.

The County filed a letter memorandum in response to Council 52's motion that was received by the Commission on February 2, 1979. The County asserts that the Motion for Reconsideration should be denied since Chapter 422 does not affect the validity or the enforcement of the County residency ordinance under the instant circumstances. The County emphasizes that the specific language of Chapter 422 as well as the Introductory Statement accompanying the bill establishes that Chapter 422 grants to county officers and other employees a temporary exemption, from February 25, 1978 to June 30, 1978, from the enforcement of a residency requirement. The County argues that contrary to Council 52's contentions, there is no express or implied repealer of N.J.S.A. 11:22-7 contained in Chapter 422. The County emphasizes that legislative recognition that N.J.S.A. 11:22-7 was still in effect after the passage of Chapter 422, until June 30, 1978 was evinced by the Legislature's later passage of Chapter 63 which expressly repealed N.J.S.A. 11:22-7

and its sister statute N.J.S.A. 40A:9-1. The County moreover concludes that there is no support for Council 52's argument that Chapter 422 superseded the County's residency ordinance. The County maintains that the County residency ordinance was in effect, within the meaning of Section 7 of Chapter 63, on or about March 1, 1978 and merely could not be enforced until after June 30, 1978.

After careful consideration of the parties' submissions relating to Council 52's Motion for Reconsideration I have determined to grant Council 52's motion for the purpose of considering the parties' submissions concerning the effect, if any, that Chapter 422, Public Laws of 1977 has on the instant matter. It is incumbent upon me as the Commission's named designee to give thought to all potentially relevant statutes dealing with the issue of County residency. However, after analyzing the parties' papers with reference to the instant motion I am constrained to reaffirm my earlier decision that Council 52 has not satisfied the Commission's standards that have been developed for evaluating the appropriateness of interim relief. I am unable to conclude that the County's proffered analysis of the limited effect that Chapter 422 has on the instant matter will be rejected by the Commission and Council 52's contrary analysis affirmed. A substantial legal dispute persists concerning the critical issue as to whether the County residence ordinance was "in effect", within the intendment of Chapter 63 (now N.J.S.A. 40A:9-1.3 to 40A:9-1.10), on June 30, 1978. I am not satisfied that the application of Chapter 422 to the instant dispute resolves this important issue so as to satisfy the Commission's "likelihood of success" test.

For the foregoing reasons, Council 52's Motion for Reconsideration is granted but Council 52's application for interim relief is again hereby denied.

BY ORDER OF THE COMMISSION



Stephen B. Hunter
Special Assistant to the Chairman

DATED: Trenton, New Jersey
February 23, 1979