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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CHANCERY
HUNTERDON COUNTY
DOCKET NO. HNT-C-14029-13
APPEAL NO.

MARGARET PASQUA,

Plaintiff,

vs.

COUNTY OF HUNTERDON, et
al.,

Defendants.

TRANSCRIPT

OF

ORDER TO SHOW CAUSE

PLACE: Somerset County Courthouse
20 North Bridge Street
Somerville, New Jersey
DATE: October 10, 2013

BEFORE:

HONORABLE EDWARD M. COLEMAN, P.J. Chancery

TRANSCRIPT ORDERED BY:

SHANA L. TAYLOR, COUNTY COUNSEL
COUNTY OF HUNTERDON

APPEARANCES:

GAETANO M. DESAPIO, ESQ.
LAW OFFICES OF GAETANO DESAPIO
For Plaintiff

MATTHEW J. GIACOBBE, ESQ.
CLEARY, GIACOBBE, ALFIERI & JACOBS, LLC
For Defendant, County of Hunterdon

PATRICIA A. BRILL, C.S.R.
9 ASPEN DRIVE
HILLSBOROUGH, NEW JERSEY 08844

Sound Recording Operator:
JEANNE GINSBERG

1 APPEARANCES (CONTINUED):

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SHANA L. TAYLOR, Esq.
 County Counsel
 County of Hunterdon

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Order to Show Cause

1 THE COURT CLERK: All rise.
 2 The Superior Court of New Jersey is now in
 3 session. The Honorable Edward M. Coleman presiding.
 4 THE COURT: Thank you.
 5 Thank you, counsel. Why don't you have a
 6 seat, and we'll get the appearances. We're on
 7 CourtSmart, which is working.
 8 If I can find a pen that works...
 9 Okay. Mr. DeSapio, let's start with you.
 10 We'll take your appearance, and then we'll move over to
 11 the other side.
 12 MR. DESAPIO: Good morning, your Honor.
 13 Gaetano DeSapio, Frenchtown, New Jersey, here for the
 14 plaintiff, Margaret Pasqua.
 15 THE COURT: Thank you. And we have --
 16 MR. GIACOBBE: Good morning, your Honor.
 17 Matthew Giacobbe, Cleary, Giacobbe, Alfieri & Jacobs,
 18 on behalf of the County of Hunterdon.
 19 THE COURT: Thank you.
 20 MS. TAYLOR: Good morning, your Honor.
 21 Shana Taylor, County Counsel for the County of
 22 Hunterdon.
 23 THE COURT: Okay. Thank you.
 24 All right. This is plaintiff's request for
 25 temporary injunctive relief, and we'll -- I have the

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1 papers, but let's hear from counsel.
 2 We'll start with you.
 3 MR. DESAPIO: Good morning, your Honor.
 4 This, as you know, is an application by
 5 Margaret Pasqua to be immediately re-seated in her
 6 official position of Hunterdon County Treasurer and
 7 Hunterdon County Chief Financial Officer.
 8 I know that -- I want to make a comment
 9 about the Chief Financial Officer position since
 10 there's a reference in the defendant's letter brief --
 11 THE COURT: Right.
 12 MR. DESAPIO: -- that she hasn't been
 13 appointed Chief Financial Officer, which I find to be
 14 incredible.
 15 There's a statutory requirement that each
 16 county have a Chief Financial Officer. There's no
 17 reply certification -- there's no reply certification
 18 by the defendants. It's just a blanket statement.
 19 There's no statement as to who is the Chief Financial
 20 Officer if the plaintiff is not.
 21 It's not possible that, since the statute
 22 was created, the county would be without one, because
 23 that would have been written up by the -- in an audit
 24 long before this and objected to by the Division of
 25 Local Government Services.

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1 Just quickly this morning, I went on the
2 county's website and found three official documents
3 which the county filed with the Division of Local
4 Government Services, which identified Margaret Pasqua
5 as the Chief Financial Officer.

6 First is the 2013 county budget, which the
7 county filed with the State and published. And in
8 that, she's identified on Page 1, together with her
9 certificate number, as the County Financial Officer,
10 and on Page 2 of the budget, there is a certification:

11 "It is hereby certified that the approved
12 budget annexed hereto and hereby made a part is an
13 exact copy of the original and filed with the clerk of
14 the governing body; that all additions are correct; all
15 statements contained herein are in proof; and the total
16 anticipated revenues exceed the total appropriations.

17 "Certified by me this 16th day of April,
18 2013," and that was signed by Margaret Pasqua over a
19 line that says "Chief Financial Officer."

20 On the county's website this morning is the
21 annual financial statement for the year 2013. Again,
22 these are forms that are required by the Division of
23 Local Government Services. And on the first page of
24 the Annual Financial Statement for 2012 it says,
25 "Required: Certification by the Chief Financial

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1 Officer.

2 "I hereby certify that I am responsible for
3 filing this verified annual financial statement which I
4 have prepared and information required also included
5 herein and that this statement is an exact copy of the
6 original on file with the clerk of the governing body;
7 that all calculations, extensions and additions are
8 correct; that no transfers have been made to or from
9 emergency appropriations; and all statements contained
10 herein are in proof.

11 "I further certify that this statement is
12 correct insofar as I can determine from all books and
13 records kept and maintained in the local unit."

14 And, again, that's signed by Margaret
15 Pasqua. "I certify I am the Chief Financial Officer,"
16 with her license number of the County of Hunterdon.
17 Again, submitted by the county to the Division of Local
18 Government Services just earlier this year and posted
19 on their website.

20 And the last thing that I have is the
21 Annual Debt Statement of the County of Hunterdon filed
22 with the Department of Community Affairs, and at the
23 beginning of that it says: "Margaret Pasqua, being
24 duly sworn, deposes and says deponent is the Chief
25 Financial Officer of," and then there's an

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1 identification number, 1,000, "Hunterdon County
2 herein -- "here and in the statements herein mentioned
3 called the local unit," and then it goes on.

4 These are official documents required by
5 the Division of Local Government Services. The county
6 filed them. The county has them on their website.

7 I realize we didn't go back and forth with
8 certifications on this, but without -- the point I'm
9 making is without the defendants filing a certification
10 saying she is not and just the attorney making a
11 statement in a brief and without them filing a
12 certification that somebody else holds the position, I
13 think the only thing the Court has in front of them
14 today is the plaintiff's assertion that she is the
15 Chief Financial Officer of the County of Hunterdon and
16 the County Treasurer.

17 Now, that having been said, in this
18 application for interim relief, we're not arguing all
19 of the various issues, myriad of issues, that may come
20 up in this case, but it's very simply this proposition:

21 You have a public official who holds their
22 office for a three-year term subject to -- and on the
23 return date of the Order To Show Cause, I imagine we'll
24 be arguing about what that's subject to -- all
25 right? -- but for today, they hold that position and no

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1 one -- no one, no Board of Chosen Freeholders, no
2 County Administrator, no one has the statutory
3 authority or any authority to go in there and say: I'm
4 locking your door; I'm locking you out; you don't have
5 access to any of your books and records; we're sticking
6 you over in the Sheriff's Office; sit over there for
7 three months; and then bring somebody in to start to do
8 that work -- all right? -- and there's got to be a
9 remedy for that.

10 It would be like three of the freehold -- I
11 mean, this is probably a preposterous example, but it's
12 to emphasize my point.

13 It would be like three of the Freeholders
14 saying to two of the Freeholders: Well, we don't like
15 the way that you did your office; we don't think you're
16 complying with your oath of office; you're out, and
17 we're going to lock you out of the Freeholders' Office
18 and we're going to bar you from Freeholders meetings.

19 Now, that's an extreme example, but they
20 would have no authority to do that.

21 They couldn't say to the county counsel
22 yeah: You have a three-year term, but don't come in
23 the county building; we're removing all your Internet
24 access; we're boxing up all your files and taking them
25 out of your office.

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1 They can't do that until they have some
2 proceeding, which, I imagine, again, on the return day,
3 we'll argue what that is because they apparently
4 disagree with the -- defendants apparently disagree
5 with me as to what that is, but for today there's got
6 to be a remedy.

7 And the remedy is you're there and you're
8 the official and if they don't like it, tough, because
9 the law gives you that position.

10 I can give you any number of other examples
11 which might sound like extremes, but this is an extreme
12 because, I mean, there's no statute -- nothing that
13 says, well, if the Freeholders suspect that they don't
14 like the way the Treasurer's doing their job or the
15 county Chief Financial Officer's doing their job, they
16 can suspend them temporarily while they have a hearing.

17 If they had that, maybe, but they don't
18 even have that. They just did it. And, in fact, they
19 did it before they even had the facts developed, which
20 they now contend that they rely on.

21 They talk about -- defendant mentions this
22 purported hearing, that I would like to have also
23 enjoined, pending a determination as to what the right
24 procedure is -- all right? -- but this is going to
25 occur under N.J.S.A. 40A:9-25.

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1 Well, they haven't even followed the
2 requirements of that because, according to that, it
3 says: "No official shall be removed from his office or
4 position until after written charges of the cause of
5 the complaint have been proffered against him signed by
6 the person making such charges."

7 Now, we attached to our affidavit,
8 plaintiff's affidavit, a copy of the charges. They're
9 not signed by anybody. They're not signed by the
10 person proffering the charges. They're signed "County
11 of Hunterdon." But what does that mean, "County of
12 Hunterdon"? How is Margaret Pasqua to know who is
13 saying she did what? It's an ambiguous statement.

14 Everybody who's working for the County of
15 Hunterdon could be charged by the County of Hunterdon.
16 All right? But that's not what this statute that they
17 say they're proceeding on -- I'm not saying they should
18 be proceeding on it, but they're saying they're
19 proceeding on it -- says: "Signed by the person making
20 such charges."

21 So they definitely can't say: Well, we're
22 entitled to keep this person out of their office
23 because we're going to have a hearing; but you didn't
24 even start the hearing yet. You didn't even start the
25 process yet, because you gave this plaintiff no

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1 indication of who is charging her with what.

2 Now they're saying today, "Well, there's
3 major" -- how did they say that? "Extreme malfeasance
4 in the performance of her duty," and they attach the
5 county audit and a letter. Not even a certification.

6 And, so far, we haven't received anything
7 from anybody that says: I'm the county auditor; I
8 found these things -- these things are the
9 responsibility of Margaret Pasqua.

10 An audit is an audit of the entire county
11 operation, including things that are not within her
12 control. There's a statutory provision to that effect.
13 Right? And those things are not always the
14 responsibility of the Chief Financial Officer. And,
15 yet, they have already taken her out of her office.

16 Now, it's been going on for a few months.
17 You may say why has it been going on for a few months?

18 Well, first of all, she didn't want to go
19 through the expense of what she's going to have to go
20 through now. And they kept saying in public -- because
21 I appeared at some of the meetings -- well, it's only
22 for a few weeks. We're going to get this report done.
23 So she wanted to wait until she saw what happened
24 because she hoped it would all blow over. And it
25 hasn't.

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1 But now she wants back in there because
2 she's entitled to that. It's her responsibility. And
3 they have absolutely no basis.

4 You know, when they say I haven't proved --
5 the plaintiff hasn't proved the likelihood of
6 prevailing on the merits? Well, they haven't said
7 anything, shown anything, to suggest otherwise. Where
8 does it say you can take a public official and say
9 we're sorry, the door is locked, give us your keys, you
10 can't go back in there?

11 There's nothing. No authority for that
12 whatsoever.

13 And there is authority for a statutory
14 official being unimpeded from performing the duties of
15 their office.

16 It makes no difference that it happens to
17 be the County Administrator and the Freeholders. They
18 have a responsibility too, and their responsibility is
19 to the law, and they have to recognize that they don't
20 run the county like some little fiefdom.

21 Their responsibility is to the law, and the
22 law says: You have a problem with the Chief Financial
23 Officer and County Treasurer? You conduct an
24 appropriate hearing or you file a complaint with the
25 Director of the Division of Local Government Services,

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1 but until somebody makes a determination that she's
2 done something wrong, you can't make that determination
3 because you haven't heard her side of it.

4 And, in fact, I haven't even seen where
5 they've heard anybody tell them she's done anything
6 wrong.

7 So I think there should be interim
8 restraints entered putting her back in her office
9 effective this afternoon or tomorrow morning and let
10 them follow the process. And then at the end of the
11 process, whatever that's determined to be, we'll see
12 what happens.

13 I suspect from my review -- and, of course,
14 that means nothing, but I suspect she's going to be
15 able to continue in her office. And she needs the
16 Court's relief now to resolve -- I mean, I know. I've
17 represented Freeholders. Sometimes they think they can
18 just do what they want because they're the Freeholders,
19 but they can't. They have to follow the law like
20 everybody else.

21 THE COURT: Okay. Thank you.

22 Yes. Counsel?

23 MR. GIACOBBE: Good morning, your Honor.
24 Matthew Giacobbe.

25 Let me start off on Mr. DeSapio's

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1 application.

2 He makes much argument early on between the
3 County CFO, County Treasurer. Both of them are
4 three-year statutory terms. And what's very
5 interesting is, attached to Exhibit A -- and as your
6 Honor knows, we were served with this earlier this week
7 and we were asked to submit a short letter brief, which
8 we did.

9 THE COURT: Right.

10 MR. GIACOBBE: Didn't have the opportunity
11 to do the certifications that Mr. DeSapio's now trying
12 to claim that we failed to do. We're doing this on
13 short notice.

14 But Exhibit A, the resolution, I'll read it
15 to you. And it should be noted that Mr. DeSapio was
16 County Counsel when this was prepared.

17 THE COURT: Uh-huh.

18 MR. GIACOBBE: He was the person giving
19 advice to the County Freeholders.

20 And it says: "Be it resolved that Margaret
21 Pasqua be hereby appointed unclassified, full-time
22 County Treasurer in the Finance Department of the
23 County of Hunterdon for a three-year term beginning May
24 1, 2012 and ending April 30th, 2014."

25 And it was voted on by all the Freeholders.

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1 Adopted May 3rd, 2011. This is the resolution. She
2 was appointed as the County Treasurer.

3 There's also a Director of the Finance
4 Department that she reports to, which is Kim Brown.

5 Now, Mr. DeSapio is basically making the
6 claim -- and let's back up.

7 Margaret is still working for the county.
8 Margaret is still being paid. She's receiving her
9 health benefits.

10 But when there was the detection of
11 possible malfeasance in that office, in consultation
12 with the Prosecutor's Office, they said reassign them,
13 and that's what was done.

14 They're going to work every day. In fact,
15 they had to sign certifications, as the County
16 Treasurer, dealing with the year-end 2012 audit
17 recently. She has not been removed as the County
18 Treasurer. She has not been removed from her position.

19 What has happened, your Honor, is today we
20 had a hearing scheduled in accordance with 40A:9-25,
21 because what the law says is -- and Mr. DeSapio cites
22 the Coyle case and the Pillsbury case in his brief.
23 And what do those cases stand for? They're both county
24 counsel cases, but those are three-year statutory
25 appointments. And, as Mr. DeSapio notes, you can only

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1 be removed for cause.

2 Well, in order to have the for-cause
3 removal, you go to 40A:9-25 and it lays out the entire
4 procedure in 40A:9-25, how you go about removing
5 somebody for cause.

6 And it's a fairly simple statute, your
7 Honor, because what it says is you have to serve
8 charges, you have to have a hearing greater than 10,
9 but no less than 30 days. They can call witnesses.
10 They have subpoena powers. And there'll be a hearing
11 officer who will render a recommended decision.

12 The County of Hunterdon retained an
13 independent hearing officer to handle this. It was
14 scheduled for today. And Mr. DeSapio filed this on
15 Monday.

16 THE COURT: So --

17 MR. GIACOBBE: And Mr. --

18 THE COURT: So who signed the charges?

19 MR. GIACOBBE: The charges were signed by
20 Cindy Yard. If you look at it, complaint made, County
21 of Hunterdon, served and dated, Cynthia Yard, 9/24/13.

22 Who is Cindy Yard? She's the appropriate
23 authority. She's the County Administrator.

24 So for Mr. DeSapio to come before the Court
25 and say they weren't signed, they were signed by the

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1 County Administrator on behalf of the County of
2 Hunterdon on 9/24/13.

3 They were served on that date and a hearing
4 was scheduled for October 10th, at 11 a.m., today;
5 greater than 10, less than 30 days from the thing.

6 And what Mr. DeSapio's arguing is quite
7 circular. He's saying she's a statutory person. You
8 can't take her out. She serves for three years.
9 Obviously, according to Mr. DeSapio, she has more
10 rights than the President of the United States. His
11 argument is if you're appointed to this position, you
12 can't be removed. That's not what the law says, your
13 Honor.

14 The law says you can't be removed unless
15 there's just cause. And in order to demonstrate just
16 cause, the CFO, the county counsel, the County
17 Treasurer, any one of these people who hold statutory
18 positions, much like a teacher who is tenured, have
19 statutory rights to due process. And that's contained
20 in 40A:9-25, and those statutory rights set forth a
21 hearing.

22 Mr. DeSapio's very actions today on behalf
23 of Ms. Pasqua are depriving her of her due process
24 rights.

25 She will have a full opportunity to present

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1 her case. She'll have a full opportunity to present
2 witnesses, to cross-examine, to challenge the
3 independent auditor, Wiss, which is attached hereto.

4 And for Mr. DeSapio to say there's no
5 evidence of any malfeasance, there's only two people in
6 the County of Hunterdon who are licensed to sign any
7 type of official documents dealing with finance:
8 Margaret Pasqua and Kim Brown. They have licenses from
9 the Department of Community Affairs. No one else can
10 do this. No one else can sign all the certifications
11 that Mr. DeSapio cited earlier this morning. It's
12 those two individuals because of their statutory
13 licenses that are required.

14 And if you go to Exhibit B, we just showed
15 you the independent audit that Wiss & Company, the
16 independent auditors, came forward. And there are a
17 plethora of very serious problems in the Finance
18 Department when you read that.

19 If you go to Exhibit C, you'll see there's
20 another plethora of inappropriate conduct by these
21 people who are responsible and charged statutorily with
22 running this department.

23 But clearly, your Honor, that's for the
24 hearing officer to determine. We'll present our
25 proofs. Ms. Pasqua and Ms. Brown will have the

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1 opportunity to present their proofs, rebut it, explain
2 it. And ultimately an independent hearing officer will
3 render a decision.

4 And what the -- what ultimately happens
5 under 40A:9-25, your Honor, in the case of Margaret, is
6 that once the independent hearing officer renders a
7 decision, the Freeholders will make the decision to
8 accept, reject or modify, and then she has further
9 rights.

10 And what are those rights? She gets to
11 have a trial de novo in Superior Court based on the
12 record below.

13 So we had a Court Reporter there today --
14 for today scheduled so there'll be a record below under
15 which Mr. DeSapio could come before this Court.

16 So she has, basically, two opportunities
17 for due process before she is deprived of the position
18 of County Treasurer.

19 Mr. DeSapio's application is permitting
20 (sic) that due process to occur.

21 Now, when I read Crowe vs. DeGioia and I
22 read Mr. DeSapio's application, there's four standards:
23 Irreparable harm; likelihood of success on the merits;
24 balancing the equities; and public policy.

25 Let's just go to irreparable harm and

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1 likelihood of success on the merits.

2 There's no irreparable harm. Margaret is
3 not losing her paycheck. Margaret hasn't been stripped
4 of her certificate. Margaret is working every day.

5 She is not in her physical office in the
6 County of Hunterdon because they were doing an audit
7 and it was directed by the prosecutor to reassign them
8 to a different location.

9 But that's -- that's, frankly, irrelevant,
10 your Honor, because the -- if you look at the standard
11 of likelihood of success on the merits and irreparable
12 harm, you have to have that money damages can't
13 suffice.

14 Margaret is -- her term expires April 30th
15 of 2014.

16 So Mr. DeSapio has not demonstrated one
17 iota that he has a likelihood of success on the merits.
18 What he's trying to do is enjoin that hearing. If the
19 hearing is enjoined, we cannot perform or provide
20 Ms. Pasqua her statutory rights to have due process.
21 That's what the -- so, clearly, there's no irreparable
22 harm.

23 The likelihood of success on the merits,
24 your Honor, is that there are -- we have a statutory
25 right to charge an employee for cause, which was done

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1 and signed by Ms. Yard. The charges set forth
2 everything.

3 Mr. DeSapio says he has absolutely no
4 evidence, but Mr. DeSapio clearly already has the audit
5 report, which was provided to him. He's been provided
6 a plethora of other documents. He was provided the
7 initial report of Donahue. And any other documents and
8 witnesses that will be provided will be made afforded
9 to him.

10 We've cancelled the hearing for today and
11 we will reschedule it.

12 But Mr. DeSapio, clearly, has not
13 demonstrated either a likelihood of success on the
14 merits that we have somehow -- are unable to have the
15 statutory hearing that's required in order to
16 effectuate this removal and has not demonstrated any
17 irreparable harm because the individual is afford --
18 being afforded their health benefits, their salary, and
19 they're still performing duties in connection with
20 their title as County Treasurer.

21 They're physically not in one office. They
22 were moved to another office at the direction of the
23 prosecutor because they want to insure that there's no
24 malfeasance.

25 What ultimately will come out, your Honor,

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1 is you're going to find out -- not your Honor, but in
2 the hearing, and what's contained in the report is --
3 just one aspect of this is that there was literally
4 millions of dollars spent on health benefits to people
5 who were dead, to people who didn't statutorily qualify
6 for health benefits. That was going on for years.

7 There's another component that you'll hear
8 that under Chapter 78 PL 2011 -- and I'm sure anybody
9 in the public sector's aware of that. The statutory
10 mandate to contribute to your health benefits. That
11 law, that is the charge of the County Treasurer and the
12 Director of Finance, to implement that law.

13 That law became effective June 28th, 2011,
14 and what that law said is, as soon as practicable, you
15 must start commencing contributions from employees, and
16 they laid out a four-tier system. And it's 25 percent,
17 50 percent, 75 percent, 100 percent based on your --
18 your income and the cost of the benefits.

19 And what the law further says is if you're
20 a new employee after June 28th, 2004 and you're not
21 then a member of a collective bargaining agreement, you
22 must go to tier four immediately.

23 Well, you know what they did --

24 THE COURT: I'm very familiar with that.

25 MR. GIACOBBE: -- through the finance --

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1 yeah -- what they did in the Finance Office?

2 A lot of employees got hired. They said
3 you know what? It's just going to be too problematic
4 to put them on tier four. We're just going to put them
5 where everyone else is. We're just going to put them
6 where everyone else is, at tier one, because it's going
7 to take us too much time to recalculate it and put them
8 on tier four.

9 That's contrary to the law, your Honor, and
10 the -- and the charge was that his client and
11 Ms. Brown, the Director of Finance, made that
12 determination. That's what's going to come out in the
13 hearing.

14 So what we're asking, your Honor, is deny
15 Mr. DeSapio's application, allow us to have the
16 hearing, and if Mr. DeSapio's dissatisfied with the
17 hearing, if the hearing doesn't go Ms. Pasqua's way, if
18 the Freeholders -- they have the right to -- it's a
19 recommended decision of the hearing officer --

20 THE COURT: Uh-huh.

21 MR. GIACOBBE: -- that the Freeholders can
22 accept, reject or modify. And if Mr. DeSapio and his
23 clients are dissatisfied with that, they have a trial
24 de novo. They come right back here before your Honor
25 or another Judge in the Superior Court and you have a

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1 trial de novo on the record below.

2 So, frankly, I think that in the interest
3 of justice, in the interest of due process, in the
4 interest of the taxpayers of Hunterdon County, clearly
5 equities weigh strongly in favor of the County of
6 Hunterdon to not have an injunction on this hearing and
7 permit this to go forward so that we can follow the
8 orderly course that's laid out in the New Jersey
9 Statutes promulgated by the Legislature and, frankly,
10 is in total accord with the Coyle and Pillsbury
11 decisions.

12 Thank you, your Honor.

13 THE COURT: Yes. I --

14 MR. DESAPIO: Can I --

15 THE COURT: I assume you want to be
16 heard --

17 MR. DESAPIO: Yes, your Honor. Thank you.

18 THE COURT: -- in response. Yes.

19 MR. DESAPIO: I want to see if I can break
20 down and clarify the relief we're seeking today.

21 One -- and this is the key and this is the
22 one that I'm -- that I respectfully suggest to the
23 Court I'm absolutely certain that Margaret Pasqua is
24 entitled to this relief, and that is pending whatever
25 process is supposed to be followed, to have her

