

D.R. NO. 92-25

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

COUNTY OF SUSSEX,

Public Employer,

-and-

Docket No. CU-92-2

C.W.A., AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation clarifies a negotiations unit of all full-time and regularly employed part-time county employees to include library pages and an agency aide.

The Director finds that the library pages are regularly and continuously employed, and therefore eligible for unit inclusion. The Director also finds that the agency aide is a full-time, permanent, classified employee who clearly falls within the description of the existing unit.

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Appearances:

For the Public Employer  
Courter, Kobert, Laufer, Pursell & Cohen, attorneys  
(Fredric M. Knapp, of counsel)

For the Petitioner  
Steven P. Weissman, attorney

DECISION

On July 18, 1991, the Communications Workers of America ("CWA") filed a clarification of unit petition with the Public Employment Relations Commission ("Commission") seeking to include an agency aide and library pages in its broad-based unit of all full-time and regularly employed part-time employees employed by the Sussex County Board of Freeholders ("County"). The County contends that the employees are inappropriate for inclusion in the existing unit.

On August 29, 1991, a Commission staff agent conducted an exploratory conference. The parties filed written position statements by October 8, 1991. On December 20, 1991, CWA informed us that settlement discussions were unsuccessful and requested a

decision on this matter. We have conducted an administrative investigation. No substantial and material facts appear to be in dispute which would warrant convening a hearing. N.J.A.C. 19:11-2.2 and 2.6. These facts appear.

CWA was certified as the unit's majority representative on November 1, 1990, after prevailing in an election between it and Sussex Council No. 20, N.J.C.S.A. CWA's clarification of unit petition is appropriate under these circumstances. It is a newly certified negotiations representative within the term of its first contract with the County.<sup>1/</sup>

The agency aide is a handicapped employee who performs maintenance, janitorial and delivery work under direct supervision. The agency aide works 40 hours a week and is a permanent employee. The County submitted a job description for the agency aide but stated that the employee's work capacity is limited and that he does not perform all of the duties listed in the job description. The agency aide title has not historically been included in the bargaining unit.

The County contends that the agency aide's limited work capacity renders him ineligible for inclusion in the unit. CWA contends that the agency aide is a full-time employee who performs bargaining unit work and is therefore properly included in the broad-based unit. CWA also states that the County employs

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<sup>1/</sup> The agreement expires on December 31, 1992.

handicapped persons in other job titles and that they are unit members.

The agency aide is a full-time, permanent, classified employee who performs maintenance type duties. He clearly falls within the unit of all full time and regularly employed part-time employees employed by the County. I find that the agency aide is eligible for inclusion in CWA's existing broad-based unit.

Library pages sort and shelve books, assist library patrons and perform routine clerical tasks. The County submitted daily time records for ten library pages covering January to August 1991. The pages worked between 17 and 38 hours per two week pay period.<sup>2/</sup> Full-time County employees work 35 hours a week or 70 hours per pay period.<sup>3/</sup> The County also supplied starting dates for the 10 pages. They range from December 1987 to September 1990.<sup>4/</sup> The library page title has not been historically included in the unit.

CWA contends that although the library page title may at one time have been reserved for high school students, currently only

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<sup>2/</sup> The pages' average hours per two week pay period are as follows: 17, 21, 22, 22, 22.8, 23, 24.4, 31, 36.9 and 38.

<sup>3/</sup> The County also submitted a time record for an employee who worked from January through July 1991 combined with the August 1991 time records of the employee who replaced her. The combined hours of the two employees averaged 14.74 hours per two-week pay period.

<sup>4/</sup> The pages' employment longevity is as follows: One has been employed by the County since 1987, three have been employed since 1988, three have been employed since 1989 and three have been employed since 1990.

two of the 11 pages are high school students and the rest are adults. CWA contends that most of the adult pages work at least 22.5 hours per pay period and all are regularly and continuously employed and therefore eligible for inclusion in the unit.

The County characterizes library pages as seasonal employees who work on a part-time basis.<sup>5/</sup> The County contends that the pages are sporadically employed as funding is available, that their employment is neither continuous nor regular and that the pages do not have a reasonable expectation of continued employment. The pages' benefits are not equivalent to those of full-time employees, although the pages do have workers compensation coverage, taxes are withheld from their paychecks and some have pension benefits.<sup>6/</sup> The County also contends that the pages' hourly wage rate is below the lowest hourly unit rate and that inclusion of the pages in the unit would lead to elimination of jobs.

The Commission has held that employees who are regularly and continuously employed are eligible for representation. See State of New Jersey, D.R. No. 87-25, 13 NJPER 326 (¶18136 1987); Cranford Tp., D.R. No. 86-26, 12 NJPER 566 (¶17214 1986); Mt. Olive Bd. of Ed., P.E.R.C. No. 86-66, 8 NJPER 102 (¶13041 1982); Rutgers Univ. v. Rutgers Univ. Coll. Teachers Ass'n, E.D. No. 76-35, 2 NJPER

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<sup>5/</sup> The pages are classified under civil service as seasonal, and cannot attain provisional or permanent civil service status.

<sup>6/</sup> The County did not specify how many of the pages enjoy pension coverage.

176 (1976), aff'd P.E.R.C. No. 76-49, 2 NJPER 229 (1976), D.R. No. 77-5, 3 NJPER 12 (1976) [dism. elec. objections], aff'd. App. Div. Dkt. No. A-1652-76 (1/26/78), certif. den. 76 N.J. 243 (1978).

Regularity of employment is determined by how frequently an employee works. Part-time employees who work at least 1/6 the number of hours worked by full-time employees have been deemed to be regularly employed and eligible for representation. Mt. Holly Tp., D.R. No. 92-19, 17 NJPER 88 (¶22042 1991); Lawrence Tp., D.R. No. 82-49, 8 NJPER 278 (¶13125 1982).

Continuity of employment is determined by the degree of stability in the employment relationship. "It runs to the relative 'permanency' of the employment and the degree of stability within the unit." State of New Jersey. In City of Rahway, D.R. No. 83-9, 8 NJPER 538 (¶13247 1982), the then Director found that although part-time crossing guards were laid off and rehired each year, their employment relationship was continuous because they occupied permanent, on-going positions and a sufficient number returned each year.

The library pages work between 17 and 38 hours per pay period. This exceeds 11.66 hours per pay period, which is 1/6 of the number of hours worked by full-time County employees.<sup>7/</sup> There

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<sup>7/</sup> Full-time County employees work 35 hours per week or 1827 hours per year. One-sixth of their total hours is 304.6 hours per year, which is 5.83 hours per week and 11.66 hours per pay period. This calculation is based on 1992, which is a leap year.

is also a high degree of job permanency among library pages. All but one of the pages have been employed for over one year, and seven have been continuously employed for longer than three years. The library pages meet the test for regular and continuous employment and I find that they are eligible for inclusion in the County-wide unit represented by CWA.

The County also argues that both titles' historical exclusion from the unit should preclude their representation. However, CWA did not specifically agree to exclude the titles from its unit. The Commission decision directing the election<sup>8/</sup> did not exclude the agency aide and library page titles. cf. Warren Tp., D.R. No. 82-10, 7 NJPER 529 (¶12233 1981). The agency aide and one library page voted by challenge ballot in the election that certified CWA as majority representative. I therefore find that CWA did not waive its right to represent the agency aide and library page titles.

The existing unit of all full-time and part-time employees employed by the Sussex County Board of Freeholders is clarified to include the agency aide and library pages. The clarification is effective immediately.<sup>9/</sup>

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<sup>8/</sup> D.R. No. 91-11, 16 NJPER 572 (¶21251 1990).

<sup>9/</sup> Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977); Union Cty. Reg. H.S. Dist. #1, D.R. No. 83-22, 9 NJPER 228 (¶14105 1983).

The County urges that if I find these employees are included in the unit, I also make a specific finding that they are not covered by the contract recently negotiated between the parties. This clarification of unit finding carries with it only the obligation to negotiate and there is no requirement that the employees be granted the benefits of the contract. However, no determination can be made here as to an employee's inclusion or exclusion in a particular contract. Whether or not these employees are covered by the terms of the newly negotiated contract between the parties can only be determined by the language of the contract. The contract is not before me now and, in any event, contract interpretation is best left to the dispute resolution mechanism within the contract. See Brookdale Community College, P.E.R.C. No. 83-131, 9 NJPER 261 (¶14122 1983); N.J. Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).<sup>10/</sup>

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Edmund G. Gerber, Director

DATED: March 24, 1992  
Trenton, New Jersey

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<sup>10/</sup> The County's reliance on Union Cty. is not persuasive. There never was a contention in Union Cty that the disputed employees were included in the newly negotiated contract.