

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

In the Matter of

SOMERSET COUNTY COLLEGE,

Public Employer,

-and-

DOCKET NO. RO-81-150

SOMERSET COUNTY COLLEGE FACULTY  
FEDERATION, LOCAL 2375, AFT-AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs an election among all coadjunct faculty. The Director determines that the substantial rate of return of the coadjunct faculty renders such a unit appropriate for collective negotiations. Those coadjunct faculty members eligible to vote in the election are "all adjunct faculty members who commenced employment for at least their second semester during a given academic year, and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year."

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Appearances:

For the Public Employer  
Lanigan, O'Connell & Jacobs, attorneys  
(Daniel F. O'Connell of counsel)

For the Petitioner  
Dorothy Gutenkauf, Staff Representative  
New Jersey State Federation of Teachers

DECISION AND DIRECTION OF ELECTION

On December 11, 1980, a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was filed with the Public Employment Relations Commission (the "Commission") by the Somerset County College Faculty Federation, Local 2375, AFT-AFL-CIO ("AFT") with respect to a proposed unit consisting of adjunct faculty employed by Somerset County College (the "College"). The undersigned has caused an administrative investigation to be conducted into the matters and allegations in order to determine the facts.

On the basis of the administrative investigation herein, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based on the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after an evidentiary hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing, where as here, no substantial and material factual issues have been placed in dispute by the parties.

2. Somerset County College is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of this Petition and is subject to the provisions of the Act.

3. Somerset County College Faculty Federation, Local 2375, AFT-AFL-CIO, is an employee representative within the meaning of the Act and is subject to its provisions.

4. The AFT is seeking to represent a unit of adjunct faculty employed by the College. AFT has indicated a willingness to execute an Agreement for Consent Election in a unit defined as all adjunct faculty members who have commenced employment for at least their second semester this academic year, and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year.

5. The College maintains that its adjunct faculty members lack the regularity and continuity of employment necessary

to establish public employee status, and, therefore, could not be represented in any appropriate unit. Accordingly, the College does not consent to a secret ballot election. The College seeks an evidentiary hearing " ... to bring out all of the factors relating to Adjunct Faculty, continuity of employment, appropriateness of unit and other related questions." <sup>1/</sup>

6. It appearing that a dispute existed which could not be resolved informally by the College and the AFT, the undersigned reviewed this matter, including the College's request for a hearing pursuant to N.J.A.C. 19:11-2.6. The undersigned was guided in his review by a previous Commission matter, In re Rutgers University, <sup>2/</sup> in which the Commission found that those Rutgers Coadjutant faculty who were public employees within the meaning of the Act could constitute an appropriate unit for collective negotiations. The Commission, in Rutgers, defined the coadjutant faculty unit in a manner which incorporated the standard by which public employee status would be judged, i.e., "all coadjutant faculty members who commence employment for at least their second semester during a given academic year, and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year." In so doing, the Commission also set forth the standard by which casual employment, i.e., employment not characterized by regularity and continuity, would be judged.

<sup>1/</sup> Letter of February 13, 1981.

<sup>2/</sup> In re Rutgers University, E.D. No. 76-35 (1976) (decision and direction of election), aff'd as modified, P.E.R.C. No. 76-49 (1976), objections to election dismissed D.R. No. 77-5 (1976), aff'd. App. Div. Docket No. A-1652-76 (1976) (unpublished decision), certif. den. N.J. (1978).

7. On May 13, 1981, the undersigned advised the parties of the apparent applicability of Rutgers to the instant matter, and that the application of the coadjutant faculty standard set forth in Rutgers would result in the identification of faculty members eligible for inclusion in a unit comprised of adjunct faculty. The undersigned observed that:

Although the College states that the facts surrounding its Adjunct Faculty are distinguishable from the Rutgers setting, and that "there are questions of the appropriateness of the unit and other legal questions which have to be resolved fully . . .," the College has not submitted an evidentiary proffer to support the claim of any substantial and material factual differences which might support its request for an evidentiary hearing, nor has it identified the "questions" which it seeks to place before the Commission other than the issues concerning public employee status and continuity of employment.

The parties were advised that the investigation did not reveal a need for a hearing, but the parties were nevertheless afforded an opportunity to submit evidentiary proffers relevant to the disposition of this matter, pursuant to N.J.A.C. 19:11-2.6.

8. On June 1, 1981, the College filed a proffer with the Commission and renewed its request for an evidentiary hearing. In its reply, the College, in part, contended that two factual distinctions existed between the instant matter and the Rutgers matter which rendered the Rutgers standard inapposite. These distinctions related to the comparative percentages of returning adjunct faculty and the comparative percentage of adjuncts enrolled in the Public Employment Retirement System.

9. On July 10, 1981, the undersigned requested the College to submit specific evidentiary material relating to its June 1 proffer. The undersigned provided the College with a form to utilize in detailing the reemployment of each adjunct faculty member over a period of five consecutive semesters and in setting forth the date of enrollment in PERS.

On July 29, the College submitted the completed form. The AFT has been provided with an opportunity to review the College's evidentiary proffer, and has not disputed the material provided by the College.

The undersigned has carefully reviewed the materials presented by the College in support of its objection to the petitioned-for unit and has made the relevant comparison of the facts herein to the facts of the Rutgers matter. For the reasons that follow, the undersigned's review of the evidentiary proffers submitted by the College reveals that the employees in question herein exhibit a regularity and continuity of employment which is comparable to the employment pattern of the Rutgers coadjutants.

In Rutgers, the Executive Director noted the factual stipulation of the parties that " ... approximately 67% of those employed during the 1974-1975 academic year had also been employed at the University College during the 1973-74 academic year. 221 of 262 coadjutants employed in 1974-75 were required to be enrolled in the Public Employees Retirement System." The Executive Director believed that the pattern of employment of coadjutants conferred upon them public employee status, and defined the unit as including

"all coadjutant faculty." Upon review, however, the Commission redefined the appropriate unit as follows to reflect the factor of individual continuity: "all coadjutant faculty members who commence employment for at least their second semester ...."

Based upon the undersigned's review of Rutgers, it appears that the significant element which established the appropriateness of a negotiations unit of coadjutant faculty was the substantial return rate of coadjutant faculty. <sup>3/</sup> Approximately two thirds of the coadjutant faculty at Rutgers returned from one year or one semester to the next as coadjutant faculty personnel. In comparison, in the instant matter, of the adjunct faculty employed by the College in the academic year 1980-81, 66% commenced employment for a second semester during the 1980-81 school year (i.e., 66% of the adjunct faculty employed by the College in 1980-81 had worked a previous semester for the College, either in Spring 1979, Fall 1979, Spring 1980, or worked both semesters in 1980-81.)

Based upon the above, the undersigned finds that a unit of adjunct faculty at the College is appropriate for the purposes of collective negotiations.

The undersigned now turns to the question of individual unit eligibility. The College suggests that the factor of employment continuity requires that only those adjunct faculty employed during two consecutive semesters or academic years are eligible for unit

<sup>3/</sup> In redefining the Rutgers coadjutant unit description, the Commission focused solely upon the return factor, not the PERS enrollment factor.

inclusion. A review of Rutgers reveals that such a requirement was not imposed by the Commission. Rather, the sole determinant was that the faculty member commenced a second semester of employment for the College, without regard for the year of initial employment. The issues raised by the College relating to individual unit eligibility do not lend themselves to the imposition of hard and fast rules. The College points to the "absurdity" of certain hypothetical situations based upon the Rutgers standard for eligibility. Individual unit placement questions are best resolved based upon actual, as opposed to hypothetical situations, in a challenge proceeding or clarification of unit proceeding, if necessary. These issues need not delay an election at this time. The Rutgers standard provides a sufficient basis for the employer to prepare an eligibility list meeting the definitional parameters. The College, or the AFT, may assert a challenge at the election to an adjunct faculty member whose eligibility is questioned, if any.

Accordingly, the undersigned finds the appropriate unit is "all adjunct faculty members who commenced employment for at least their second semester during a given academic year, and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year, excluding all other employees, craft employees, nonprofessional employees, policemen, managerial executives, confidential employees, and supervisors within the meaning of the Act.

Those eligible to vote shall be those adjunct faculty members employed for at least their second semester during the



Spring 1981 semester or who have commenced employment for at least their second semester during the Fall 1981 semester, and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year.

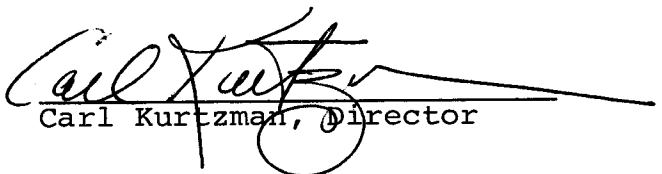
Pursuant to N.J.A.C. 19:11-9.6, the Public Employer is directed to file with the undersigned an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. Such list must be received no later than ten (10) days prior to the date of the election. The undersigned shall make the eligibility list immediately available to all parties to the election.

The election directed herein shall be a mail ballot election commencing with the mailing of ballots on Monday, December 28, 1981. Ballots are to be returned to the Commission's postal address no later than 10:00 a.m., Monday, January 18, 1982.

Those eligible to vote shall vote on whether they desire to be represented for the purposes of collective negotiations by the Somerset County College Faculty Federation, Local 2375, AFT-AFL-CIO.

The majority representative shall be determined by a majority of the valid ballots cast. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: November 19, 1981  
Trenton, New Jersey