

D.R. NO. 88-26

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

In the Matter of

ESSEX COUNTY COLLEGE,

Public Employer,

-and-

ESSEX COUNTY COLLEGE O.W.A., NJEA,

DOCKET NO. RO-88-70

Petitioner,

-and-

I.U.O.E., LOCAL 68,

Intervenor.

SYNOPSIS

The Director of Representation finds the Association's Petition to represent employees of the Essex County College is timely filed. The October 14, 1987, filing is within the time period set forth in N.J.A.C. 19:11-2.8(c)(3), the controlling Rule section for county colleges. See Brookdale County College, D.R. No. 81-51. Accordingly, an election is directed among full-time and regularly employed part-time maintenance and food services personnel

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Appearances:

For the Public Employer
Schwartz, Pisano, Simon & Edelstein, Esq.
(Stephen J. Edelstein, of counsel)

For the Petitioner
New Jersey Education Association-Higher Education
(Leo Galcher, Field Representative)

For the Intervenor
Zazzali, Zazzali & Kroll, Esqs.
(Paul L. Kleinbaum, of counsel)

DECISION AND DIRECTION OF ELECTION

On October 14, 1987, the Essex County College O.W.A., NJEA ("Association") filed a Petition for Certification of Public Employee Representative, accompanied by an adequate showing of interest, with the Public Employment Relations Commission. By its Petition, the Association seeks to represent a unit of maintenance

and food services personnel employed by the Essex County College ("College") at the Newark campus. These employees are currently represented by Local 68, International Union of Operating Engineers ("IUOE"), and are covered by a three-year collective negotiations agreement between the College and IUOE, which expires on June 30, 1988. IUOE intervened in this proceeding on the basis of that agreement. N.J.A.C. 19:11-2.7.

In accordance with N.J.A.C. 19:11-2.2(a), an administrative investigation was conducted into the matters and allegations involved in the Petition in order to determine the facts. An informal conference was convened by a Commission staff agent on November 9, 1987. The Association and the College consent to an election. The IUOE objected to an election, asserting that the Petition was not timely filed under N.J.A.C. 19:11-2.8.

N.J.A.C. 19:11-2.8(c) provides:

During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative normally will not be considered timely filed unless...

(2) In a case involving employees of a county or a municipality or any agency thereof, or any county or municipal authority, Commission or Board, the Petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement;

(3) In a case involving employees of a school district, the petition is filed during the period between September 1 and October 15, inclusive, within the last 12 months of such agreement.

IUOE argues that Essex County College is an agency of the County, and therefore, subsection 2.8(c)(2) controls the filing of a petition for these employees. This petition was not filed within 90 to 120 days prior to contract expiration, and thus, it argues, is not timely.

The Commission and the courts have previously found that county colleges are not agencies of county government. See Atlantic Community College v. Civil Service Commission, 59 N.J. 102 (1971); The Board of Trustees of Mercer County College v. Sypek, 160 N.J. Super 452 (App. Div. 1978); Brookdale Community College, D.R. No. 81-51, 7 NJPER 400 (¶12177 1981). In Brookdale, we concluded that N.J.A.C. 19:11-2.8(c)(2) is not the applicable section controlling the filing of petitions for employees of county colleges, but rather, the timely filing period affecting such employees is section 2.8(c)(3). We noted:

Concededly, county colleges are not public school districts as that term is defined in Title 18A. County colleges are public institutions of higher education. Nevertheless, after careful consideration, the undersigned finds that, in order to effectuate the purposes of the Act and in order to provide an adequate period for the resolution of questions concerning representation while providing sufficient time for negotiations in the context of the employer's budget considerations, the timely period for filing representation petitions affecting employees of

the county colleges is most appropriately established under subsection (c)(3).^{1/}

Brookdale, at 402.

The Association's Petition was filed on October 14, 1987, within the time period set forth in section 2.8(c)(3). Therefore, we find that the Association's Petition is timely filed.

Accordingly, we direct that an election be conducted among the employees in the extant unit comprised of all full-time and regularly employed part-time maintenance and food services personnel in the following titles:^{2/}

LEAD - Building Service	LEAD - Transportation
Building Service Repairman	Dishwasher
Lead Custodian	Utility Worker
Custodian	Food Service Worker
Lead Groundsmen	Kitchen - Cook
Groundsmen	Kitchen - Cook/Helper
Plumbing Specialist	Grill Cook
Electrical Specialist	Utility Worker (Buildings
Boiler Operator	& Grounds)
Automotive & Equipment Mechanic	Area Lead Person (Evenings)
Transportation Aide	HVAC Mechanic

Excluded shall be:

^{1/} Since the issuance of the Brookdale decision, this agency has specifically stated -- in its annual notice to interested parties regularly appearing before this Commission, providing the relevant periods for the filing of such petitions -- that the filing periods for county colleges are controlled by subsection (c)(3).

^{2/} We note that the Petition and the current agreement restrict unit inclusion to employees working 20 hours per week or more. However, the Commission's policy is to not specifically exclude part-time employees solely on the basis of an arbitrary minimum number of hours, but rather to include all part-time employees who are regularly employed.

All supervisory personnel including but not limited to the Director of Physical Plant and the Superintendent of Buildings and Grounds, the Director of Food Services and the Heads of any department section, all employees covered by other collective negotiations agreements, all security personnel, all "exempt" personnel, students, part-time and temporary employees, managerial and confidential employees and all personnel whose salaries are derived from restricted sources such as Federal, State and private grants, that are employed by Essex County College and all other statutory exclusions pursuant to the Act.

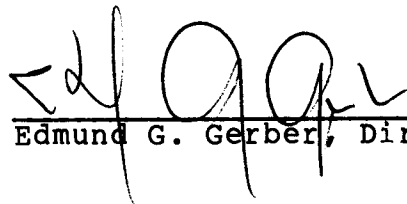
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote are the employees in the unit set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be filed

simultaneously with the employee organizations with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative of the maintenance and food service personnel, if any, shall be determined by a majority of the valid votes cast in the election by these employees. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: January 14, 1988
Trenton, New Jersey