

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

In the Matter of

UNION COUNTY COLLEGE,

Public Employer,

-and-

UNION COUNTY CHAPTER OF AMERICAN
ASSOCIATION OF UNIVERSITY PROFESSORS,

DOCKET NO. RO-83-116

Petitioner,

-and-

UNION COUNTY COLLEGE FACULTY
ASSOCIATION, NJEA,

Intervenor.

SYNOPSIS

The Director of Representation directs an election among faculty employees of Union County College, finding that the Commission's contract bar rule does not apply under the circumstances to prevent the processing of a certification petition seeking to consolidate two employee units. Union County College is a new college created through the merger of two former educational institutions -- one public; one private -- in accordance with the provisions of N.J.S.A. 18A:64A-50 et seq. The investigation revealed that a significant amount of commingling of employees has occurred since the merger.

Prior to the merger, the Faculty Association represented faculty employees at the public institution and the Petitioner (AAUP) represented faculty employees at the private institution. Both contracts covering the respective employees continue to be effective under the terms of the above statute until their expiration in Summer, 1984. The AAUP filed its Petition on December 27, 1982, prior to the "window" period during which certification petitions may normally be filed under the terms of the Commission's contract bar rule.

The Director, however, noting the degree of employee integration and the fact that all parties agreed to the appropriateness of consolidating the two faculty units, finds the contract

bar rule inapplicable. Although the terms of the enabling statute protect existing employee contractual benefits, the enabling statute does not mandate the continued existence of the particular employee representative which holds the contract, nor does it preclude any negotiations to improve employee benefits or to reflect additional terms and conditions of employment which were not anticipated when the current agreements were negotiated. The interests of the faculty and the employer are not served by applying the contract bar rule in the instant circumstance.

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Appearances:

For the Public Employer
Yauch, Peterpaul & Clark, attorneys
(Frank Peterpaul of counsel)

For the Petitioner
Sterns, Herbert & Weinroth, attorneys
(Michael J. Herbert of counsel)

For the Intervenor
Cohen, Weiss & Simon, attorneys
(April Harris of counsel)

DECISION AND DIRECTION OF ELECTION

On December 27, 1982, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by the Union College Chapter of the American Association of University Professors

("AAUP") with respect to certain faculty employees of Union County College ("College"). The instant certification Petition arises from the recent merger of the Union County Technical Institute ("Technical Institute"), a public college, and Union College, a private college. ^{1/}

Prior to the merger of the Technical Institute and Union College, the faculty employees at each institution were represented in separate negotiations units. The AAUP represented faculty at Union College. The Union County Technical Institute Educational Association, NJEA, now renamed the Union County College Faculty Association, NJEA ("Faculty Association"), represented faculty at the Technical Institute. The instant Petition seeks the consolidation of these separate respective negotiations units and the certification of one majority representative therein.

Pursuant to N.J.A.C. 19:11-2.2(a), the undersigned has caused an administrative investigation to be conducted into the matters and allegations involved in the Petition. The investigation revealed that no dispute was raised by the parties concerning the appropriateness of the petitioned-for negotiations unit. Rather, the sole disputed issue is whether existing contract between the above respective employee representatives and Union County College, as the successor employer, serve to bar the filing of the Petition pursuant to N.J.A.C. 19:11-2.8(c)(3).

^{1/} Legislation enabling the merger of these institutions was adopted June 24, 1982. N.J.S.A. 18A-64A-50 et seq. Appropriate resolutions of the institutions approving a merger were passed on August 17, 1982.

The investigation further revealed that similar issues were involved in an earlier petition filed with the Commission, Docket No. RO-83-110, concerning the secretarial/clerical employees at the College. The undersigned consolidated the Petitions for investigatory purposes. ^{2/}

Based upon the administrative investigation, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon 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. Union 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. ("Act"), is the employer of the employees who are the subject of this Petition, and is subject to the provisions of the Act.

3. Union College Chapter of the American Association of University Professors and Union County College Faculty Association, NJEA are employee representatives within the meaning of the Act and are subject to its provisions. The AAUP represents faculty

^{2/} A decision concerning the companion matter has issued this day. In re Union Cty. College and Union Cty. College Staff Assoc., D.R. No. 83-30, 9 NJPER ____ (¶ ____ 1983).

employees formerly employed at Union College. The Faculty Association represents faculty employees formerly employed at the Technical Institute.

4. The legislation that enabled the Technical Institute and Union College to merge, N.J.S.A. 18A:64A-50 et seq., requires that the extant collective agreements with the respective representatives survive any merger and continue in effect until their expiration dates. The contract with the Faculty Association expires July 30, 1984; the AAUP contract expires August 31, 1984.

5. On December 27, 1982, the AAUP filed a Petition for Certification of Public Employee Representative seeking to represent the faculty in a unit which consolidates the two units that contained the former Technical Institute and Union College faculty employees.

6. The Faculty Association opposes the processing of the AAUP petition on the basis of the Commission's "contract bar" rule. N.J.A.C. 19:11-2.8(c)(3). As applied to county colleges, this rule limits the opportunity to file a certification petition, when employees are covered by a contract, to the September 1 - October 15 period immediately preceding the expiration date of the contract. More specifically, 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 or a petition for decertification of public employee representative normally will not be considered timely filed unless:

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

Assuming the normal application of the rule in the present circumstance, the AAUP petition, having been filed prior to the "window" period for the filing of a petition, would not be considered timely. 4/

7. The College asserts that the contract bar rule is not applicable under the instant circumstances. It asserts that the merger of the two former academic institutions has presented an exceptional circumstance and that the rule should not apply. 5/

8. The AAUP agrees with the above position of the College that the contract bar rule is inapplicable. It further cites several decisions of the National Labor Relations Board for the proposition that the merger of operations by an employer may give rise to circumstances under which the contract bar rule should not be applied. The AAUP specifically referred to a passage

3/ N.J.A.C. 19:11-2.8(c)(3) was determined to apply to county colleges in In re Bergen Cty. College, D.R. No. 81-51, 7 NJPER 400 (¶ 12177 1981).

4/ Thus, under the normal application of the contract bar rule, a petition for certification filed during the period of September 1 - October 15, 1983, would be considered timely filed.

5/ The College further contends that the AAUP contract cannot be asserted for contract bar rule purposes because it contains a union security provision which is illegal in the public sector. This argument is not material to the issues herein. It is the Faculty Association's contract, not the AAUP contract, which is asserted by the Faculty Association as a bar to the AAUP Petition.

in Boston Gas Co., 221 NLRB No. 78 (1975), in which the NLRB stated:

... employees historically represented by different labor organizations have been merged to a single workforce in which they work side by side in similar job classifications performing like functions under common supervision.

Consistent with its citation of the above authority the undersigned, on March 9, 1983, requested that the AAUP present specific evidence that would demonstrate a commingling of employees, and that absent such evidence it would appear that the Petition should be dismissed under the normal application of the contract bar rule.

10. The AAUP subsequently submitted an extensive affidavit in support of its claim of faculty commingling. Details of the documentation provided by the AAUP need not be reviewed, since the College and the Faculty Association have reviewed this material, have not disputed its factual accuracy, and agree that faculty integration has occurred. ^{6/}

11. The Faculty Association nevertheless premises its argument that the contract bar applies on the provisions of N.J.S.A. 18A:64A-71, which it asserts mandates that existing contractual protections accorded to employees be preserved until contract expiration. The Faculty Association asserts that " ... the only construction that could be given ... consistent with Section 22 of Chapter 42, would be to allow all existing contracts to

^{6/} The Faculty Association goes further and submits that the integration of employees is mandated by the terms of the enabling legislation.

run until the expiration of their respective terms." The Faculty Association further asserts " ... the representation election should not be allowed to cover a period earlier than June 30, 1984, for faculty." ^{7/}

For the reasons that follow, the undersigned does not find the Faculty Association's argument persuasive. First, a review of the specific language of N.J.S.A. 18A:64A-71 is in order. In relevant part, this section provides:

Existing tenure rights, contractual agreements and all rights or protections provided employees under pension law or retirement system or any law of this State shall be fully protected by the board of trustees of the college;....
(emphasis added).

It is noteworthy that the above statute imposes an obligation upon the college to protect employees from any diminishment of their contractual rights. There is no suggestion in the Statute that the College is entrusted to preserve the existence of the particular employee representative which holds the current contractual agreement. To the contrary, that designation is a statutory and constitutional right exclusively reserved to the employees.

^{7/} Although the Faculty Association has not elaborated upon this last statement, it appears that the Faculty Association is arguing that any new certification of representative not be effective until the earlier of the existing faculty contracts expires. Under standard Commission practice, a newly certified representative obtains immediate rights to administer an existing collective agreement. In re Bayonne Bd. of Ed., P.E.R.C. No. 78-60, 4 NJPER 160 (¶ 4077 1978). Thus, in an educational setting, a noncontested petition filed in the September 1 - October 15 period normally results in the issuance of a new certification several months before contract expiration. The newly certified representative may thus administer the old agreement for the remaining several months of its existence.

The designation by employees of a new representative does not normally result in a diminishment of contractual benefits. Moreover, it appears that the enabling statute would not permit an employee representative to disavow the terms of the existing agreement which provides rights and protections to employees.

Upon further review, it does not appear that the statute prevents the college and the majority representative from negotiating improved benefits during the contractual period, should they so desire, nor does it prevent negotiation over additional terms and conditions of employment resulting from the merger and consolidation activities which were not anticipated when the contract was entered into and which do not diminish existing contractual protections. These arrangements may be particularly beneficial to the College and its employees during this period of dynamic change.

Thus, the undersigned reads the legislative direction literally to require the continued adherence to those contractual conditions that have already been set. The undersigned cannot conclude that the statute precludes negotiations on new matters which do not affect employee rights and protections embodied in the current contract. Neither does the undersigned read the statute as mandating that employees continue to be represented by the same representative that currently holds a particular contract.

Under the present circumstances, where all parties agree that there has been a progressive development of integration and commingling in the faculty workforce, the undersigned cannot

conclude that the normal application of the contract bar rule promotes stability in the employment relationship or would otherwise be consistent with legislative intent embodied in the enabling legislation. To the contrary, it appears that the faculty are now being drawn together by actions that affect their work and welfare. The interests of faculty members in their work and welfare, as well as the interest of the College in maintaining stable employment relations, is not served by encouraging divisiveness and unwholesome competition among the representatives during the critical period in which the employer's operation is in a state of flux.

Therefore, for the above reasons, the undersigned finds that the contract bar rule is not applicable to the circumstances herein and determines that the purposes of the Act are best served by the conduct of an immediate election.

The undersigned finds that the appropriate unit is: all full-time instructional and professional library staff employed by Union County College, but excluding managerial executives, confidential employees, police and craft employees, supervisors and all other employees.

Pursuant to N.J.A.C. 19:11-2.6(b), the undersigned directs that an election be conducted among the employees described above. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are the employees 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, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. ^{8/} 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 College is directed to file with the undersigned and with AAUP and the Faculty Association 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. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with AAUP and the Faculty Association with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by Union Chapter of American Association of University Professors, Union County College Faculty Association, NJEA, or neither.

^{8/} The Commission's election agent is authorized to conduct a mail ballot election to commence within the thirty (30) day period if it appears that an on-site election is not practical.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. 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: May 16, 1983
Trenton, New Jersey