

D.R. No. 2006-14

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

In the Matter of

BERGEN COMMUNITY COLLEGE,

Public Employer,

-and-

Docket No. RO-2006-027

BERGEN COMMUNITY COLLEGE FACULTY  
ASSOCIATION/NJEA,

Petitioner.

SYNOPSIS

The Director of Representation grants a Petition for Card Check Certification and adds teaching staff assigned to the College Learning Academy to the existing unit of College faculty represented by the Faculty Association. The Learning Center teachers had previously been represented in a separate unit and their majority representative disclaimed further interest in representing those employees.

The Director rejected the employer's objections to the proposed merger of the two units and found that the two groups of professional employees share a community of interest.

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Appearances:

For the Public Employer,  
DeCotiis, Fitzpatrick, Cole & Wisler, LLP, attorneys  
(Ramon E. Rivera, of counsel)

For the Petitioner,  
Julie Giordano, NJEA Field Representative

DECISION

On October 5, October 12 and November 1, 2005, the Bergen Community College Faculty Association/NJEA (BCCFA) filed a timely representation petition and amendments thereto for card check certification seeking to add regularly employed full-time faculty employed by Bergen Community College (College) in its Ciarco Learning Center, to an existing unit of professional employees represented by BCCFA. The employees of the Ciarco Learning Center are currently represented by the Bergen Community College Adult Learning Center Faculty Association/NJEA (BCCALFA). The

petition was supported by a showing of interest adequate to support the request for card check certification.

The College objects to the grant of card check certification. It asserts that the employees in the two units are quite different based upon their educational background, working conditions and funding sources. The College states that many Ciarco employees do not possess the requisite educational background necessary to hold a faculty position and teach credit classes at the College; that the minimum educational requirements for current BCCFA members exceed those for Ciarco members; that certain Ciarco members' salaries are paid from grant funding, whereas BCCFA members are paid primarily from tuition; Ciarco members work a twelve-month year with up to 28 days of vacation, whereas BCCFA members work a ten-month academic calendar and do not receive vacation days; and the average salary of Ciarco members is significantly lower than that of current BCCFA members. The College further points out that there are numerous distinctions between the collective bargaining agreements in effect for both groups, such as benefits, work and holiday schedules and sick leave payouts.

BCCFA asserts that the College's arguments concerning the differences between the BCCFA and BCCALFA members are factually inaccurate, and disputes the College's claim that the asserted

differences should prevent the two units from being combined for negotiations purposes.

We have conducted an administrative investigation into this matter to determine the facts. By letter dated March 9, 2006 to the parties, we summarized the result of our investigation and advised the parties that we intended to certify the BCCFA as the representative of the petitioned-for unit. We invited replies by March 20. Neither party filed a response. Accordingly, the disposition of the petition is properly based upon our administrative investigation, as there are no substantial material facts in dispute which would require an evidentiary hearing. N.J.A.C. 19:11-2.2 and 2.6.<sup>1/</sup> I find the following facts:

BCCFA currently represents all full-time faculty holding the academic rank of professor, associate professor, assistant professor; and instructor, associate instructor, library associates, professional assistants and technical assistants employed by the College. BCCALFA was certified by the Commission on June 20, 1975. It represents all full-time faculty and secretarial staff employed by the Ciarco Learning Center. BCCFA originally sought to add all employees of the Learning Center to

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<sup>1/</sup> While BCCFA alleges factual inaccuracies are set forth in the College's position statement, these issues do not appear to raise "substantial and material factual issues" which require resolution through the conduct of a hearing. N.J.A.C. 19:11-2.6.

its existing unit, but by its November 1 amendment, seeks only to add the full-time faculty of the Center.

By letter dated November 3, 2005 from NJEA Consultant Howard Parish, BCCALFA indicated its wish to merge with BCCFA and disclaimed interest in continuing to represent the Ciarco employees.<sup>2/</sup>

The College submitted a list of employees fitting the description on the petition. A Commission staff agent conducted a telephone investigatory conference between representatives of the College and BCCFA. The purpose of the investigatory conference was to resolve the accuracy of the list of unit employees submitted by the College so that an accurate check of the Petitioner's authorization cards could be conducted, and to solicit the parties' agreement on the appropriateness of the proposed unit. During the conference, the College raised an objection to the proposed consolidation of the units. The parties were directed to submit supplemental written position statements. Both the College and BCCFA submitted such statements by December 23, 2005.

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<sup>2/</sup> The BCCFA has not petitioned for the Ciarco Center support staff through this petition. Since the BCCALFA has disclaimed representation rights to the Ciarco unit, these employees will be unrepresented.

ANALYSIS

On July 19, 2005, the Legislature amended the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, to authorize the Commission to determine whether a majority of employees in an appropriate unit who have signed authorization cards and where no other employee representative seeks to represent those employees, could organize. N.J.A.C. 19:11-2.6(b). However, where the parties cannot agree on an appropriate unit, we determine which unit is most appropriate for collective negotiations. N.J.S.A. 34:13A-6; N.J.A.C. 19:11-2.6d(3); see also State of N.J. and Prof. Assn. of N.J. Dept. of Educ., 64 N.J. 231 (1974). The Commission must define the appropriate unit ". . . with due regard for the community of interest among the employees concerned....Community of interest..encompasses many factors...." West Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218 (¶56 1971). The Commission ultimately weighs the facts and concerns of the employer, employee representatives and the public in deciding what unit structure promotes the statutory goals of labor stability and peace. State of N.J., 64 N.J. at 240. However, the Commission also weighs other factors in determining the appropriate unit: whether the composition of the petitioned-for unit is consistent with the requirements of the Act; whether the proposed unit structure is broad-based and employer-wide in scope; and the number, size and composition of

the employer's existing negotiations units. State of New Jersey (State College Locals), D.R. No. 97-5, 24 NJPER 295 (¶29141 1996). The totality of circumstances, including the desire of the employees and the extent of organization of the employer's other employees, must be considered. New Jersey State (Human Services), D.R. No. 95-1, 20 NJPER 308 (¶25154 1994).

In State of N.J. (Professional Ass'n), the Supreme Court endorsed the Commission's adoption of the concept of broad-based, employer-wide, functional negotiations units. In upholding the Commission's decision, the Supreme Court quoted the gravamen of the Commission's decision -- its concern about unit fragmentation and attendant proliferation:

Given the policy considerations of this statute, the Commission believes that the characteristics of a particular profession should not be the determinant in establishing units for negotiations. If community of interest is equated with and limited to such characteristics, the stability and harmony which this Act was designed to promote are in jeopardy. Potentially, every recognized professional group would be segregated, presenting the Employer with multiplicity of units and the likelihood of attendant problems of competing demands, whipsawing, and continuous negotiations which, disregarding the Employer's inconvenience, are not judged to be in the public interest. Fragmentation to that degree cannot be justified[.]

State of N.J. (Professional Ass'n), 64 N.J. at 241, quoting In re State of New Jersey (State Nurses Ass'n), P.E.R.C. No. 68, NJPER Supp. 273 (¶68 1972) at 275.

The Commission has rejected arguments favoring units at institutional or departmental levels; instead, the Commission has opted for employer-wide negotiations units. State of New Jersey Public Broadcasting Auth., E.D. No. 76-21, 2 NJPER 35 (1976).

In State of New Jersey (State College Locals), the State opposed a state-wide unit of adjunct faculty at the eight State colleges, arguing that even though adjuncts might be regularly employed, circumstances varied among the eight colleges; therefore, adjuncts at different colleges did not share a community of interest. The then Director of Representation ordered an election, concluding that a community of interest exists among adjuncts who are regularly employed:

A community of interest may be indicated by such factors as a common employer, common goals among the petitioned-for employees, employees' compensation, fringe benefits, hours of work, work facilities, educational requirements, supervision and evaluation...Varying degrees of expertise in an area, varying levels of training, and different job duties are traditionally not significant community of interest factors when compared to shared goals, the central authority which controls their working conditions and work environment.

Affording employees who have similar titles and goals an opportunity for unified employee representation promotes labor stability, since unified employee representation may permit negotiations with an already centralized and unified employer to proceed more smoothly. State of New Jersey and Prof. Nurses; Piscataway Twp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984); West



Milford, P.E.R.C. No. 56, NJPER Supp. 218  
(¶56 1971).

The facts herein are similar to those presented in Essex County College, D.R. No. 93-15, 19 NJPER 131(¶24064 1993).

In that case, the Essex County College Office Workers Association ("OWA") filed a representation petition seeking to represent about 45 maintenance personnel employed by Essex County College. The petitioned-for employees -- mechanics, custodians, drivers, maintenance service workers and others -- were represented by the Essex County College Facilities Staff Association ("FSA"). The OWA represented about 120 support staff employees including clerks, cashiers, secretaries, teacher assistants and technicians. The OWA sought a consolidated unit. The College opposed the petition, claiming that the proposed consolidation was "patently inappropriate" and would "emasculate" historically separate negotiations relationships. It also asserted that, due to differences between the white and blue-collar employees' job duties and terms and conditions of employment, the employees did not share a community of interest. The FSA supported a "merger" of the two units and acknowledged that the OWA -- if it received a majority of valid ballots cast -- would be the majority representative of the petitioned-for employees. There, too, the then-Director ordered an election, finding:

A history of separate negotiations is one factor in reviewing community of interest. But the significance of this factor is

undercut when the majority representative of the extant unit welcomes, rather than opposes, the proposed consolidated unit. Cf. Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981). Here, the FSA welcomes the proposed consolidation.

The differences in terms and conditions of employment in the two units are not great enough to compel the continuation of the two-unit structure. No facts suggest that the differences in work hours and overtime pay are especially significant. While agreeing that blue collar employees without particular educational training perform different work than white collar employees with some specialized educational training, I do not believe that these differences overcome many similarities in terms and conditions of employment. Furthermore, the educational requirements for several OWA titles -- such as mail clerk, stock clerk and student center attendant -- are similar to those for certain employees in the FSA unit.

Employees in both units share comparable health and other fringe benefits (e.g., military leave, maternity leave, vacations, etc.). They have signed generally similar agreements and have roughly similar work hours . . .

The factors relevant in determining appropriate unit structure are sufficiently in balance to permit the desires of the employees for or against certification to control. Piscataway.  
[19 NJPER at 131-132]

The College argues that the employees in BCCFA and BCCALFA are different based upon their educational background, working conditions, funding sources, and the provisions of their respective collective bargaining agreements.

However, I find that the employees in both units share a sufficient community of interest to justify unit consolidation. State of New Jersey(State College Locals), Essex County.

Notably, although claiming that the Ciarco employees have lesser educational requirements than College faculty, the College does not dispute that they are professional employees who are appropriately included in a professional unit. I further find that any differences between the terms of conditions of the employees in the respective units to be outweighed by the Commission's policy favoring broad-based units, as well as by the right of the subject employees to choose their majority representative.

Finally, I note that, like the circumstances in Essex County, BCCALFA, the current majority representative of the petitioned-for Ciarco Learning Center employees, disclaims representation interest in its separate negotiations unit and welcomes consolidation of Ciarco faculty with the BCCFA unit. Therefore, I find that the petitioned-for consolidated unit is appropriate. Our review of BCCFA's showing of interest shows that it has submitted authorization cards from a majority of the Ciarco Learning Center employees and is therefore entitled to certification based upon a card check. N.J.S.A. 34:13A-5.3.

I, therefore, certify Bergen Community College Faculty Association as the exclusive representative of the unit described below:

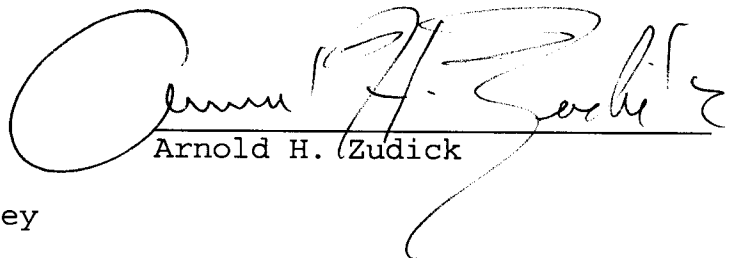
Included: All regularly employed full-time faculty("College") assigned to the Ciarco Learning Center are hereby added to the existing unit of full-time College faculty, including professors, assistant professors, associate professors, and instructors; library assistants, professional assistants and technical assistants.

Excluded: All managerial executives, confidential employees and supervisory employees within the meaning of the Act; non-professional employees, craft employees, police employees, casual employees, and support staff of the Ciarco Learning Center; all other employees of Bergen Community College.

ORDER

I certify Bergen Community College Faculty Association as the exclusive representative of the unit described above, based upon its authorization cards.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Arnold H. Zudick

Dated: March 23, 2006  
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by April 5, 2006.