

D.R. NO. 87-25

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

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

DOCKET NO. R0-86-130

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, NJSFT, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation orders an election among regularly and recurrently employed part-time faculty employed at New Jersey's nine State Colleges to determine whether a majority wish to be represented by Council of New Jersey State College Locals, NJSFT, AFT within the existing unit of full-time faculty.

Applying the Commission's previously enunciated standards of regularity and continuity of employment to this unit, the Director found that those eligible for inclusion in the unit are those who are employed on a full-year contract, or employed for at least a second semester, in a regular recurrent position.

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Appearances:

For the Public Employer
W. Cary Edwards, Attorney General
Melvin E. Mounts, Deputy Attorney General

For the Petitioner
John DiNicola, Representative

DECISION AND DIRECTION OF ELECTION

On April 14, 1986, the Council of New Jersey State College Locals, NJSFT, AFL-CIO, ("Federation") filed a Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"). By its Petition, the Federation seeks to represent all regular part-time teaching and research faculty, and regular part-time administrative staff employed by the State of New Jersey ("State"). These part-time employees are not currently represented in any negotiations unit. The State does not consent to an election among the employees in the requested unit.

We have conducted an administrative investigation in this matter to determine the facts. (N.J.A.C. 19:11-2.2 and 2.6). By letter dated February 24, 1987, we reviewed the facts presented by the parties to date and provided the parties with an additional period to proffer any supplemental factual allegations and/or argument. No responses were received.^{1/} Therefore, based upon the administrative investigation, we find the following are the undisputed facts.

1. The Federation, in its Petition, described the collective negotiations unit claimed to be appropriate as:

INCLUDED: All regular part-time faculty, both teaching and research, and all regular part-time administrative staff (non-managerial), and librarians.

EXCLUDED: All managerial administrative staff, secretarial and maintenance staff, all full-time teaching and research staff, both regular and temporary, and all other employees.

2. At the time of the filing of this Petition, there was an agreement in effect between these parties covering an existing unit of full-time teaching and research faculty and administrative staff employed by the State at the nine State colleges, for the period July 1, 1983 through June 30, 1986. The parties have since

^{1/} While we did receive a short letter from the State, it did not make additional factual allegations or arguments; its purpose was to clarify the State's understanding of our earlier correspondence.

entered into a successor agreement for the period July 1, 1986 through June 30, 1989.^{2/}

3. The State takes the position that such a separate unit of part-time faculty is inappropriately narrow and would encourage unit fragmentation. The State proposes that if such part-time employees are to be represented, it would be more appropriate for these employees to be combined with the existing collective negotiations unit of full-time faculty, with whom they share a community of interest. The Federation agrees that these part-time employees may be added to its extant collective negotiations unit.^{3/}

4. There are approximately 117 "part-time" employees in the petitioned-for unit. The Federation does not seek to represent adjunct faculty. The part-time teaching/research faculty members who are the subject of this petition are hired to teach a partial teaching load, usually 6 credit-hours per semester, which is half of the full-time teaching load of 12 hours per semester. Upon employment, the part-time faculty members are given a teaching contract for a period of either one single semester or a full

^{2/} During the summer and early fall, 1986, the parties requested that this matter be held in abeyance in order to provide the parties with an opportunity to resolve the issues through negotiations. Those efforts proved unsuccessful.

^{3/} Both parties agree not to assert any contractual bar to the addition of part-time employees to the existing unit. (N.J.A.C. 19:11-2.8).

academic year (2 semesters). Of the 117 employees in the petitioned-for group, the overwhelming majority -- about 90 -- have one-year contracts. The Federation alleges that nearly all of the part-time employees having one-year contracts are "repeaters" from academic year 1985-86, and that they have come back year after year.

The remaining 27 part-time employees are employed on single semester contracts. About 20 of those were employed for at least their second semester in the fall, 1986. That is, they worked during the fall, spring or summer semester in academic year 1985-86. The remaining employees - less than 10 - are employed on single semester contracts and were working in their first semester during the fall of 1986.

5. The State is not opposed to the organization of regularly employed part-time employees for negotiations purposes, but the parties disagree concerning the standard to be utilized to determine regularity of employment for unit eligibility purposes.

6. The Federation argues that all part-time employees are eligible for inclusion in the unit from the commencement of their employment in a regular contract position, (excluding adjunct faculty and special services employees). This would include those employed on a single semester contract if the position being filled is a recurring position, as opposed to employees hired on a grant basis for limited purpose research. The Federation points out that its position is consonant with the structure of the existing full-time unit -- that is, the existing full-time unit includes temporary employees hired to fill regular unit positions.

7. The State argues that the unit should be limited to employees working at least 50% of the employment year - that is, those faculty who are employed half-time on a full year contract, and those faculty who are employed half-time for at least two of the three semesters in an academic year. Additionally, the State suggests that only those employees who are offered a contract to return for the next succeeding academic year enjoy sufficient continuity of employment with the State to qualify as public employees.

8. Previous Commission and Director of Representation decisions have distinguished between "casual" employees hired on a limited, non-recurring basis and those employees possessing a sufficient degree of regularity and continuity in their employment relationship with the public employer to warrant collective negotiations rights. Casual employees are excluded from collective negotiations units; the latter group are public employees eligible for representation in collective negotiations units. See, Mt. Olive Board of Education, P.E.R.C. No. 82-66, 8 NJPER 102 (¶13041 1982).^{4/}

^{4/} See also, Rutgers, The State University, P.E.R.C. No. 76-49, 2 NJPER 229 (1976), aff'g E.D. No. 76-35, 2 NJPER 176 (1976), D.R. No. 77-5, 3 NJPER 12 (1976) (dismissing election objections), aff'd App. Div. Docket No. A-1652-76 (1977), cert. den. 76 N.J. 243 (1978); Borough of Seaside Park, P.E.R.C. No. 81-18, 6 NJPER 392 (¶11203 1980); Bergen Pines County Hospital, D.R. No. 87-3, 12 NJPER 619 (¶17234 1986); Bridgewater-Raritan Board of Education, D.R. No. 79-12, 4 NJPER 444 (¶4201 1978); Ocean County College, D.R. No. 83-4, 8

9. Regularity of employment is a measure of how frequently the employee works -- the recurrence of employment. Part-time employees in permanent positions who regularly work at least 1/6 the number of hours worked by full-time employees have been deemed to have a regularity of employment sufficient to qualify them for inclusion in a collective negotiations unit. In County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983), the Commission found that employees regularly working less than 20 hours per week were appropriate for inclusion with full-time employees. In Tp. of North Brunswick, D.R. No. 85-16, 11 NJPER 155 (16068 1985), we found that part-time employees regularly and continuously working 10 hours per week were eligible for inclusion in a unit with full-time employees. In Lawrence Tp. Bd. of Ed., D.R. No. 82-49, 8 NJPER 278 (¶13125 1982), we held that instructional aides working 5 to 15 hours per week every week of the school year were eligible for inclusion in a unit with full-time employees.

10. Here, part-time employees, both those employed on a full-year contract and those employed on a semester basis, work on a regular schedule, either in a teaching or administrative position, for one-half the number of credit-hours of their full-time counterparts.

4/ Footnote Continued From Previous Page

NJPER 476 (¶13222 1982); Clearview Regional Board of Education, D.R. No. 76-24, 2 NJPER 63 (1976). Compare, State of New Jersey, 1 NJPER 2 (1975); Rutgers University, (Residence Counsellors), P.E.R.C. No. 82-55, 8 NJPER 28 (¶13012 1981).

11. Continuity of employment is a measure of the degree of stability of the employment relationship. It runs to the relative "permanency" of the employment, and the degree of stability within the unit. See, Rutgers University (residence counsellors), supra, and City of Rahway, D.R. No. 83-9, 8 NJPER 538 (¶ 13247 1982).

12. In City of Rahway, supra, we found that, although part-time crossing guards were "laid off and rehired every school year", their employment relationship was not "temporary", because they occupied permanent, on-going positions and 85% of the employees in the unit returned every year. Therefore, we held that the unit, as a whole, possessed continuity and the employees were eligible for representation in a collective negotiations unit.^{5/}

13. Approximately 90 employees who are the subject of this Petition are full-year, part-time faculty members who are employed half-time in regular, recurring teaching positions or professional administrative positions. This group meets the above-defined requirement of regularity of employment. Additionally, these employees are employed in permanent-type positions and the group as a whole has a high incidence of return from one academic year to the next; thus, these employees also satisfy the continuity

^{5/} Compare, Rahway with Mt. Olive, supra, and Bridgewater-Raritan Bd. of Ed., supra, situations where employees were hired as substitutes; in those cases, the Commission found that it is necessary to examine each individual employee's historical and future employment patterns to determine whether a pattern of regularity is established.

requirement. Accordingly, we are inclined to find that they are eligible for inclusion in the unit with full-time faculty.

14. There are approximately 27^{6/} part-time faculty members who work under single-semester contracts. These employees regularly work half-time in professional administrative positions or teach 6 credit hours during a single semester. Whether they teach a second semester in a particular academic year depends on the needs of the College -- some course(s) are only offered during one semester each year. In effect, these faculty teach the equivalent of one-quarter of the full-time faculty's teaching load. Among this group of 27 employees, 20 worked at least one semester during the previous academic year (1985-86), and, where these employees occupy regular, recurring positions (showing a high rate of return), they have demonstrated by their employment pattern to date that, as a group, they possess a sufficient regularity and continuity of employment to warrant inclusion in the unit with other regular, part-time and full-time faculty employees.

The petitioner correctly argues that it seeks to represent not only persons who fill a position but also, the employment positions themselves, for the status of an organization as the majority representative of a negotiations unit survives changes in the identity of the individual employees who fill unit positions. See, Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Ed. Secs.,

^{6/} As of the fall semester, 1986.

78 N.J. 1 (1978). Where an employment position has a degree of "permanency" -- as in this circumstance, where the position is for a faculty member to teach a regularly offered course of study, or to fill a regular and recurrent administrative position -- then that employment position is included in the unit. This can be distinguished from an employee hired for a temporary engagement^{7/} or an employee hired on a special federal research grant. These situations do not involve employees in regular recurring positions. Therefore, such employees would not be included in this unit. Here, the Petitioner has agreed to exclude those employees who are not employed in regular recurring positions.

More importantly, however, the group as a whole demonstrates a significant rate of return. About 20 of the 27 employees employed for one semester in the fall of 1986 were also employed for at least one semester during the 1985-86 academic year. Clearly then, this part-time faculty group meets the Commission's continuity of employment standards.

The remaining employees (less than 10), began their employment relationship with the State Colleges in the fall semester of the current academic year, 1986-87. They have worked half-time teaching 6 credit hours during a single semester. It may be that they are not eligible for inclusion in the unit because they may

^{7/} Such temporary "positions" do occur. For instance, Paterson State College hired a jazz musician to teach a one-time course in jazz operation.

occupy non-recurring, limited engagement positions. If there are employees in this group of one-semester contract employees who work in an on-again, off-again relationship with the State colleges, this would be somewhat similar to the employment patterns of seasonal employees and adjunct faculty.

In previous Commission cases involving such employment patterns, for an employee to be included in the unit, the Commission has required a demonstration that each employee holding an eligible unit position possess a sufficient regularity and continuity of employment. See, Rutgers, the State University (Adjunct Faculty), supra, Borough of Seaside Park, supra, Ocean County College, supra. As provided in those decisions, we find that, while the regular recurring position is included in the unit, the employee who is employed on a one semester contract basis may only be included in the unit when he/she commences employment for a second semester in a given or immediately subsequent academic year. If any of these employees are in a regular, recurring position, we will determine their continuity of employment by inquiring, through a ballot question, whether they are willing to accept a part-time employment position for at least one semester during academic year 1987-88.

Based upon the foregoing, I find that the appropriate collective negotiations unit consists of:

Included: All part-time teaching/research/administrative faculty (working the equivalent of at least 6 credit hours per semester) who are: (a) employed in regular, recurrent positions;

and (b) either are employed on a full academic year contract OR, are employed for a least their second semester^{8/}, to be added to the existing unit of full-time teaching/research/administrative faculty, currently represented by the Council of New Jersey State College Locals, NJSFT.^{9/}

Excluded: All employees currently represented in other collective negotiations units, clerical administrative employees, managerial executives, supervisors within the meaning of the Act, craft employees, confidential employees, grant employees, special services employees, and adjunct faculty.

Accordingly, I direct that a secret, mail-ballot election be conducted among the employees in the unit described above.^{10/}

8/ Employees employed for their second semester in a regular recurrent position will receive a ballot question inquiring whether they are willing to accept a part-time employment position for at least one semester during academic year 1987-88. The first semester may have been during the current or the most recent academic year.

9/ If the part-time employees vote to be represented by the Federation, their inclusion in an existing unit of full-time employees means only that there is an obligation to negotiate the terms and conditions of employment of the part-time employees. It does not follow the part-time employees, newly added to an existing unit, are entitled to the benefits already negotiated for full-time employees under the existing contract. See, Union Co. Reg. H.S. District, D.R. No. 83-22, 9 NJPER 228 (¶ 14106 1983).

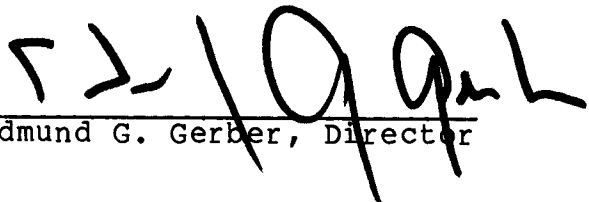
10/ It may be that the parties will have some disagreements concerning whether employees in regular, recurrent positions shall be eligible to vote. Such disputes concerning voter eligibility may be handled through the challenged ballot process. See N.J.A.C. 19:11-9.2; North Brunswick Township, D.R. No. 78-4, 3 NJPER 260 (1977)

The election shall commence no later than thirty (30) days from the date of this decision.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with me 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 me no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with the employee organization and a statement of service filed with me. I 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 they desire to be represented for the purpose of collective negotiations by Council of New Jersey State College Locals, NJSFT, AFL-CIO. The mail ballot election shall be conducted in accordance with the Commission's Rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: April 3, 1987
Trenton, New Jersey