

E.D. NO. 76-35

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS UNIVERSITY,  
Public Employer,

-and-

Docket No. RO-1042

RUTGERS UNIVERSITY COLLEGE  
TEACHERS' ASSOCIATION,  
Petitioner.

SYNOPSIS

Based upon a stipulated record and the waiver of an evidentiary hearing, the Executive Director directs a representation election in a unit of university coadjutant faculty. The sole issue before the Executive Director was whether coadjutant faculty are public employees within the meaning of the Act. The Executive Director finds that the coadjutant faculty are regular, part-time employees entitled to the Act's organizational rights.

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Appearances:

For the Public Employer, Christine B. Mowry,  
Employee Relations Coordinator

For the Petitioner, Joseph Fisch, Esq.

DECISION AND DIRECTION OF ELECTION

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") on May 15, 1975 by the Rutgers University College Teachers' Association (the "Association") seeking to be certified as the exclusive representative for the purposes of collective negotiations for all "coadjutant" faculty employed at University College, Rutgers University (the "University"). The petition states that there are approximately 308 employees in the proposed unit. Pursuant to Section 19:14A-3.4 of the Commission's Rules, the parties agreed to waive an evidentiary hearing and to submit the matter directly to the undersigned for decision. The Commission's Rules provide that an agreed statement of facts may be accepted by the Executive Director for a decision without a hearing and that the acceptance of an agreed statement of facts by the Executive Director

may be deemed a waiver of a right to hearing.

On September 25, 1975, the undersigned received the executed Stipulations of Facts submitted by the parties. Thereafter, on October 15, 1975 the undersigned notified the parties of the acceptance of the agreed statement of facts and directed the parties to submit briefs or proposed findings and conclusions, or both in accordance with an agreed upon schedule. The Association filed a brief and a responsive brief while the University filed a brief and supplemental memorandum. The Stipulations of Facts, in their entirety, are attached hereto. The undersigned has carefully considered the Stipulations of Facts and the briefs and supplemental memorandum and, on the basis of the facts in this case, finds:

1. Rutgers University is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act and is subject to its provisions.

2. The parties were asked to stipulate that the Rutgers University College Teachers' Association is an employee representative within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"). However, the University declined to enter into that stipulation. Nevertheless, the undersigned determines that the Association is an employee representative within the meaning of the Act. See N.J.S.A. 34:13A-3(e). The designation statements submitted by the Association as a showing of interest (See N.J.A.C. 19:10-1.1 and 19:11-1.2(a)9) contain the following language:

"By my signature below, I choose the Rutgers University College Teachers Association (RUCTA) to represent the coadjutant faculty of University College in negotiations with Rutgers University on matters of salary and working conditions.

'I understand that the Public Employees Relations Commission (PERC) will schedule an election to choose such a bargaining agent, when RUCTA has obtained the signatures of at least one-third of the coadjutant faculty members of University College on these designation statements."

Accordingly, and in the absence of contrary evidence, it is found and determined that the Association is an employee representative within the meaning of the Act.

3. The Association seeks to represent a unit composed of all coadjutant faculty employed at University College of the University. The University has declined to consent to an election in the unit sought, disputing the status of the individuals sought as "public employees" within the meaning of the Act. Accordingly, there is a question regarding representation and the matter is appropriately before the undersigned for determination.

4. The parties have stipulated that:

The sole issue to be determined in this proceeding is whether petitioned for coadjutant faculty at University College are public employees within the meaning of the New Jersey Employer-Employee Relations Act and, therefore, entitled to representation. 1/

1/ Stipulation 2.

Therefore, this decision is limited by the agreement of the parties and with the approval of the undersigned to the above-stated determination as to whether the coadjutant faculty at University College are public employees and, therefore, entitled to representation. There is no dispute regarding the appropriateness of the unit sought by the Association, assuming that the employees sought are found to be public employees within the meaning of the Act. The University's statement of position as expressed in a letter to the Commission from Robert R. Bickal, Director, Office of Employee Relations dated June 27, 1975, concludes with the following paragraph:

"To the extent that the Commission finds that the individuals petitioned for, if any, to be employees within the meaning of the act, the University will accept a unit of such employees."

Therefore, the question of whether an election is to be directed in this matter turns upon the status of the petitioned for individuals.

5. The position of the University is that the individuals sought by the Association are not public employees within the meaning of the New Jersey Employer-Employee Relations Act and, therefore, that they are not entitled to be represented for purposes of collective negotiations by the Association.

The University contends that the term "public employee" as defined in the Act does not include the disputed individuals and is not meant to be all inclusive. It is argued that any individual who receives any income from a public employer is not

necessarily a public employee within the meaning of the Act. Further, the University asserts that the coadjutant faculty as a class earn the bulk of their livelihoods outside the University's direction and even outside the public sector. Thus, it is claimed, they should not be granted the same rights as employees who earn their living in and have made their prime commitment to the University and the public sector. In this regard, the University cites several decisions of public employment relations boards and courts in other jurisdictions which, it argues, support its position that coadjutant faculty are not public employees within the meaning of the Act.

6. The Association contends that coadjutant faculty are public employees and, as such, are entitled to representation under the New Jersey Employer-Employee Relations Act. It maintains that the Legislature did not limit or proscribe in any way the broad definition of "employee" in the Act, thus entitling coadjutants to full rights of representation thereunder.

The Association cites decisions of the National Labor Relations Board, arguing that the logic of those cases is applicable in the instant matter, leading to the conclusion that coadjutants who work more than one semester and show a willingness to be rehired should be found to be regular part-time employees entitled to representation under our Act.

In addition, citing cases of the New York Public Employment Relations Board, the Association contends that the

coadjutants would be public employees under the New York Public Employees Fair Employment Act which contains a definition of the term "employee" that is similar to the one contained in our Act. Also, the Association disputes the interpretation of the decisions which the University cites in its brief, distinguishing those cases from the instant matter.

The Association states that there is no attempt on the part of the coadjutants to equate themselves in all cases with the full-time faculty. Hence, there is no need here to prove that a "community of interest" between the two groups of faculty exists. However, the Association does maintain that it is important to note that there are inherent similarities between the two groups which lend support to the view that representation under the Act is a right which should accrue to coadjutants as well as to the full-time faculty.

7. The sole issue to be determined in this proceeding as stipulated by the parties and as discussed above is whether coadjutant faculty employed at University College are public employees within the meaning of the Act and, therefore, entitled to representation. Having given careful consideration to the arguments of the parties and the cases cited in support thereof, the undersigned concludes that coadjutants are public employees and are entitled to representation under the Act.

The New Jersey Employer-Employee Relations Act defines the term "employee". That definition, as applied to "public employee", follows:

This term shall include any public employee, i.e., any person holding a position by appointment or contract, or employment in the service of a public employer, except elected officials, members of boards and commissions, managerial executives and confidential employees. 2/

A literal reading of the above-quoted definition of the term "public employee" suggests no basis for the exclusion of the coadjutants. The University does not claim that the coadjutants are elected officials, members of boards or commissions, managerial executives or confidential employees. Coadjutants hold positions by appointment or ~~employment in the~~ contract in the service of a public employer.

While it is true that the coadjutants are not full-time employees of the University, their appointments are for a semester, their duties with respect to a three-credit course are similar to those of full-time employees who teach such courses, and approximately 67% of those employed during the 1974-75 academic year also had been employed at 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. 3/

Neither the Commission nor the undersigned has

2/ N.J.S.A. 34:13A-3(d).

3/ Enrollment, according to the petitioner's brief, is required subsequent to teaching two consecutive semesters or after one semester if previously enrolled.



interpreted the term "public employee" narrowly. See, for example, In re Burlington County, P.E.R.C. No. 14 (1969) ("temporary" employees are public employees); In re Cherry Hill Township, P.E.R.C. No. 30 (1970) ("probationary" employees are entitled to representation under the Act); In re Clearview Regional Board of Education, E.D. No. 76-24 (1976) (part-time bus drivers who also work as bus drivers in other school districts are eligible for inclusion in a unit with other bus drivers). The decision of the undersigned cited by the University involving the eligibility of "consulting physicians"<sup>4/</sup> was decided on the basis of the community of interest of the consulting physicians. It was assumed, for purposes of that decision, that consulting physicians were public employees within the meaning of the Act.<sup>5/</sup>

Thus, having found the coadjutants to be employed on a regular, part-time basis by the University and finding the contrary arguments made to be unpersuasive, the undersigned finds and concludes, based upon the above and the record as a whole, that the coadjutants are public employees within the meaning of the Act and are entitled to representation thereunder.

8. Accordingly, the undersigned hereby directs that a secret ballot election be conducted in the following appropriate unit: "All coadjutant faculty employed at University College, Rutgers University but excluding all other employees,

<sup>4/</sup> In re State of New Jersey, E.D. No. 67, 1 NJPER 2, (1975).

<sup>5/</sup> In re State of New Jersey, 1 NJPER at 7.

craft employees, nonprofessional employees, policemen, managerial executives, confidential employees, and supervisors within the meaning of the Act."

Those eligible to vote are those employees set forth above who were employed for at least their second semester as coadjutant faculty by University College, Rutgers University during either the first or second semester of the 1975-76 academic year.

Pursuant to Rule Section 19:11-2.7 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.

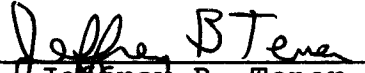
The election directed herein shall be a mail ballot election and is to be conducted as soon as practicable in accordance with the instructions of the undersigned.

Those eligible to vote shall vote on whether they desire to be represented for the purposes of collective negotiations by the Rutgers University College Teachers' Association.

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 and Regulations and Statement of Procedure.

BY ORDER OF THE EXECUTIVE DIRECTOR

  
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Jeffrey B. Tener  
Executive Director

DATED: Trenton, New Jersey  
May 11, 1976