

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1652-76

IN the MATTER OF
RUTGERS UNIVERSITY,

Public Employer-Appellant,

-and-

RUTGERS UNIVERSITY COLLEGE
TEACHERS ASSOCIATION,

Petitioner-Respondent.

Argued December 20, 1977 -- Decided

JAN 26 1978

Before Judges Lora, Seidman and Milmed.

On appeal from decision of Public
Employment Relations Commission.

Mr. H. Reed Ellis argued the cause
for appellant (Messrs. Pitney, Hardin
& Kipp, attorneys; Mr. Thomas J. Spies,
on the brief).

Mr. Joseph Fisch argued the cause for
respondent.

Mr. Sidney H. Lehmann, General Counsel,
filed a Statement in Lieu of Brief on
behalf of Public Employment Relations
Commission.

Mr. William F. Hyland, Attorney General
of New Jersey, filed a brief on behalf
of amici curiae Department of Higher
Education and the Governor's Office of
Employee Relations (Ms. Erminie L. Conley,
Deputy Attorney General of counsel; Mr.
Melvin E. Mounts, Deputy Attorney General,
on the brief).

PER CURIAM

Rutgers University College Teacher's Association

(Association) filed a petition with the Public Employment Relations Commission (PERC) for certification as the public employee representative of coadjutant faculty members at University College of Rutgers, The State University. Rutgers questioned the status of the coadjutants as employees within the meaning of N.J.S.A. 34:13A-1 et seq.

Thereafter, Rutgers and the Association submitted to PERC an agreed statement of facts for decision without hearing. The single issue to be resolved was "[w]hether 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."

In due course, the Executive Director of PERC issued a Decision and Direction of Election. He noted therein that Rutgers, through its Director, Office of Employee Relations, had informed PERC that "[t]o 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." The Executive Director found that the coadjutants were employed by the University on a regular, part-time basis and concluded that they were public employees within the meaning of the Act and entitled to representation thereunder. He directed that a secret ballot election be conducted.

Rutgers filed with PERC a "request for review of the Decision and Direction of Election issued by the Commission's

Executive Director * * *." PERC thereafter rendered its "Decision on Request for Review," limited to Rutgers' contention that

The finding that all coadjutants are regular part-time employees is erroneous, as the record evidence can only support a finding that some coadjutants are employed regularly. As regularity of employment is utilized for determining public employee status, the University contends that its rights have been prejudicially affected by the Executive Director's decision that all coadjutants are public employees.

PERC modified the unit definition as follows:

"all coadjutant faculty members who commence employment for at least their second semester during a given academic year, and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year."

In all other respects the decision of the Executive Director was affirmed. Subsequently, a secret mail ballot election was conducted among the eligible coadjutant faculty members and the Association was certified as their exclusive representative for bargaining purposes.

Rutgers appeals, contending that the certification must be reversed because (1) there is no substantial evidence to support PERC's finding of fact that coadjutants are regular part-time employees, and (2) PERC's definition of the bargaining unit is arbitrary and capricious. Amici curiae express the view that the PERC definition of the unit "is unreasonable both in terms

lack of continuity of employment of the affected individuals and the subjective element of 'willingness to be rehired.'"

We have carefully reviewed the record and the briefs submitted and are "unable to say that the Commission's determination * * * is in any sense arbitrary or unreasonable, or unfounded in the statutory criteria for determination and the pervading public policy underlying the act, express or implied." State v. Prof. Assoc. of N.J. Dept. of Ed., 64 N.J. 231, 259 (1974). There was sufficient credible evidence in the record to support the finding that the coadjutants were regular part-time employees who came within the act. Close v. Kordulak Bros., 44 N.J. 588, 599 (1965). One should be mindful of the comment in State v. Prof. Assoc. of N.J. Dept. of Ed., supra, that "it is particularly important in the early phases of the development of experience in this relatively new area of the administrative process that a broad and flexible latitude of interpretation of the statute be accorded the agency charged with its implementation."

Rutgers' brief notes that the unit definition does not specifically include the words "employed at University College." PERC agrees that this was the intended scope of the negotiating unit and that the definition should be amended accordingly. It is so ordered.

As so modified, the PERC certification under review is affirmed substantially for the reasons expressed in the

Executive Director's "Decision and Direction of Election," in
PERC's "Decision on Request for Review," and in PERC's "Deci-
sion and Certification of Representative."

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Elizabeth W. Laughlin

Clerk

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