

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

In the Matter of

UNIVERSITY OF MEDICINE AND
DENTISTRY OF NEW JERSEY,

Public Employer,

-and-

DOCKET NO. RO-83-99

ALLIED HEALTH FACULTY
NJEA-HIGHER EDUCATION,

Petitioner.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs that an election be conducted among all allied health faculty employed by the University of Medicine and Dentistry of New Jersey at the School of Health Related Professions. The Director, for several reasons, rejects the employer's contention that the appropriate unit for the allied health faculty staff is their placement within an existing unit comprised of faculty at UMDNJ's five other schools. Although the School of Health Related Professions was established in 1976, no attempt was made by UMDNJ to include its faculty in the existing broad-based faculty unit. The majority representative of the existing unit has twice advised the employees that it has no interest in representing them. Allied health faculty primarily instruct at the undergraduate level; faculty of the other schools instruct at the graduate level. Additionally, the occupational interests of allied health faculty differ from those of the other faculty. There is little interchange among the faculties in an instructional setting. Finally, the creation of a separate unit would not tend to promote unit proliferation among UMDNJ's non-represented professional personnel.

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Appearances:

For the Public Employer
Robert K. Walsh, Deputy Attorney General

For the Petitioner
Leo E. Galcher, UniServ Field Representative, NJEA

DECISION AND DIRECTION OF ELECTION

On October 22, 1982, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by Allied Health Faculty/NJEA-Higher Education ("NJEA"), with respect to a proposed collective negotiations unit comprised of all allied health faculty employed by the University of Medicine and Dentistry of New Jersey ("UMDNJ").

The undersigned has caused the conduct of an administrative investigation into the matters and allegations involved in the

Petition in order to determine the facts and to obtain the positions of the parties. The assigned Commission staff agent has conducted an informal conference with the parties. There is no agreement for a secret ballot election.

On the basis of 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. The University of Medicine and Dentistry of New Jersey is a public employer within the meaning of 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 the Petition and is subject to the provisions of the Act.

3. The Allied Health Faculty/NJEA-Higher Education is an employee representative within the meaning of the Act, and is subject to its provisions.

4. NJEA has filed a Petition seeking a collective negotiations unit comprised of all allied health faculty employed at the UMDNJ School of Health Related Professions in Newark. The proposed unit would exclude department chairpersons, program

directors, and nonprofessional employees in the School of Health Related Professions, as well as all other faculty and nonfaculty employees at the other schools within UMDNJ, and all categories of employees excluded by the Act. NJEA states that the unit is comprised of approximately 35 employees.

5. UMDNJ does not consent to a secret ballot election. UMDNJ asserts that the petitioned-for employees belong in the same negotiations unit as other teaching faculty of the UMDNJ, who are represented for the purposes of collective negotiations by the American Association of University Professors ("AAUP"). AAUP represents teaching faculty within five of the six divisions (i.e., schools) of UMDNJ: New Jersey Medical School in Newark, New Jersey Dental School in Newark, New Jersey School of Osteopathic Medicine in Camden, Rutgers Medical School in Piscataway, and the Graduate School of Biomedical Science in Newark. AAUP has been the certified representative of these employees since 1972. The sixth (and most recent) division is the UMDNJ School of Health Related Professions in Newark, which has been in operation since 1976, and was originally known as the School of Allied Health Professions.

UMDNJ states that the petitioned for employees share a community of interest with all other faculty in that they perform the same daily job related responsibilities as other faculty of UMDNJ. In further support of this position, UMDNJ states that the School of Health Related Professions has an organizational hierarchy similar to all other schools within the University, is

intertwined with the University's internal governance systems and requirements, and that job responsibilities and terms and conditions of employment of faculty at the School of Health Related Professions have always been consistent with those of all faculty represented by AAUP in the other five divisions. ^{1/} Moreover, UMDNJ stresses the interdependence of its six divisions in the pursuit of University goals. Faculty members of various UMDNJ divisions teach courses sponsored by the School of Health Related Professions. With varying degrees of oversight, the curriculum and/or operation of each certificate program sponsored by the School of Health Related Professions is headed by a Medical Director who is a physician affiliated with one of UMDNJ's other divisions. UMDNJ argues that all of the above factors lead to a conclusion that the petitioned-for employees share a community of interest with the rest of the teaching faculty employed by UMDNJ and currently represented by the AAUP, and asks that the petition be dismissed.

6. UMDNJ also states that a representation election is inappropriate in a unit comprised solely of faculty from the School of Health Related Professions in that it would cause undue fragmentation of negotiations units in the University. In addition to the faculty unit represented by the AAUP, there are units of: Security Guards & Officers, Attending Physicians, Services Technicians,

^{1/} UMDNJ initially objected to the inclusion of certain individual faculty members in the proposed unit because those employees had not yet received faculty appointments; however, by letter dated December 21, 1982, UMDNJ confirmed that those faculty members had received their official appointments. Accordingly, UMDNJ no longer objects to the Petition on that ground.

Maintenance and Clerical employees, and Interns & Residents. In addition, in 1981, UMDNJ agreed to an election among employees in a proposed unit of nonfaculty, professional, nonsupervisory employees. The employees chose not to be represented by either of the competing employee representatives and they are not currently represented for negotiations purposes. Educational requirements for many of the latter employees are similar to those of employees in the petitioned-for unit. No other nonsupervisory UMDNJ employees, other than those described above, possess similar educational and training qualifications.

7. NJEA disputes UMDNJ's assertion that the School of Health Related Professions faculty share a community of interest with the remainder of the faculty within the University who are represented by AAUP. NJEA stresses the following distinctions in qualifications and responsibilities between the faculty of the School of Health Related Professions and the remaining faculty:

- (1) the educational requirements for Health Related Professions faculty are not equivalent to the degree requirements imposed of faculty at the other schools. While the School of Health Related Professions requires at least a Baccalaureat Degree plus a certificate in the field of concentration, the remaining five divisions require either M.D., D.D.S., or PhD Degrees in fields of concentration;
- (2) degrees granted to students matriculating at the School of Health Related Professions are substantially different from degrees granted at the other five schools. The School of Health Related

Professions offers various certifications in areas of concentration as well as Associate Degrees in such areas as Dental Hygiene, Nursing, and Emergency Medical Technology, Physical Therapy, and Physician's Assistant in cooperation with other State and County colleges. In cooperation with Rutgers University, the School of Health Related Professions also offers courses toward a Master of Science in Allied Health Education. At the remaining five divisions, awarded degrees are all at the graduate level; (3) the student population served by the School of Health Related Professions is primarily at the undergraduate level, whereas the remaining five schools within the University offer courses at the graduate level.

UMDNJ does not dispute these distinctions, but argues that they are not probative as to community of interest. Moreover, UMDNJ notes that, notwithstanding the different levels of the degree requirements in different fields, all teaching faculty at UMDNJ must have terminal degrees in their respective fields.

8. In further response to UMDNJ's position that the petitioned-for employees belong in the negotiations unit currently represented by AAUP, NJEA asserts that, assuming arguendo the validity of UMDNJ's position, the petitioned-for employees have previously sought representation by the AAUP. NJEA states that "[a]s late as the Fall of 1981, a meeting was held with a representative of the AAUP, Stanley Van Hagen, which confirmed the AAUP's lack of interest in representing the faculty." These facts are supported by a letter received by the Commission from the AAUP Chairman, Norman Sissman. By letter of December 3, 1982, Dr.

Sissman states that "... the AAUP has discussed this subject matter with the [petitioned-for] faculty in early September 1981. In these discussions it was mentioned that there were no significant differences in function between the members of its unit and those of the Allied Health faculty, and that the Allied Health faculty might wish to seek other representation." In his letter, Dr. Sissman further stated that the AAUP "... has not represented and does not desire to represent the faculty with the school of Allied Health Professions. Accordingly, the AAUP has no intention of intervening in this matter before you which involves the representation of that group."

Preliminarily, the undersigned notes that there is no dispute as to an acknowledged community of interest among all faculty of the School of Health Related Professions. Rather, the issue is the appropriateness of the proposed unit in light of the employer's claim that a university-wide unit of instructional employees is more appropriate. While due regard for the community of interest of the employees is a factor to be considered in such a determination, the community of interest among employees must be examined in the context of all salient factors. State v. Prof. Assoc. of New Jersey Dept. of Education, 64 N.J. 231 (1974), aff'g P.E.R.C. No. 68 (May 23, 1972).

Notwithstanding the Commission's preference for broad-based units which avoid unnecessary fragmentation, factual circumstances may dictate that the most appropriate unit in a given situation be limited in scope and added alongside an already established structure of negotiations units. Thus, in County of

Middlesex and District 1199J, D.R. 81-4, 6 NJPER 423 (¶ 11212 1980), where a public employer participated and consented to the initial establishment of a multiplicity of negotiations units, a residual unit of previously excluded employees was found to constitute the appropriate unit. In residual unit contexts, concern has focused not only on the posture of the employer, but on the positions of the existing majority representative and the petitioning employees seeking the residual unit. Parsippany-Troy Hills Bd. of Ed., D.R. No. 79-7, 4 NJPER 394 (¶ 4177 1978); Essex Cty. Sheriff's Office, D.R. No. 83-5, 8 NJPER 477 (¶ 13323 1982).

The instant Petition presents a unique factual pattern. Notwithstanding the existence of a university-wide faculty instructional unit when the School of Health Related Professions was created by UMDNJ, there was apparently no effort made by UMDNJ or AAUP to include these faculty in the broad-based unit. The petitioned-for employees appear to comprise a residual faculty unit with significant educational and professional differences from employees in the established faculty unit represented by the AAUP. There appears to be little intermingling among faculty, except that a faculty member of another school may be assigned to teach a course offered by the School of Health Related Professions. Employees in the petitioned-for unit have twice sought representation by AAUP. AAUP first rejected a request for representation from Allied Health faculty in September 1981 due to " ... significant differences in function between the members of [the AAUP] unit and

those of the Allied Health faculty...." (December 3, 1982 letter of Chairman, Council of Chapters AAUP to the Commission). In the letter,^{2/} the Chairman of the AAUP Council of Chapters emphasized the AAUP's unchanged position:

The Council has not represented and does not desire to represent the faculty at the University's School of Allied Health Professions. Accordingly, the AAUP has no intention of intervening in the matter before you which involves the representation of that group.

Finally, it appears that the creation of the proposed unit would not foster undue fragmentation of the negotiations unit structures for professional employees at UMDNJ. The instant group of employees appear to be the sole professional nonsupervisory employees for whom an established unit structure has not been identified.

On March 18, 1982, the undersigned advised the parties that for the reasons set forth above, it appeared that the petitioned-for employees, under the circumstances presented, constituted an appropriate residual unit within UMDNJ with significant educational and professional differences from employees in the established faculty unit represented by the AAUP. The parties were reminded of their obligations under N.J.A.C. 19:11-2.6, to present documentary or other evidence, as well as statements of position relating to the instant Petition, and were afforded an additional opportunity

^{2/} Consistent with Commission policy of notice to potential intervenors, on November 12, 1982, the undersigned advised the AAUP of the filing of a petition and scheduling of an investigatory conference in this matter. AAUP did not attend the investigatory conference but submitted the above letter-position.

to proffer any supplementary evidence or statements of position relevant to the instant Petition. The parties were further advised that in the absence of the presentation of facts placing in dispute any substantial and material factual issues, the undersigned would thereafter issue a decision and direction of election.

On April 4, 1983, UMDNJ proffered supplementary evidence and statements of position. In these submissions, UMDNJ did not place any factual issues in dispute. Instead, UMDNJ stressed its position that the petitioned-for unit is not appropriate " ... in light of the community of interest which exists among all UMDNJ faculty members, the minimal differences between the faculty presently represented by AAUP and the faculty of the School of Health Related Professions and the clearly expressed legislative policy favoring broad-based units and avoiding undue fragmentation of units in the public sector, especially in the field of health care...."

For the reasons stated above, as well as those that follow, the undersigned does not find UMDNJ's arguments persuasive. The differences between the faculty represented by AAUP and the faculty of the School of Health Related Professions are claimed to be minimal. The decisions of the National Labor Relations Board ("Board") involving faculty employees illustrate that these differences are not minimal. Rather, the Board has found that the difference between a graduate school instructional setting and an undergraduate school instructional setting is a significant

factor in unit determination. See, University of San Francisco, 207 NLRB No. 14, 84 LRRM 1403 (1973), where the Board directed an election in a unit solely of law school faculty as opposed to all faculty due to differences of accreditation and professional standards between law school faculty and other University faculty. See also, Fordham University, 193 NLRB 134, 78 LRRM 1177 (1971); Catholic University, 201 NLRB 134, 78 LRRM 117 and Catholic University, 201 NLRB No. 145, 82 LRRM 1385 (1973).

Second, as noted above, unit proliferation is not an issue in this case, in that UMDNJ has not identified any additional group of professional nonsupervisory employees who would not be in an established unit structure and who might potentially seek to organize in separate units. UMDNJ has nonetheless urged that the Commission consider the experience of the Board in determining unit structure under the health care amendments to the Labor Management Relations Act. However, even in these determinations, where the avoidance of unit proliferation is an important concern, the Board has recognized that:

... sometimes circumstances require that there be a number of bargaining units among nonsupervisory employees, particularly where there is such a history in the area or a notable disparity of interest between employees in different job classifications. Mercy Hospitals of Sacramento, 217 NLRB No. 131, 89 LRRM 1097, 1099 (1975).

Thus, in Mercy Hospitals, the Board determined that nurses, by function and history, evidenced a substantial "degree of separateness" to warrant a negotiations unit separate from other professional

personnel. Id at p. 1101. The occupational and historical differences between the faculty personnel herein and the faculty of all other UMDNJ schools are significant factors weighing in favor of a separate unit.

N.J.S.A. 34:13A-5.3 simply requires that negotiations units be defined with due regard for employee community of interest. Often, the greatest benefits in effectuating the policies of the Act are best achieved by defining units of the broadest possible scope. This is not, however, a hard and fast rule. To the contrary, the Commission has proceeded to identify appropriate unit structure on a case-by-case basis, after weighing and balancing all pertinent factors. In re State of N.J., P.E.R.C. No. 68 (1972). ^{3/} The Supreme Court endorsed this approach in review of this decision, sub nom In re State of N.J. and Prof. Assoc., supra, and noted the Commission's obligation to decide the most appropriate unit in light of all factors, notwithstanding the fact that an employer might be advancing the concept of one overall appropriate broad-based unit or whether various employee representatives were seeking occupationally based appropriate negotiations units.

Significantly, in endorsing the Commission's view that one broad-based professional employee unit was the appropriate employee unit under the particular facts of Professional Assoc., where no State professional employees enjoyed any prior history of

^{3/} See also, In re Englewood Bd. of Ed., P.E.R.C. No. 81-100, 7 NJPER 141 (¶ 12061 1981) and P.E.R.C. No. 82-25, 2 NJPER 516 (¶ 12229 1981).

representation, the Court proffered that the question of unit structure would require re-examination if the practical consequences of the decision left employees without representation.

The history of an unrepresented status for the petitioned-for employees, notwithstanding the representation of all other UMDNJ faculty, is a significant concern herein. When UMDNJ, upon creation of this new faculty division, did not seek to include the allied health faculty in the AAUP's negotiations unit, it ran the risk that it could not, more than six years later, persuasively argue that those employees rightfully belonged in the overall faculty unit. These employees have sought to enter the overall faculty unit and have twice been advised by the AAUP that it has no interest in representing them. At this juncture it would be fundamentally unfair to deprive the instant employees of representation of their choice by dismissing the within petition. It would appear to be consistent with the Court's instruction in Professional Assoc., supra, to consider at this time the practical consequences of a decision which would leave these employees without representation.

Accordingly, for all the above reasons, the undersigned finds that the petitioned-for unit is the appropriate collective negotiations unit for the representation of these employees. Therefore, the undersigned finds that the appropriate unit for collective negotiations is: all allied health faculty employed at the School of Health Related Professions by the University of Medicine and Dentistry of New Jersey.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted in the above-described unit of employees. N.J.S.A. 34:13A-6(d). 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. ^{4/} 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 Public Employer is directed to file with the undersigned and with the Allied Health Faculty/NJEA-Higher Education, an 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 the Allied Health Faculty/NJEA-Higher Education with

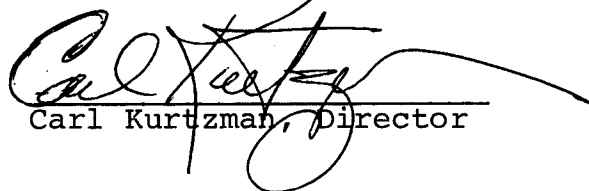
^{4/} The Commission's election agent is authorized to conduct a mail ballot election to commence within the thirty (30) day period if it appears that an on-site election is not practical.

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 the Allied Health Faculty/NJEA-Higher Education.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: May 3, 1983
Trenton, New Jersey