

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

In the Matter of

UNION COUNTY COLLEGE,

Public Employer,

-and-

UNION COUNTY COLLEGE STAFF
ASSOCIATION, NJEA,

DOCKET NO. RO-83-110

Petitioner,

-and-

LOCAL 32, OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL UNION,

Intervenor.

SYNOPSIS

The Director of Representation directs an election among secretarial/clerical employees of Union County College, finding that the Commission's contract bar rule does not apply under the circumstances to prevent the processing of the certification petition seeking to consolidate two employee units. Union County College is a new college created through the merger of two former educational institutions -- one public; one private -- in accordance with the provisions of N.J.S.A. 18A-64A-50 et seq. The investigation revealed that a significant amount of commingling of employees has occurred since the merger.

Prior to the merger, Local 32 represented secretarial/clerical employees at the private institution and the Petitioner (Staff Association) represented secretarial/clerical employees at the public institution. Local 32's contract, which continues to be effective under the terms of the above statute, expires June 30, 1983. The Staff Association filed its petition on December 3, 1982, during a period which is normally "insulated" under the terms of the Commission's contract bar rule in order to permit uninterrupted negotiations toward a successor agreement between an incumbent representative and an employer.

Noting the degree of employee integration and the fact that all parties agreed that a consolidation of the two secretarial/

clerical units was appropriate, the Director found that the normal application of the contract bar rule, which would forestall the resolution of the question concerning representation until the Local 32 contract expired, would not advance the purposes of the Employer-Employee Relations Act.

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Appearances:

For the Public Employer
Yauch, Peterpaul & Clark, attorneys
(Frank Peterpaul of counsel)

For the Petitioner
Sterns, Herbert & Weinroth, attorneys
(Michael J. Herbert of counsel)

For the Intervenor
Howard Goldberger, attorney

DECISION AND DIRECTION OF ELECTION

On December 3, 1982, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by the Union County College Staff Association, NJEA ("Staff Association") with respect

to certain secretarial and clerical employees of Union County College ("College"). The instant certification petition arises from the recent merger of the Union County Technical Institute ("Technical Institute"), a public college, and Union College, a private college. ^{1/} Prior to the merger of the Technical Institute and Union College, the petitioned-for employees at each institution were represented in the negotiations units described below. ^{2/} The instant Petition seeks the consolidation of these separate respective negotiations units and the certification of one majority representative therein.

Pursuant to N.J.A.C. 19:11-2.2(a), the undersigned has caused an administrative investigation to be conducted into the matters and allegations in the Petition. The investigation revealed

1/ Legislation enabling the merger of these institutions was adopted June 24, 1982. N.J.S.A. 18A:64A-50 et seq. Appropriate resolutions of the institutions approving a merger were passed on August 17, 1982.

2/ At Union College, Local 32, Office and Professional Employees International Union represented:

All full-time and part-time clerical employees who work more than twelve (12) hours per week, including clerks I, II, III and IV, secretaries and departmental secretaries, computer operators, keypunch operators, clerk-typists, programmers, administrative assistants I and II, general clerks, couriers, switchboard operators, accounting assistants, typists, offset operators, lab assistants, laboratory technicians, recorders, and coordinators.

At Union County Technical Institute, the Secretarial Association of Union County Technical Institute and V.C. represented a unit of "all full-time office personnel, including Computer Center and Library "

The Union County College Staff Association apparently is the renamed successor to the incumbent Secretarial Association of Union County Technical Institute and V.C.

that no dispute was raised by the parties concerning the appropriateness of the petitioned-for negotiations unit. Rather, the sole disputed issue is whether existing contracts between the above respective employee representatives and the College, as the successor employer, serve to bar the filing of the Petition pursuant to N.J.A.C. 19:11-2.8(c)(3).

The investigation further revealed that similar issues were involved in a second Petition placed before the Commission, Docket No. RO-83-116, concerning the faculty members at the College. The undersigned consolidated the Petitions for investigatory purposes. ^{3/}

Based upon 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. Union County College is a public employer within the meaning of the 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 this Petition, and is subject to the provisions of the Act.

^{3/} A determination with respect to the second Petition has also issued this day, In re Union Cty. College and AAUP, D.R. No. 83-31, 9 NJPER ____ (¶ ____ 1983).

3. Union County College Staff Association, NJEA and Local 32, Office and Professional Employees International Union are employee representatives within the meaning of the Act and are subject to its provisions. The Staff Association represents employees who were formerly employed by the Technical Institute. Local 32 represents employees who were formerly employed by Union College.

4. The legislation that enabled the Technical Institute and Union College to merge, N.J.S.A. 18A: 64A-50 et seq., requires that the extant collective agreements with the respective representatives survive any merger and continue in effect until their expiration dates. The contracts with both representatives each expire on June 30, 1983.

5. On December 3, 1982, the Staff Association filed a Petition for Certification of Public Employee Representative seeking to represent secretarial/clerical employees in a unit which consolidates the two secretarial/clerical units that contained the former Technical Institute and Union College employees.

6. Local 32 opposes the processing of the Staff Association's Petition on the basis of the Commission's "contract bar" rule. N.J.A.C. 19:11-2.8(c)(3). As applied to county colleges, this rule normally limits the opportunity to file a certification petition, when employees are covered by a contract, to the September 1 - October 15 period immediately preceeding the expiration date of the contract. More specifically, N.J.A.C. 19:11-2.8(c) provides:

During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative or a petition for decertification of public employee representative normally will not be considered timely filed unless:

* * *

3. In the case involving a school district, the petition is filed during the period between September 1 and October 15, inclusive, ^{4/} within the last 12 months of such agreement.

Assuming the normal application of the rule in the present circumstance, the Staff Association's Petition, having been filed during the "insulated" period of Local 32's Agreement, would not be considered timely.

7. The College does not assert the contract as a bar to the consideration of the Petition. It asserts that the merger of the two former academic institutions has presented an exceptional circumstance, and that the rule should not apply.

The Staff Association, also opposing the applicability of the rule, asserts that the merger of the two institutions was accomplished too soon before the required September 1 - October 15, 1982 filing period and therefore prevented the effective organization of employee support to the extent necessary to meet the Commission's showing of interest requirements.

8. By letter dated March 9, 1983, the undersigned advised the parties that the facts submitted in the administrative

^{4/} N.J.A.C. 19:11-2.8(c)(3) was determined to apply to county colleges in In re Bergen Cty. College, D.R. No. 81-51, 7 NJPER 400 (¶ 12177 1981)

investigation prior to that date did not appear to establish a basis for deviation from the normal application of the contract bar rule. The undersigned reviewed the experience of the National Labor Relations Board ("Board") in applying its contract bar policy to mergers in the private sector. It was noted that the Board apparently enforced its contract bar policy unless, among other factors, the circumstances demonstrated that as a result of the merger, there was a significant commingling of the workforce of the successor operation. ^{5/}

The undersigned stated that unless it could be demonstrated that a commingling of employees had occurred in the successor operation or that the private sector experience was distinguishable, the petition would be dismissed.

9. In response to the undersigned's letter, the Staff Association asserted that evidence need not be submitted to show employee commingling, because upon the effectuation of the merger of the two former institutions, the enabling legislation would operate to require one employer and one workforce with "unitary supervision." The Staff Association argues: "Thus ... all employees

^{5/} Boston Gas Co., 221 NLRB No. 78 (1975):

We have a situation in which employees historically represented by different labor organizations have been merged to a single workforce in which they work side by side in similar job classifications performing like functions under common supervision.

See also General Extrusion Co., Inc., 121 NLRB No. 147 (1952).

of the successor institution would be considered as a combined workforce."

In an additional letter from the College, dated March 31, 1983, its President outlined certain areas of consolidation of the College's campuses, and stated that all business office functions were now located on one campus, and attending to the needs of the three campuses.

10. In light of these positions and additional evidentiary proffers, the undersigned on April 14, 1983, provided a further opportunity to the College to submit evidence concerning the impact, if any, the transfer of business functions had on the working conditions of clerical employees, such as transfers and employee commingling. Additionally, all parties were provided an opportunity, under an established timetable, to review the requested material, and to respond to its factual accuracy. Further, all parties were provided a final opportunity to comment as to whether the application of the contract bar rule in the present matter would strike the appropriate balance of protecting the rightful interests of affected employees, employer, and employee representatives.

11. In correspondence dated April 25, 1983, the College provided additional factual material and a further statement of position. The College stated, in part:

Your letter also requested that the College submit information concerning the impact of recent transfers of business operations amongst the campuses on the working conditions of clerical employees. The list attached sets

forth the names of employees who have been transferred from one campus to another. In many instances, such employees carry with them terms and conditions of employment dictated by the collective negotiating agreement at the campus from which they were transferred. They may then be working alongside employees at the campus to which they were transferred, who are covered by another collective negotiating agreement with significantly different terms. Needless to say, this creates a difficult situation. Employees are working side by side, in many cases performing the same functions, yet their terms and conditions of employment differ, depending upon the union contract which covers them.

In furtherance of its position against application of the contract bar rule, the College also stated:

A vivid illustration of the reason why the application of the rule fails to strike the proper balance is that both Local 32 and the Staff Association have requested the College to negotiate. All parties agree that the only appropriate unit under the circumstances is one which encompasses employees at all campuses; consequently, the College is constrained to decline the requested negotiations (particularly since a question of representation is pending). Undoubtedly, resolutions of this issue will consume considerable time. On the other hand, if the matter were resolved through an election, all parties could go about performing their respective obligations in the manner contemplated by the statute.

12. In an additional submission, the Staff Association has reiterated its previous position against application of the contract bar rule. Local 32 has not provided any additional material and has not disputed the College's factual proffers.

13. Having reviewed all the materials presented in this matter, including the material requested subsequent to the undersigned's initial letter of March 9, 1983, the undersigned is satisfied that the normal application of the contract bar rule is not suitable to the circumstances herein. First, the College's factual submission confirms that there has been a considerable degree of employee transfer and commingling subsequent to the merger of the two former institutions. Employees have undergone and are undergoing significant changes in their employment relationships. However, because the terms of the enabling legislation freeze existing contractual agreements, different standards apply to different employees which engender conflicts of treatment. At the same time, all parties agree that the appropriate unit should be college-wide. Collective negotiations for an agreement covering all employees in an appropriate unit should proceed at this time. Ironically, the contract bar rule which provides an insulated period for the purpose of guaranteeing unimpaired negotiations opportunities, would, if applied normally in the instant circumstance, become the obstacle to the formation of the appropriate unit and the subsequent commencement of negotiations.

In light of the above, the undersigned concludes that the stability of negotiations relationships sought to be accomplished by the application of contract bar principles cannot be achieved by its normal implementation under these unusual circumstance. Therefore, the undersigned finds that the contract bar

rule is not operative herein and directs that an election proceed.

Accordingly, the undersigned finds that the appropriate unit is: All full-time and part-time secretarial and clerical employees employed by Union County College (as more fully described in the respective current collective agreements), excluding managerial executives, confidential employees, professional and craft employees, police, and supervisors within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the employees described above. 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. ^{6/} 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 College is directed to file with the undersigned and with the Staff Association and Local 32 an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their

^{6/} 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.

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 Staff Association and Local 32 with 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 Union County College Staff Association, NJEA, Local 32, Office and Professional Employees International Union, or neither.

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

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: May 16, 1983
Trenton, New Jersey