

P.E.R.C. NO. 87-165

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNIVERSITY OF MEDICINE
AND DENTISTRY OF NEW JERSEY,

Public Employer,

-and-

Docket No. RO-84-92

OPEIU, LOCAL 153,

Petitioner.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses a representation petition filed by the Office and Professional Employees International Union, Local 153. The Union sought to represent all public safety interns employed by the University of Medicine and Dentistry of New Jersey. The Chairman, in agreement with a Commission Hearing Examiner, finds that the proposal unit of interns is not appropriate.

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Appearances:

For the Public Employer, Hon. W. Cary Edwards, Attorney
General of New Jersey (Katherine Suga, Deputy Attorney
General)

For the Petitioner, Schneider, Cohen, Solomon, Montalbano &
Leder, Esqs. (Bruce D. Leder, of counsel)

DECISION AND ORDER

On April 25, 1984, the Office and Professional Employees
International Union, Local 153 ("Local 153") filed a Petition for
Certification of Public Employee Representative. Local 153 seeks to
represent all "public safety interns" employed by the University of
Medicine and Dentistry of New Jersey ("UMDNJ").

UMDNJ has opposed the petition. It alleges that the
proposed unit is inappropriate because the trainees lack "sufficient
regularity and continuity of employment."

On April 16, 1985, a Notice of Hearing issued.

On October 10, 1985, Hearing Officer Jonathon Roth conducted
a hearing. The parties examined witnesses and introduced exhibits.
They also filed post-hearing briefs.

On May 15, 1987, the Hearing Officer issued his report and recommended decision. H.O. 87-18, 13 NJPER ____ (¶ 1987). He found that the proposed unit is inappropriate because interns have no expectation of reemployment "as interns" and therefore "do not possess sufficient interest in their employment relationship with the University to warrant the right to collectively negotiate under the Act."

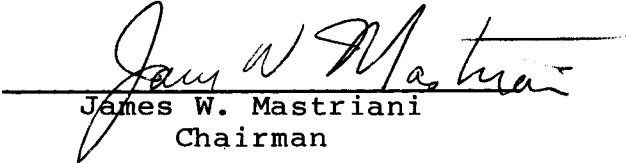
The Hearing Officer served his report on the parties and informed them that exceptions were due on or before May 29, 1987. Neither party filed exceptions or requested an extension of time.

I have reviewed the record. The Hearing Officer's findings of fact (pp. 2-6) are accurate. I adopt and incorporate them here. Under all the circumstances of this case and acting pursuant to authority delegated to me by the full Commission in the absence of exceptions, I also adopt his recommendation that the petition be dismissed.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
June 24, 1987
ISSUED: June 25, 1987

H.O. NO. 87-18

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY UNIVERSITY OF
MEDICINE AND DENTISTRY,

Public Employer,

-and-

DOCKET NO. RO-84-92

OPEIU, LOCAL 153,

Petitioner.

SYNOPSIS

A Hearing Officer recommends that the Commission dismiss a representation petition filed by the OPEIU, Local 153 seeking to represent a unit of public safety interns employed by the New Jersey University of Medicine and Dentistry. The Hearing Officer finds that the employees in the petitioned-for unit have no regularity and continuity of employment.

H.O. NO. 87-18

STATE OF NEW JERSEY
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY UNIVERSITY OF
MEDICINE AND DENTISTRY,

Public Employer,

-and-

DOCKET NO. RO-84-92

OPEIU, LOCAL 153,

Petitioner.

Appearances:

For the Public Employer
Katherine Suga, Deputy Attorney General

For the Petitioner
Schneider, Cohen, Solomon, Montalbano & Leder
(Bruce D. Leder, of counsel)

HEARING OFFICER'S RECOMMENDED REPORT AND DECISION

On April 25, 1984, the Office and Professional Employees International Union, Local 153 ("OPEIU" or "Union") filed a Representation Petition with the Public Employment Relations Commission ("Commission") seeking certification as the exclusive representative of a collective negotiations unit composed of all security guards/police officer trainees employed by the New Jersey University of Medicine and Dentistry ("University" or "Employer"). The Union also represents a unit of full-time and part-time security officers who work a minimum of 20 hours per week.

The University opposes the petition and alleged that the proposed unit does not have the continuity or regularity of employment in the position to be considered public employees within the meaning of the Act. On April 16, 1985, a Notice of Hearing was issued by the Administrator of Representation. After several adjournments, I conducted a hearing in this matter on October 10, 1985, at which time the parties were given an opportunity to introduce evidence, examine and cross-examine witnesses and argue orally. Post-hearing briefs were submitted by January 2, 1986. Based on the entire record, I make the following:

FINDINGS OF FACT

1. The University of Medicine and Dentistry of New Jersey is a public employer within the meaning of the Act.
2. Office and Professional Employees International Union, Local 153, AFL-CIO is a public employee representative within the meaning of the Act.
3. The University consists of campuses at Newark, Piscataway and Camden. The Newark campus houses the Medical and Dental Schools and University Hospital. The Piscataway campus is composed of a section of the Medical School which affiliates with Middlesex Hospital. There are seven collective negotiations units at the campuses. Teamsters Local 97 represents about 2500 unskilled and clerical employees. Operating Engineers represents approximately 120 employees in skilled trades and the engineers who

operate the power plants. The Committee of Interns and Residents represents approximately 150 employees. Two collective negotiations units representing the faculty; Allied Health Professions, N.J.E.A. and the A.A.U.P. There are also two public safety units; Local 153 represents approximately 65 security officers and FOP, Lodge 74 represents approximately 75 police officers (T9).

4. In approximately June 1982, the public safety intern program was started to provide prospective police officers on-the-job training concurrent with their attendance at the police academy in either Essex or Middlesex County (T13, T14).^{1/} Interns are trained in self-defense, martial arts, laws of arrest and are given the opportunity to work along side of police officers (T25). Their on-the-job training has been successful because the failure rate at the police academy has been reduced (T26).

The public intern is not a permanent position. John Love, the Assistant Director of Public Safety at the University, asserted it is "a temporary halting area for a maximum of one year" (T20). During that period, the intern works with a commissioned officer on patrol routes and witnesses arrests, attends court appearances, and receives "background information." The intern does not carry a weapon nor has the power to arrest and issue summonses (T20). Interns do not in fact make arrests but sometimes assist the

^{1/} The parties stipulated that the petitioned-for titles are "public safety interns" (T61).

arresting officer. The intern does not prepare a uniform crime report but may otherwise assist an officer with paper work.^{2/}

The security officer is assigned a stand post, i.e. he or she is assigned certain locations at building entrances, lobbies, and parking lots. Unlike interns, security officers do not have to be United States citizens or possess any specific educational background. Interns are sometimes assigned to stand post with security officers as a form of training (T22).

Interns are trained in boxing, martial arts, and the use of night sticks. Security officers do not receive comparable training. Interns may be selected from the ranks of security officer or solicited from outside the University.

After an intern has successfully completed the academy course and passed all the other background checks, he or she is commissioned as a police officer and is included in the collective negotiations unit represented by the FOP. The Camden campus has approximately six officers, Piscataway has about seventeen and Newark has about forty-two. At the time of hearing, the Piscataway and Newark campuses each had about four interns (T27). Security officers receive no firearms training and are never assigned to

^{2/} The parties stipulated that the interns are not "policemen" within the meaning of the Act and the evidence proffered at the hearing fully supports the stipulation. See County of Gloucester v. Public Employment Relations Commission, 107 N.J. Super. 150 (App. Div. 1969), aff'd 55 N.J. 333 (1976), County of Warren, P.E.R.C. No. 86-111, 12 NJPER 357 (¶17134 1986).

assist police officers. The University employs about 40 security officers at the Newark campus (T39).

Security officers and interns wear different badges than police officers. The security officers and interns wear identical badges. The security officer wears a light blue shirt; interns wear dark blue shirts.

Raymond Bynum is a security officer at the University where he has been employed for twelve years. He is also chief shop steward of Local 153. Bynum testified that security officers are assigned to the Hospital emergency room. At roll call of the security officers, interns are assigned to accompany some of the officers. Security officers do not carry weapons nor go on delivery or pickups to and from the banks with police officers. Security officers do not patrol the campus with police officers. Security officers also do not train interns in filling out crime reports, etc. Interns and security officers work the same shifts. The first shift is 11:30 p.m. to 8 a.m.; second shift runs from 7:30 a.m. until 4 p.m.; and the final shift runs from 3:30 p.m. to 12 midnight. Roll call is taken during the one half hour overlap (T73). Bynum also asserted that the intern position is a "temporary basis to await becoming a police officer. It's not a final position. When he enters that position he has the goal of leaving it" (T76). R-1 lists the 57 public safety interns hired since 1981, including their hiring dates and employment status under the category, "Police officer." All interns have been commissioned as

officers, terminated, "demoted" to security officers or are awaiting entrance to the academy. Forty-two of forty-six interns have been commissioned, terminated or demoted within one year of their date of hire. Two were commissioned within thirteen months of their date of hire, one commissioned within sixteen months of the date of hire and one, in an anomalous circumstance explained in R-1, was commissioned within two and one-half years of the date of hire. Eleven interns are attending the academy (at the time of hearing) and would presumably be commissioned or terminated within one year of their dates of hire. Three others requested later dates to begin academy training: their commission or termination dates were uncertain at the time of hearing. The IUE presented no evidence that contradicted the contents of R-1.

ANALYSIS

The sole issue is whether public safety interns lack the continuity or regularity of employment to organize and collectively negotiate under protection of the Act.^{3/} Their entitlement hinges

^{3/} Public safety interns are "public employees" within the meaning of the Act, which defines that term as "any person holding a position, by appointment or contract of employment in the service of a public employer, except elected officials, members of boards and Commissions, managerial executives and confidential employees". N.J.S.A. 34:13A-3(d). Although interns are "employees" under the Act, they may not be entitled to organize and collectively negotiate if they do possess "sufficient interest in their employment relationship" with the University. See Rutgers, the State University (residence counselors), P.E.R.C. No. 82-55, 8 NJPER 28 (¶13012 1981).

upon their employment status - full-time, part-time, temporary, casual, probationary or seasonal.^{4/} See Borough of Avalon, H.E. No. 79-30, 5 NJPER 71 (¶10044 1979), specifically adopted by the Commission in Borough of Seaside Park, P.E.R.C. No. 81-18, 6 NJPER 392 (¶11203 1980). The Commission has distinguished "casual" from "regular" employees: the former, in contrast to the latter work sporadically or occasionally and "their contact with the employer is too tenuous and infrequent to warrant inclusion in the same unit with regular employees." Mt. Olive Bd. of Ed., P.E.R.C. No. 82-66, 8 NJPER 102 (¶13041 1982). Seasonal employees (such as lifeguards) must also demonstrate regularity of employment to be entitled to organize and collectively negotiate under the Act. Regularity of employment is demonstrated when employees are drawn from the same labor force each season, where former employees are given preference in rehiring and where the employer has a substantial number of returning employees and has a relatively stabilized demand for such employment. Avalon.

^{4/} The eligibility of students to be exclusively represented in a collective negotiations unit was analyzed in Rutgers (residence counselors). The Commission noted in a subsequent case that their employment status was tied to their student responsibilities in contrast to a "strictly employment" relationship between faculty and the employer. Somerset Cty. College, P.E.R.C. No. 87-129, 13 NJPER ____ (____ 1987). Notwithstanding any imprecise analogies between students and these interns and an educational institution and the police training academy, nothing in the record established that the interns have anything but a strict employment or economic relationship to the University. See also St. Clare's Hosp. & Health Center, 229 NLRB 1000, 95 LRRM 1180 (1977).

Proposed units of employees who work more than 1/6 of the average number of hours worked by regular full-time and part-time employees who have some continuity of employment and who express a willingness to work in the future have been considered appropriate for collective negotiations. See Rutgers University, E.D. No. 76-35, 2 NJPER 176 (1976), aff'd P.E.R.C. No. 76-49, 2 NJPER 229 (1976), aff'd. App. Div. Dkt. No. A-1652-76 (1977) certif. den. 76 N.J. 243 (1978) and most recently, Somerset Cty. College, regarding adjunct faculty.

Temporary employees are generally ineligible to vote unless they have a reasonable expectation of reemployment and a substantial interest in working conditions at the employer's place of business. See, for example, Morris, The Developing Labor Law, at 387 (2nd ed. 1983) and Schlossberg and Scott, Organizing and the Law, at 248 (1st ed. 1983). However, the Commission has held that employees hired by municipalities under the Comprehensive Employment Training Act (CETA) who share a community of interest with other regular employees are not ineligible as temporary employees. Passaic Cty. Freeholders Bd., D.R. No. 78-29, 4 NJPER 8 (¶4066 1977); Tp. of Mine Hill, D.R. No. 79-4, 4 NJPER 297 (¶4141 1978), req. for recon. den. P.E.R.C. No. 79-8, 4 NJPER 416 (¶4186 1978). In Passaic, the Director held that CETA employees had the right to organize and collectively negotiate. He noted:

there is no provision in the CETA act, or regulations provided thereunder, requiring the automatic termination of a CETA employee upon the expiration of the CETA grant. To the contrary, CETA encourages the

absorption of CETA employees into the regular work force, utilizing the employer's own funding. Thus, the indefinite term of a CETA participant's employment is attributable to the continued availability of federal funding and the ability of the local unit of government to substitute its own funding. Notwithstanding the indefinite nature of employment, the record indicates that in actual experience, of the three CETA employees identified in the County's Public Works Department, two have been in employment for over a year, and a third for over two years. It therefore appears that the claimed indefiniteness of CETA employment relates primarily to the continued availability of funding; and, while there is no guarantee of continued employment without federal funding, such employees do nevertheless have a sufficient regularity in their employment relationship to be entitled to the protections of the Act and the right to negotiate with their employer as to their terms and conditions of employment, subject to any restrictions that the federal legislation imposes upon the employment relationship. [Id] at 10.

I find that public safety interns are temporary employees not entitled to organize and collectively negotiate under the Act.^{5/} Unlike units of adjunct faculty or lifeguards found

^{5/} Inasmuch as the interns are seeking a separate collective negotiations unit, my recommendation does not divest them of limited protection under our Act. The Commission explained in Rutgers (residence counselors):

The NLRB has consistently drawn the distinction between an employee's status with respect to an appropriate bargaining unit and his or her status as an "employee" within Section 2(3) of the Act. See e.g. Oak Apparel, Inc., 218 NLRB 701 (1975). The Board emphasized that were this distinction forgotten, employers could discriminate with impunity against temporary or casual employees who are not members of any appropriate bargaining unit. Id. Consistent with NLRB precedent, Residence Counselors, although they may not collectively negotiate, are entitled to the protections of this Act and can avail themselves of the unfair practice jurisdiction of the

to be appropriate based in part on the employer's rehiring of employees and stabilized demand for the employment, interns have no expectations of reemployment. They are invariably commissioned as officers or demoted to security officers or fired. In any case, nothing in the record suggested that interns are ever rehired in their title.

My finding is consistent with the Director's decision in Passaic, where there was merely a claimed definiteness of CETA employment in the face of employees actually working one to two years and where nothing in the enabling legislation required "automatic termination." Interns, by contrast, are almost always terminated, demoted or commissioned within one year of their hiring date. In the rare instances when interns are hired for more than one year, they face a certain termination date upon completion of or dismissal from police academy training (See R-1).

I also rely upon Trustees of Stevens Inst. of Technology, 22 NLRB 16, 91 LRRM 1087 (1976),^{6/} where a visiting instructor

5/ Footnote Continued From Previous Page

Commission when their rights are violated. See N.J.S.A. 34:13A-5.4(a)(1) et seq. Similarly, the Association, though not entitled to negotiate on behalf of these employees, may represent them in asserting other protections guaranteed by the Act. [Id. at 30]

6/ In interpreting the Act, the New Jersey Supreme Court has suggested that the experience and adjudications under the

hired for one academic year (to replace a professor on sabbatical leave) was held to be ineligible to vote in a representation election among the school's faculty members. The instructor was informed at the time of hire that he would not be rehired for a subsequent term. During his term, the instructor performed the same duties as regular faculty and received comparable pay and benefits. In declaring the instructor ineligible to vote, the Board stated:

From the outset of his employment at Stevens, [the instructor] was apprised of the limited one-year duration of his contract. In these circumstances, we find that [the instructor] was merely a temporary employee for a specified limited duration and, on the eligibility and election dates, had no reasonable expectancy for further employment. [Id. at 1088].

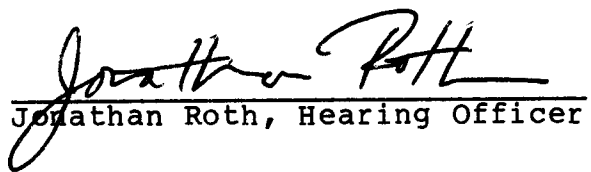
See also United Telecontrol Electronics, 239 NLRB 135, 100 LRRM 1093 (1978), where the Board emphasized the temporariness of employment in denying four employees' eligibility to vote in a unit of maintenance employees. Similarly, interns are hired for a "specified limited duration" and have no expectation of further employment.

6/ Footnote Continued From Previous Page

National Labor Relations Act, 29 USCA 151 et seq., should serve as a guide. See Lullo v. Int'l Ass'n of Firefighters, 55 N.J. 409, 424 (1970).

RECOMMENDATION

Under all of the circumstances of this case, I recommend that public safety interns do not possess sufficient interest in their employment relationship with the University to warrant the right to collectively negotiate under the Act. Accordingly, the petition should be dismissed.^{7/}


Jonathan Roth, Hearing Officer

DATED: May 15, 1987
Trenton, New Jersey

^{7/} I do not decide the appropriateness of including the interns within a unit of security officers or any other unit. Even if another organization filed a representation petition seeking to add the interns to an existing unit, these interns would need to demonstrate a reasonable expectation of permanent employment. See City of Bordentown, D.R. No. 81-27, 7 NJPER 120 (¶12049 1981). In light of the insufficient interest of interns in their employment relationship to be represented in a separate unit, I recommend that the petition be dismissed.