

D.R. NO. 95-8

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

In the Matter of

OCEAN COUNTY COLLEGE,

Public Employer,

-and-

Docket Nos. CU-94-13  
RO-94-49

OCEAN COUNTY COLLEGE FACULTY ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation clarifies the faculty unit to include program coordinators and directors. Relying on Wayne Bd. of Ed., P.E.R.C. No. 80-94, 6 NJPER 54 (¶21029 1980), in which the Commission held that regular teachers who are assigned extra, educationally-related activities are inherently part of the teachers' unit, the Director finds that the part-time coordinator and director "positions" are extra-curricular duties assigned almost entirely to members of the faculty. Thus, the faculty representative already represents these employees and is entitled to negotiate compensation for the extra duties.

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Appearances:

For the Public Employer  
Berry, Kagan & Sahradnik, attorneys  
(Seymour J. Kagan, of counsel)

For the Petitioner  
Anne Rowbotham, NJEA UniServ Representative

DECISION

On October 14, 1993, the Ocean County College Faculty Association filed a Petition for Clarification of Unit (docket no. CU-94-13) and a Petition for Certification of Public Employee Representative (docket no. RO-94-49) with the Public Employment Relations Commission. Through its petitions, the Association seeks to clarify its faculty unit to include program coordinators and directors.<sup>1/</sup> The Association seeks to represent approximately 20

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<sup>1/</sup> The Association initiated this matter by filing an Unfair Practice Charge (docket no. CO-93-455), alleging that the Ocean County College refused to negotiate over compensation for the coordinators. The charge has been held in abeyance pending the outcome of these petitions.

coordinator positions as follows:

- Coordinator of Basic Skills Curriculum
- Coordinator of Business Studies
- Coordinator of Community Services Tech Program
- Coordinator of Computer Science
- Coordinator of Computer Writing Lab
- Coordinator of Criminal Justice Program
- Coordinator of English

- Coordinator of Fine & Performing Arts
- Coordinator of Honors Program
- Coordinator of Fire Science
- Coordinator of International Education
- Coordinator of MLT Program
- Coordinator of Nature Trail
- Coordinator of Science
- Gallery Coordinator

- Director, Concert Band
- Director of Summer Musical
- Director of Summer Play
- Director, Theater Company
- Director of Community Chorus

The Association notes that the coordinators' and directors' positions are currently filled by full-time faculty and the Association already represents these employees. It contends this work is similar to extra-curricular work being done primarily by full-time faculty. Therefore, the Association argues that it already represents these titles. In its Petition for Certification, the Association states that in the alternative, if these positions are not currently included in its unit, it seeks to add these positions to the existing unit.

The College objects to both petitions. It asserts that the coordinators are separate, part-time positions which have never been included in the faculty unit. The College submitted the parties' contract recognition clause which restricts the faculty unit to

"full time faculty." The College further maintains that it has always set the coordinators' compensation unilaterally.

The College also asserts that the coordinators do not belong in the faculty unit. It argues that the petitioned-for positions do not share a community of interest with full-time faculty, and that these positions are "not always filled from among faculty members." It also asserts that coordinators may possess a conflict of interest with faculty because some of them "assist in screening and selection of candidates for faculty positions."

We have conducted an administrative investigation concerning this matter. N.J.A.C. 19:11-2.2. These facts appear.

When these petitions were filed, the Association and the College were negotiating a successor contract. Their most recent agreement covered the period from August 29, 1990 through August 25, 1993. The negotiations unit described in the recognition clause of the faculty agreement is as follows:

...all full-time professional personnel...including instructors, assistant professors, associate professors, full professors, counselors, librarians, and all those not listed on the accompanying list titled "schedule A."

Schedule A, appended to the contract, lists specific titles, such as deans and certain directors, which are excluded from the faculty unit. The coordinator positions are not specifically included in or excluded from the existing unit described in the recognition clause.

The College's regularly employed adjunct faculty members are represented for collective negotiations by the Ocean County

College Adjunct Faculty Association, also affiliated with the NJEA.<sup>2/</sup>

The College has employed coordinators for over twenty years. Each of the coordinator positions has a separate job description. The College represents that the job descriptions accurately detail the job requirements and responsibilities of the coordinators. The Association has not disagreed.

All coordinators report to an Assistant Dean or Department Chairperson. They all plan, lead and evaluate their respective programs. They evaluate program curriculum and course syllabi, recruit and advise students, interpret academic policy, and select texts and academic materials within their respective disciplines. All coordinators must meet the minimum requirements in academic background and teaching experience as required for academic rank at the College. Coordinators' hours vary by position from one semester hour to six semester hours per semester.

Directors are classified by the College as "professional" positions and are paid from the College's auxiliary budget or the operating budget. The director positions are non-academic and are under the College's fine arts department. The directors coordinate student musical productions.

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<sup>2/</sup> We take administrative notice of the October 4, 1982 Certification of Representative we issued to this Association covering the regularly employed adjunct faculty unit.

Coordinators and directors are appointed annually for an academic year. The various coordinator/director positions are not posted annually; they are only advertised when a position becomes vacant. The College requires only two of the coordinator positions -- coordinator of honors program and criminal justice coordinator -- to be filled by a full-time faculty member. The College may fill any other vacant coordinator positions from among the ranks of the full-time faculty or it may hire an adjunct instructor, an administrator, or a member of the community. However, full-time faculty do, in fact, occupy all of these positions except two--Coordinator of Fire Science and Coordinator of Fine Arts. These two individuals are members of the College's adjunct faculty.

Coordinators sign separate individual employment contracts for their respective positions. Coordinators do not earn separate tenure. The College either compensates coordinators for performing their responsibilities by paying them the equivalent of the semester hour "overload rate" as established in the faculty contract, or it grants the faculty member release time from teaching responsibilities to perform coordinator activities.

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We will first consider whether the employees may appropriately be placed into the unit through the Association's unit clarification petition.

A unit clarification petition may be used to identify titles or positions as being within the broad definition of the unit

certified by this Commission or as contained in parties' contract recognition clause. Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). A unit clarification petition cannot ordinarily be used to expand a unit to add titles or positions which existed before the unit formed and were not contemplated as part of the unit when it was formed, except where there is a change in circumstances giving rise to the dispute. Clearview. Placing previously unrepresented employees into an existing unit through a unit clarification petition does not provide the employees with the opportunity to determine their representative. Therefore, where the employee representative has permitted employees to remain outside the negotiations unit--unrepresented--for a period of time, we will find that a question concerning the representation of those employees exists and will, through a proper representation petition, afford them the right to vote concerning their negotiations representative.

However, there is a difference between discrete positions or titles and additional work assignments for unit employees. The employees' majority representative may seek to negotiate compensation for employees in the latter situation even if it never did so before. For example, if a school district asks its teachers to chaperone school trips or coach after-school sporting events, the majority representative of those employees may seek to negotiate

compensation for that activity during successor negotiations, even if it had never asked to negotiate over it before.<sup>3/</sup>

Conversely, the majority representative may seek to expand its unit to include separate, discrete positions only through a representation petition or voluntary recognition.

Here, I find that the coordinator jobs are not separate, distinct positions from the teaching faculty unit. Rather, the coordinator work is merely an extension of the teaching faculty's function.

In Long Branch Bd. of Ed., D.R. No. 78-24 (1977), the then Director clarified a teachers' unit to include teachers performing in capacities as coaches, noting that these duties are a fundamental part of the education process. See also, Hamilton Tp. Bd. of Ed., E.D. No. 30 (1971). The Commission specifically concurred with these decisions in Wayne Bd. of Ed., P.E.R.C. No. 80-94, 6 NJPER 54 (¶11029 1980), where it held that regular teachers who are assigned extra, educationally-related activities are inherently part of the teachers' unit. The Commission observed that the potential for disruptive fragmentation exists if employees performing these extra duties gain separate representation status. Accordingly, where an extracurricular activity is performed by a regular teacher during

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<sup>3/</sup> Further, the employer may not unilaterally change the existing compensation rate for that extra duty without first negotiating the change with the employee representative. Carlstadt-East Rutherford Reg. Bd. of Ed., P.E.R.C. No. 89-59, 15 NJPER 18 (¶20006 1988).



the regular workyear in addition to his/her regular duties, the unit will be clarified to include such extracurricular positions.

Here, most of the positions sought are filled by employees included in the faculty unit. With the exception of the two coordinators who are members of the adjunct faculty -- the Coordinator of Fire Science and Coordinator of Fine Arts -- all of the coordinators and directors "positions" are or have been held by members of the faculty unit. As such, these employees are already represented by the Association. Accordingly, an election among them is not appropriate or necessary.

Further, we find that the coordinators and directors are not supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

N.J.S.A. 34:13A-5.3 provides:

...nor, except where established practice, prior agreement or special circumstances dictate to the contrary shall any supervisor having the power to hire, discharge, discipline or effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership.

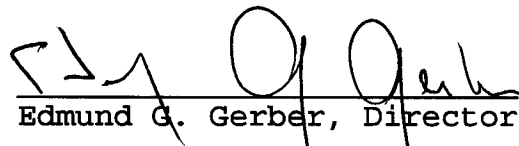
The coordinators and directors supervise programs, not faculty. There is no evidence that they have authority to hire, discipline or discharge employees, nor is there evidence that they have effectively recommended such personnel actions.

Accordingly, the Association's faculty unit is hereby clarified to include regular, full-time faculty who also hold

coordinator and director titles, effective immediately.<sup>4/</sup> As there is no valid representation dispute concerning these positions, the representation petition is unnecessary and is dismissed.

On this record, we are not prepared to clarify the coordinator titles held by adjunct faculty members into the Association's faculty unit. The Adjunct Faculty Association may petition separately for those positions, if it believes those employees are sufficiently regularly employed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: October 28, 1994  
Trenton, New Jersey

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<sup>4/</sup> Placement of the coordinators and directors in the faculty unit carries with it the obligation to negotiate over their terms and conditions of employment in that role. See Wayne at fn. 3; Sussex Cty., D.R. No. 92-25, 7 NJPER 212 (123095 1992).