

P.E.R.C. NO. 89-136

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (TRENTON
STATE COLLEGE and STOCKTON
STATE COLLEGE),

Public Employer,

-and-

Docket Nos. CU-H-88-13
CU-H-88-16

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, NEW JERSEY STATE
FEDERATION OF TEACHERS, AFT, AFL-CIO,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission dismisses petitions for clarification of unit filed by the Council of New Jersey State College Locals, NJSFT, AFT, AFL-CIO. The petitions seek to include two part time speech clinic supervisors at Stockton State College and the part time counselor to disabled students at Trenton State College in the collective negotiations unit of full and part time faculty employed by the State of New Jersey at the State Colleges. The Commission finds that these employees are special service employees explicitly excluded from the certification's unit definition.

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Petitioner.

Appearances:

For the Public Employer, Peter N. Perretti, Jr.,
Attorney General (Melvin E. Mounts, Deputy Attorney
General)

For the Petitioner, Barbara Hoerner, Staff
Representative

DECISION AND ORDER

On September 28, 1987, the Council of New Jersey State College Locals, NJSFT, AFT, AFL-CIO ("Council") filed a petition for clarification of unit. It seeks to include two part-time speech clinic supervisors at Stockton State College in its collective negotiations unit of full and part-time faculty employed by the State of New Jersey ("State") at the State colleges. On October 8, 1987, the Council filed a petition seeking to include in its unit the part-time counsellor to disabled students at Trenton State College.

The Director of Representation issued Notices of Hearing. On February 24 and March 8, 1988, respectively, Hearing Officer

Susan Wood Osborn conducted hearings in the Trenton and Stockton matters. The parties stipulated certain facts, examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs by December 5. The State filed a reply brief on December 20.

On April 12, 1989, in a consolidated decision, the Hearing Officer recommended that the petitions be dismissed. H.O. No. 89-6, 15 NJPER ____ (¶ ____ 1989). She found that although these part-time faculty otherwise qualify for inclusion in the unit, they are special services employees whom the parties intended to exclude from the unit.

On May 5, 1989, the State filed exceptions. It claims that the disputed employees are not employed regularly enough to be included in the Council's unit. It argues that the certification requires that unit employees work the equivalent of six credit hours (half-time) either on a one year or second semester contract.

On May 9, 1989, the Council filed exceptions. It claims that as of September 21, 1987 the special services category was abolished and that special services employees are now either regular or temporary employees properly within the Council's unit. It further claims that even if the employees were hired into the special services category, they do not meet Department of Personnel requirements for temporary blanket positions. It further claims that even if the employees are temporary, they were not meant to be excluded from the Council's unit.

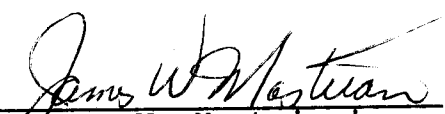
We have reviewed the record. The Hearing Officer's findings of fact (pp. 2-11) are accurate. We incorporate them.

Special services employees are explicitly excluded from the certification's unit definition. These employees were hired into and remain in the special services category and are paid through a "title blanket." They were not hired into regular budgeted positions. It may be that under Department of Personnel guidelines they belong in regular part-time positions. But we have no jurisdiction to make that determination. See State of New Jersey (Dept. of Higher Ed.), P.E.R.C. No. 85-77, 11 NJPER 74 (¶16036 1985), aff'd App. Div. Dkt. Nos. A-2920-84T7; A-3124-84T7 (4/7/86). Until they are removed from that category, a clarification of unit procedure cannot be used to include them in the Council's unit. In light of this finding, we need not address whether these employees otherwise come within the certification's unit definition.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Ruggiero, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
June 23, 1989
ISSUED: June 26, 1989

H.O. NO. 89-6

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

In the Matter of

STATE OF NEW JERSEY
(TRENTON STATE COLLEGE)
(STOCKTON STATE COLLEGE),

Public Employer

-and-

Docket Nos. CUH-88-13
CUH-88-16

COUNCIL OF NEW JERSEY
STATE COLLEGE LOCALS
NEW JERSEY STATE FEDERATION
OF TEACHERS, AFT, AFL-CIO,

Petitioner.

SYNOPSIS

A Hearing Officer recommends dismissal of two unit clarification petitions seeking to include certain part-time employees in the Council's faculty unit at the State colleges. The Hearing Officer find that, although these part-time faculty members are sufficiently regularly employed, they are special services employees whom the parties mutually intended to exclude from the collective negotiations unit. Therefore, the Hearing Officer find that these employees cannot be included in the Association's unit through a clarification of unit proceeding.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law.

H.O. NO. 89-6

STATE OF NEW JERSEY
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In the Matter of

STATE OF NEW JERSEY
(TRENTON STATE COLLEGE)
(STOCKTON STATE COLLEGE),

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CUH-88-16

COUNCIL OF NEW JERSEY
STATE COLLEGE LOCALS
NEW JERSEY STATE FEDERATION
OF TEACHERS, AFT, AFL-CIO,

Petitioner.

Appearances:

For the Public Employer,
Cary Edwards, Attorney General
By Melvin Mounts, Deputy Attorney General

For the Petitioner,
Barbara Hoerner, Staff Rep.

HEARING OFFICER'S REPORT
AND RECOMMENDED DECISION

The Council of New Jersey State College Locals, NJSFT, AFT, AFL-CIO ("Council" or "Federation") filed Petitions for Clarification of Unit with the Public Employment Relations Commission ("Commission") seeking to include certain part-time employees in its collective negotiations unit of full and part-time faculty employed by the State of New Jersey ("State") at the State colleges. The Council's September 28, 1987 petition (CUH-88-13) seeks to include two part-time Speech Clinic Supervisors at Stockton

State College. The Council's October 8, 1987 petition (CUH-88-16) seeks inclusion of the part-time Counsellor to Disabled Students at Trenton State College. The State objects to the petitions and contends that employees holding these positions do not fall within the parameters of the unit's certification issued by this Commission.

Hearings were conducted concerning these matters on February 24 and March 8, 1988.^{1/} The parties stipulated certain facts, submitted exhibits and examined witnesses. The parties waived oral argument and filed briefs by December 5, 1988. The State filed a reply brief on December 20, 1988.^{2/}

Based upon the record in these matters, I make the following

FINDINGS OF FACT

1. The parties stipulated that the State is the employer of full time and part-time teaching, research and administrative faculty employed at the State's nine state colleges.

2. The Council has represented full time faculty for nearly 20 years.

1/ The transcript of the February 28 hearing concerning the Trenton State College part-time employee will be identified as "1T;" the transcript of the March 8 hearing concerning the Stockton State College part-time employees will be identified as "2T."

2/ Following hearings, the parties requested that I hold these matters in abeyance to give the parties a chance to voluntarily resolve the unit disputes. By October, 1988, the issues remained unresolved. Accordingly, I set a briefing schedule and advised the parties that I would consolidate the respective records for briefs and a recommended decision.

3. In April, 1986, the Council filed a Petition for Certification (RO-86-130) seeking to represent "all regular part-time faculty, both teaching and research, and all part-time administrative staff and librarians."^{3/} In State of New Jersey, D.R. No. 87-25, 13 NJPER 326 (¶18136 1987) ("State of New Jersey"), the Commission's Director of Representation summarized the undisputed facts^{4/} and positions of the parties as follows:

The Federation does not seek to represent adjunct faculty. The part-time teaching/research faculty members who are the subject of this petition are hired to teach a partial teaching load, usually 6 credit-hours per semester, which is half of the full-time teaching load of 12 hours per semester. The State is not opposed to the organization of regularly employed part-time employees for negotiations purposes, but the parties disagree concerning the standard to be utilized to determine regularity of employment for unit eligibility purposes.

The Federation argues that all part-time employees are eligible for inclusion in the unit from the commencement of their employment in a regular contract position, (excluding adjunct faculty and special services employees)...The State argues that the unit should be limited to employees working at least 50% of the employment year - that is, those faculty who are employed half-time on a full year contract, and those faculty who are employed half-time for at least two of the three semesters in an academic year. 13 NJPER at 327.

^{3/} I take administrative notice of the procedural history of this unit.

^{4/} In that decision, the Director noted, "...we reviewed the facts presented by the parties to date and provided the parties with an additional period to proffer any supplemental factual allegations and/or argument. No responses were received (footnotes omitted). Therefore, based upon the administrative investigation, we find the following are the undisputed facts..." 13 NJPER at 327.

4. The Director rejected the State's half-time argument and, applying long-standing Commission precedent, focused on the employees' regularity and continuity of employment. He found the following unit appropriate:

Included: All part-time teaching/research/administrative faculty (working the equivalent of at least 6 credit hours per semester) who are: (a) employed in regular, recurrent positions; and (b) either are employed on a full academic year contract OR, are employed for at least their second semester, to be added to the existing unit of full-time teaching/research/administrative faculty, currently represented by the Council of New Jersey State College Locals, NJSFT (footnotes omitted).

Excluded: All employees currently represented in other collective negotiations units, clerical administrative employees, managerial executives, supervisors within the meaning of the Act, craft employees, confidential employees, grant employees, special services employees, and adjunct faculty. 13 NJPER at 328.

An election was conducted among the part-time employees described above, and, on June 9, 1987, the Commission certified the addition of these part-time employees to the Council's unit. Negotiations for the part-time faculty's terms and conditions of employment are continuing.

5. The faculty unit includes professional administrative faculty, which the parties refer to as "non-teaching professionals," and teaching faculty. The colleges also employ adjunct instructors who are not included in the unit.

6. Full-time faculty work under either a ten or twelve-month employment contract. Ten-month faculty are contracted for September 1 through June 30 (43.6 weeks). Full-time teaching faculty carry a normal teaching load of 24 semester hours during the regular academic year consisting of two 16-week semesters. Part-time teaching faculty usually teach a half load and are paid half of the full-time salary.

In addition to teaching assigned classes, full-time teaching faculty hold office hours, advise students, participate in committee and departmental meetings, engage in scholarly pursuits, and are involved in with the college community. Part-time faculty may be involved in departmental and committee work and student advisement but are not expected to do scholarly research, although some do. Office hours, class hours and the scheduling of committee and departmental meetings are determined within each department. Therefore, work hours for teaching faculty are not standardized. Teaching faculty are not required to be on campus during semester breaks (1T48; 2T34).

7. Full-time non-teaching professionals work 35 hours a week, from 8:30 a.m. to 4:30 p.m.. They may work additional uncompensated hours, since they are classified as "hours not limited". Part-time non-teaching professionals receive vacation, sick time, and holidays on a pro-rated basis. All employees working less than full-time are ineligible for health benefits. (1T57).

8. Adjuncts contract to teach a 16-week semester; the contract may be renewed for another semester. Adjunct instructors

are hired for a specific purpose--to teach a course--and they are paid an amount per credit, which is not proportional to a full or part-time regular faculty salary. They do not participate in the college's committee structure, hold office hours, or engage in research. (1T64; 1T47)

Trenton State College

9. As Counselor to Disabled Students, Beatrice Cohen is a non-teaching professional. Cohen reports to the Director of Special Services, Glen Felix.

10. The parties stipulated that Cohen's job responsibilities are within the scope of the faculty unit. She develops and implements programs and services for disabled students. Her duties include: interviewing and recommending disabled applicants, counselling disabled students, coordinating support groups and workshops for students and faculty, speaking to classes and advising the disabled students coalition. She advises faculty about teaching strategies and accommodations for disabled students, and advises the administration about handicapped accessibility (J-7; 1T21).

11. Before Cohen was hired, another employee served as Counsellor to Disabled Students eight hours a week, and was assisted by a graduate assistant. In 1983, the two positions were merged together to create Cohen's half-time position. There is a recurrent need for a Counsellor to the Disabled (1T31).

Cohen has worked continuously in the position since September 1983, except one semester (Spring 1987). A graduate

assistant served in the position during Cohen's leave of absence. (J-3; T19).^{5/}

12. Cohen's work schedule follows the teaching faculty calendar rather than the non-teaching professionals' calendar. That is, she works only during the 32 to 34 weeks classes are in session. Unlike other non-teaching professionals, she is not expected to work during semester breaks or other periods when students are not present. In 1987-88 her full-year employment contract with Trenton State College required her to work from September 2 through December 18 and from January 20 through May 24 (J-1, J-2; 1T20-21; 1T49).

Cohen is scheduled to work 20 hours a week: 8:50 a.m. to 4:30 p.m., three days a week. Like other non-teaching professionals, she frequently works more than her scheduled hours (1T27-29; 1T40).

13. Her annual salary is pro-rated into an hourly rate of \$10.40 (1987-88), and she is paid bi-weekly. Bernice Rydel, Associate Vice-President for administrative services at Trenton State College, constructed Cohen's salary by pro-rating the salary of a professional services specialist, grade IV, ^{6/} into an hourly rate (1T32-33).

^{5/} Because Cohen was not working in Spring, 1987, she was ineligible to vote in the representation election.

^{6/} Felix testified that he was told Cohen holds the regular title professional services specialist. I do not find this as a fact. Felix misunderstood Rydel's explanation that she merely used this official title as a model.

14. Cohen is not on the regular payroll and does not have an assigned, numbered State position. Cohen's position was created under a "special services" payroll under what the State calls a "title blanket." According to a 1988 administrative directive from the State Department of Personnel, special services employees hired under a "title blanket" refers to "...where the employment for a project or the work aggregates not more than six months in a 12-month period...to provide for the hiring of five or more people in a given established title for peak workloads or unique work circumstances on a temporary basis."^{7/} Cohen was hired under the special services budget because the position did not fall within the guidelines used to place employees in a regular, numbered position.

The College employs one other non-teaching professional under the special services payroll, who works eight hours a week in the evening. The College is hiring another non-teaching professional under special services. In accordance with the 1988 Department of Personnel directive, employees working up to 1944 hours a year may be hired on a special services payroll (1T55; 1T66).

Stockton State College

15. Joan Liston and Joanne Popeson are Speech Clinic Supervisors at Stockton State College.^{8/} They voted in the 1987 representation election by challenge ballot.

^{7/} New Jersey Department of Personnel Salary Administration Memorandum No. 8-88, issued September 21, 1987.

^{8/} Liston also taught one course in the Spring of 1986 as an adjunct. The parties agree that this assignment will not be considered for purposes of determining her unit status.

16. The parties have stipulated that Popeson and Liston perform unit work. Popeson and Liston report to the Director of the Clinic. The speech clinic is part of the department of speech pathology/audiology within the academic division of professional studies (2T19, 2T22).

Popeson and Liston are certified speech pathologists. They instruct clinical practicum of students majoring in speech pathology/audiology. Each student is required to take two clinics a semester, for which they earn two credits. Popeson and Liston each instruct about 15 students each semester. Speech labs are listed as tutorials in the course offerings list (2T23).

17. Popeson and Liston have identical duties. In effect, they share one position. Their duties include: supervising students performing therapy on clients, demonstrating diagnostic testing and therapy, assisting students write client lesson plans, approving progress reports, grading students' reports, counseling students, writing lesson plans, scheduling, and filing. They grade students on their course work. They consult with other members of the speech pathology department concerning curriculum and student performance in the clinic. Popeson and Liston grade papers, review student reports, and read professionals journals at home. They regularly participate in faculty meetings with other members of the program and vote as members of the program. Popeson and Liston are not responsible for scholarly research or contribution to college and community ((J-1; 2T13; 2T21; 2T22; 2T24; 2T28).

18. Regular teaching faculty occasionally teach small groups of students in independent studies, lab classes, and tutorials (2T30). The contractual agreement between the State and the Council provides that

Article XII, B, 5 (c): Teaching credit hours are defined as...(2) When the number of regularly scheduled average weekly class hours is greater than the number of student credit hours, those class meetings typically designed as "laboratories" or "studios" shall be equated on the basis of two-thirds of a teaching credit hour for each class hour (J-14, p. 18).

19. Popeson and Liston were not hired into a regular budgeted position. They are paid under a special services payroll under a title blanket (see fact 14 above.). Popeson and Liston are paid the equivalent of ten credit hours per semester (\$3,500 in 1986-87), or \$16.60 per hour. Their employment contracts are issued from the office of academic affairs. Personnel Director Priscilla Comfort explained that the division decided to pay Popeson and Liston the equivalent of ten semester hours per semester because there was no logical parallel with other full and part-time faculty. They receive no fringe benefits, vacation or administrative leave (J-1; J-2; 2T50).

20. They have been employed since at least the fall of 1983. They each work 9:00 a.m. to 5:00 p.m., two days per week, totaling 210 hours per semester. Popeson works Mondays and Wednesdays and Liston works Tuesdays and Thursdays. They follow the teaching faculty workyear (J-2; J-3; 2T12-13).

21. The inclusion of part-time employees in six of the State's other collective negotiations agreements covering various units of employees is restricted to employees working half-time (at least 20 hours a week).

ANALYSIS

The Council contends that the disputed employees are sufficiently regularly employed and are within the certification's definition of the unit; that is, they each work the equivalent of at least six credit hours per semester. The State argues that the employees do not meet the certification's unit eligibility criteria and should not be included.

The Director's decision in State of New Jersey and the unit's certification identifies four criteria to be eligible for unit inclusion. First, employees must be "...teaching/research or administrative faculty"; that is, employees must perform unit work. Second, employees must be "...employed in regular, recurrent positions..." Third, employees must be "...either employed on a full academic year contract or are employed for at least their second semester...." This is the measure of employment continuity. Fourth, employees must be "...working the equivalent of at least six credit hours per semester...." This is a test of employment regularity.

There is no dispute that the affected employees here do unit work. These employees hold recurrent positions. They each possess continuity of employment. Cohen has worked every

semester except one since 1983. Popeson and Liston have worked every academic year since 1983.

The State argues that these employees fail to meet the certification's test for employment regularity. It asserts that the Director's six credit hours per semester equivalency should be interpreted as half-time. To support this position, the State points to contractual agreements with its other negotiations units which restrict negotiations units to part-time employees working at least half-time.

I do not construe the Director's decision as restricting the unit to only those employees working half time. First, as the Director pointed out in State of New Jersey, the Commission has previously rejected a half-time approach to including part-time employees. Instead, the Commission has found that regularly, recurrently employed employees in continuing positions are eligible for inclusion in collective negotiations units with other full and part-time employees. See Mt. Olive Bd. of Ed., 82-66, 8 NJPER 102 (¶13041 1982); County of Bergen, D.R. No. 84-2, 9 NJPER 451 (¶14196 1983); Bergen County (Bergen Pines County Hospital), D.R. No. 87-3, 12 NJPER 619 (¶17234 1986).

The State's suggested interpretation of the Director's decision and unit certification--employees working half-time for a full year--is inconsistent with the overall sense of the decision and the Commission's caselaw. The Director rejected the half-time argument. In fact, the Director found that employees

working half-time for only one semester a year qualify for inclusion in the unit, provided their positions are recurrent and they individually show continuity in their employment relationship with the college. Thus, employees working half-time for half of the regular academic year (or one third of the year if a 12 month-year is used as the base) are eligible for unit inclusion.^{9/}

Specifically, the State argues that Cohen is ineligible for inclusion because she works half time for less than the full ten months non-teaching professionals normally work. Cohen works twenty hours a week, every week for the 32 to 34 weeks of the academic year. Regular part-time non-teaching professionals at Trenton State work on a ten or twelve-month calendar; that is, either 43.6 or 52 weeks a year.

I find that Cohen is sufficiently regularly employed. She works 43 percent of the full time schedule.^{10/} Six credits is half of the teaching faculty full load. It follows that the certification's unit eligibility test--"...faculty working the equivalent of at least six credit hours per semester...who are employed for at least their second semester..."--also includes

^{9/} This is consistent with the yardstick adopted by the Commission in Mt. Olive, where the Commission found regularly employed employees working one-sixth of full-time employment eligible for inclusion in the unit.

^{10/} Full-time ten-month non-teaching professionals work 35 hours a week for 43.6 weeks, or 1526 hours a year. Cohen works 660 hours a year, or 43 percent of the full-time work year.

non-teaching professionals working half-time for at least one semester a year. Cohen meets this criteria. Accordingly, I find that Cohen is sufficiently regularly employed to be appropriately included in the unit.

I also find the Stockton State College Speech Clinic Supervisors--Popeson and Liston--are sufficiently regularly employed to be included in the unit. First, as instructors in an academic department, they perform teaching faculty work. They instruct regular track students for required, credited courses. They grade students, plan lessons, and interact with other faculty. They attend and vote with program meetings.

They share one position. They each work seven hours a day, two days a week, or 14 hours a week. They are contracted for 10 semester hours each. Although the number of hours per workweek of full-time faculty is difficult to quantify, we know that full-time faculty teach 12 semester hours a week, and also put in hours in office time, counselling, and committee work. However calculated, Popeson and Liston certainly are sufficiently regularly employed. They each work at least one quarter of the work week of full-time faculty, and they work for the entire academic year. Logic dictates that since the Director's decision permits employees working half time for one semester to be included in the unit, then employees working at least one-quarter time for the entire academic year are also sufficiently regular. Accordingly, I find that Popeson and Liston are sufficiently regularly employed to be appropriate for inclusion in the unit.

Finally, the State argues that these employees are not in regular positions but are paid under the special services budget designation. The Director's decision, State of New Jersey, and the unit's certification specifically exclude special services employees from the unit.

Normally, the source of the funding or method of budgeting the position, by itself, would not operate to exclude employees from a unit in which they otherwise belong. Passaic Co. Bd. of Freeholders, D.R. No. 78-29, 4 NJPER 8 (¶4066 1977); Ocean County, D.R. No. 79-25, 5 NJPER 128 (¶10076 1979). I find that, but for the special services payroll designation, these employees would be covered by the Commission's certification. However, the clarification petition must be treated in light of the whole certification. The Commission clarifies units in CU proceedings in accordance with the statute, applicable caselaw and the unit's recognition or certification. Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977) ("Clearview").

The Council specifically sought to exclude special service employees from the unit.^{11/} Where, as here, the parties mutually intended to exclude a group of employees (in this case, special services employees) from the unit, it is inappropriate to enlarge the scope of the unit through a unit

^{11/} If the Council disagreed with the Director's recitation of the parties' positions, it had an opportunity to correct its position before the Director. It did not.

clarification proceeding, absent a change in circumstances. Clearview; Wayne Tp. Bd. of Ed., P.E.R.C. No. 80-94, 6 NJPER 54 (¶11029 1980); Salem Co. College, P.E.R.C. 88-71, 14 NJPER 136 (¶19054 1987); Warren Tp., D.R. No. 82-10, 7 NJPER 529 (¶12233 1981). This is particularly true since the three petitioned-for employees may well be part of a larger group of other regularly employed special services faculty.^{12/} To permit a unit clarification under such circumstances may lead to disenfranchising those employees of their rights to select a majority representative. A question concerning the representation of regularly employed part-time special services faculty may more appropriately be addressed by a petition for certification (RO) seeking to add those employees to this unit.

CONCLUSIONS

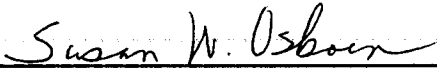
1. I find that the Counsellor to Disabled Students at Trenton State College is sufficiently regularly employed to be appropriate for inclusion in the unit of full-time and part-time faculty represented by the Council.
2. I find that the Speech Clinic Supervisors at Stockton State College are sufficiently regularly employed to be appropriate for inclusion in the unit represented by the Council.

^{12/} The record indicates that there are other special services non-teaching professionals at Trenton State. The State was unable to provide information about whether such employees exist at the other colleges.

3. I find that the Council and the State mutually intended to exclude special service employees, including the petitioned-for employees, from this unit. Accordingly, a question concerning representation exists among special services faculty which cannot be resolved in this unit clarification petition.

RECOMMENDATION

I recommend that the Council's Unit Clarification Petitions be dismissed.



Susan Wood Osborn
Hearing Officer

DATED: April 12, 1989
Trenton, New Jersey