

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

In the Matter of

MERCER COUNTY COMMUNITY COLLEGE,

Public Employer,

-and-

DOCKET NO. RO-77-12

MERCER COUNTY COMMUNITY COLLEGE
FEDERATION OF SECRETARIAL, CLERICAL
AND TECHNICAL EMPLOYEES, LOCAL 2319,
AFT,

Petitioner.

MERCER COUNTY COMMUNITY COLLEGE,

Public Employer,

-and-

DOCKET NO. RO-77-14

MERCER COUNTY COMMUNITY COLLEGE
FACULTY ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation, adopting a Hearing Officer's Report and Recommendations substantially for the reasons set forth therein, determines that the most appropriate unit for the representation of technical assistants is a unit comprised of all instructional and noninstructional technical assistants and senior technical assistants. Inasmuch as neither petitioner seeks to represent the employees in the appropriate unit their petitions are dismissed. In view of the dismissal of the petitions, the Director need not consider the identification of certain disputed titles.

D.R. NO. 80-13

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

In the Matter of

MERCER COUNTY COMMUNITY COLLEGE,

Public Employer,

-and-

DOCKET NO. RO-77-12

MERCER COUNTY COMMUNITY COLLEGE
FEDERATION OF SECRETARIAL, CLERICAL
AND TECHNICAL EMPLOYEES, LOCAL 2319,
AFT,

Petitioner.

MERCER COUNTY COMMUNITY COLLEGE,

Public Employer,

-and-

DOCKET NO. RO-77-14

MERCER COUNTY COMMUNITY COLLEGE
FACULTY ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer
Smith, Stratton, Wise & Heher, Esqs.
(Garrett M. Heher, of Counsel)

For the Petitioner Federation
John Fallon, Staff Representative

For the Petitioner Association
Sterns, Herbert & Weinroth, Esqs.
(Michael J. Herbert, of Counsel)

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees, hearings were

held on March 1, April 1, May 3, September 19, 20, and 21, 1977, before Hearing Officer Charles Tadduni at which all parties were afforded an opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. Post-hearing briefs were filed by the parties by February 3, 1978.

Thereafter, on July 26, 1979, the Hearing Officer issued his Report and Recommendations [H.O. No. 80-3], a copy of which is attached hereto and made a part hereof. On August 8, 1979, the public employer filed exceptions to certain findings and recommendations of the Hearing Officer. Neither employee organization involved in the proceeding filed exceptions to the Hearing Officer's Report, nor have they filed any answers to the public employer's exceptions.

The undersigned has carefully considered the entire record in the proceeding, including the Hearing Officer's Report and Recommendations, the transcript and exceptions, and based upon the facts in this matter finds and determines as follows:

1. Mercer County Community College (the "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. (the "Act"), is the employer of the employees who are the subject of this proceeding and is subject to the provisions of the Act.

2. Mercer County Community College Federation of Secretarial, Clerical and Technical Employees, Local 2319, AFT (the "Federation") and Mercer County Community College Faculty Association (the "Association"), are employee representatives within the

meaning of the Act and subject to its provisions.

3. The Federation, in Docket No. RO-77-12, seeks to add noninstructional technical assistants and senior technical assistants to a collective negotiations unit of clerical/supportive staff personnel which it currently represents. The Association, in Docket No. RO-77-14, seeks to add instructional technical assistants and senior technical assistants to a collective negotiations unit of faculty and certain other professional personnel with academic rank which it currently represents.

4. The College asserts that the addition of these personnel to the respective units represented by the Federation and the Association is inappropriate and submits that the most appropriate collective negotiations unit would be a unit comprised of all instructional and noninstructional technical assistants and senior technical assistants.

5. A secondary issue raised in the proceeding relates to the identification of three positions as either includable or nonincludable in the Federation's proposed unit. These positions are publication specialist, research assistant in the office of instructional research, and coordinator of scheduling and records. Lastly, the College asserts that the senior technical assistant position within the office of personnel services is a confidential position and should be excluded from any collective negotiations unit.

6. The Hearing Officer recommended that the Federation's Petition and the Association's Petition be dismissed and that the most appropriate unit for the representation of instructional and noninstructional technical assistants and senior technical assistants would be one overall unit comprised of these personnel. Additionally, the Hearing Officer made recommendations as to the specific titles in dispute.

7. The Hearing Officer based his recommendations as to the appropriate unit upon factual findings from which he concluded that all technical assistants share a close community of interest and were employed under similar terms and conditions of employment.

8. Technical assistants function as "assistants" or "resource people" to faculty and administrators and effectuate projects conceived by the latter personnel. Many instructional and noninstructional technical assistants work together in the performance of their responsibilities. They are employed in what might be generally termed as a paraprofessional relationship and they share common benefits. Technical assistants are employed within the same salary ranges which are less than those of faculty personnel and higher than support personnel. Technical assistants are granted 20 vacation days a year which is equal to faculty vacations and more than clerical vacation benefits. Technical assistants, clerical/support personnel and non-teaching faculty work a 35 hour week. However, technical assistants receive compensatory time for overtime work while clerical/support

personnel receive monetary benefits. Faculty members receive monetary compensation for "overload teaching" based upon contact hours. Technical assistants have common supervisory lines within their assigned department. The instructional and noninstructional technical assistants generally have common skill levels and educational background. While technical assistants may participate in department meetings, they are not permitted to vote along with faculty members. However, technical assistants are full participants in the College senate with faculty, administrators and students. Clerical/support personnel do not participate in the faculty senate.

9. Apart from the unit placement of technical assistants as proposed by the parties, the Hearing Officer also considered the merits and disadvantages of the placement of all technical assistants in either the faculty unit, the support unit, or the existing administrators unit. The Hearing Officer concluded that although there are common interests that College employees in these various groupings share, significant differences exist in their working conditions and responsibilities which mitigate against the finding that any of these possible unit structures is more desirable than a unit limited to all technical assistants. The Hearing Officer recommended that the possible creation of an additional negotiations unit of all technical assistants would not result in the deleterious effects of unit proliferation and fragmentation within the College, given the existing structure of negotiations units and the extent of representation among all College employees.

10. None of the parties has excepted to the Hearing Officer's conclusion that the most appropriate unit herein is a unit


comprised of all technical assistants. The undersigned, having reviewed the entire record, agrees with the Hearing Officer's factual findings and adopts his recommendation as to the appropriate unit for technical assistants, substantially for the reasons cited by him in his Report. The Hearing Officer properly considered the arguments advanced by the parties and additionally considered the various other unit structure possibilities. The Hearing Officer correctly concluded that the community of interest among all technical assistants was so substantial that the appropriate unit must contain all technical assistants. As the Hearing Officer correctly concluded, the placement of technical assistants in different units would result in the unfavorable effects of whip-sawing among employees who share substantially common benefits and would be antithetical to appropriate unit placement and stable labor relations. Accordingly, the undersigned determines that the most appropriate unit for the representation of technical assistants is a unit comprised of all instructional and noninstructional technical assistants and senior technical assistants.

11. Since the Petitions filed by the Federation and the Association are dismissed and since no employee representative, at this time, seeks to represent the employees in the appropriate unit, the undersigned need not consider the identification of the specific disputed titles as either professional or paraprofessional positions or confidential positions. The number of employees in dispute is limited to four employees. The undersigned notes that if a Petition

is filed seeking to represent the appropriate unit, any disputes as to these employees may be resolved in that proceeding with the benefit of the factual record developed in the hearing in these proceedings and with the addition of any further factual material relevant to such proceeding. Therefore, the determination herein shall not effect current unit placement, if any, of the disputed personnel.

Accordingly, for the above reasons, the undersigned determines that the most appropriate unit for the representation of technical assistants is a unit comprised of all instructional and noninstructional technical assistants and senior technical assistants. The Federation's Petition and the Association's Petition are hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: October 29, 1979
Trenton, New Jersey

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

In the Matter of

MERCER COUNTY COMMUNITY COLLEGE,
Public Employer,

-and-

Docket No. RO-77-12

MERCER COUNTY COMMUNITY COLLEGE
FEDERATION OF SECRETARIAL, CLERICAL
AND TECHNICAL EMPLOYEES, LOCAL 2319, AFT,

Petitioner.

MERCER COUNTY COMMUNITY COLLEGE,
Public Employer,

-and-

Docket No. RO-77-14

MERCER COUNTY COMMUNITY COLLEGE FACULTY
ASSOCIATION,

Petitioner.

SYNOPSIS

On the basis of evidence taken at a hearing in a representation proceeding, a Commission Hearing Officer recommends that the consolidated petitions seeking certification to represent Technical Assistants, Senior Technical Assistants and certain other employees of Mercer County Community College be dismissed.

In making this determination, the Hearing Officer finds that the Technical Assistants and Senior Technical Assistant positions, the Research Assistant and the position occupied by M. Schiff in the Office of College Publications and Information Services are paraprofessional positions. Under the circumstances herein, the Hearing Officer determines that the most appropriate unit for collective negotiations is an employer-wide paraprofessional unit including all Technical Assistants, Senior Technical Assistants, the Research Assistant and the position occupied by M. Schiff in the College Publications Office. The Hearing Officer further concludes that the Coordinator of Scheduling and Records is a professional-level position and is not appropriately included in the above-designated unit. Finally, the Hearing Officer finds that the Senior Technical Assistant in the Office of Personnel Services is a confidential employee and thus should be excluded from the above-designated unit.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, any exceptions 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. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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

In the Matter of

MERCER COUNTY COMMUNITY COLLEGE,

Public Employer,

-and-

Docket No. RO-77-12

MERCER COUNTY COMMUNITY COLLEGE
FEDERATION OF SECRETARIAL, CLERICAL
AND TECHNICAL EMPLOYEES, LOCAL 2319, AFT,

Petitioner.

MERCER COUNTY COMMUNITY COLLEGE,

Public Employer,

-and-

Docket No. RO-77-14

MERCER COUNTY COMMUNITY COLLEGE FACULTY
ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer
Smith, Stratton, Wise & Heher, Esqs.
(Garrett M. Heher, Of Counsel)

For the Petitioner Federation
John Fallon, Staff Representative

For the Petitioner Association
Sterns, Herbert & Weinroth, Esqs.
(Michael J. Herbert, Of Counsel)

HEARING OFFICER'S REPORT
AND RECOMMENDATIONS

Pursuant to the New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-1 et seq. (the "Act") a Petition for Certification of Public Employee

Representative (Docket No. RO-77-12) was filed with the Public Employment Relations Commission (the "Commission") on August 10, 1976, by the Mercer County Community College Federation of Secretarial, Clerical & Technical Employees, Local 2319, AFT (the "Federation"), seeking to add certain employees of Mercer County Community College (the "College") -- non-instructional Technical Assistants and non-instructional Senior Technical Assistants ("non-instructional TAs") ^{1/} -- to the negotiating unit represented by the Federation. ^{2/} On August 11, 1976, the Mercer County Community College Faculty Association (the "Association") filed a Petition for Certification of Public Employee Representative (Docket No. RO-77-14) seeking to add certain employees of the College - instructional Technical Assistants and instructional Senior Technical Assistants ("instruc-

~~*The undersigned has adopted the following system for transcript reference: T1 for hearing date March 1, 1977, T2 for April 1, 1977, T3 for May 3, 1977, T4 for September 19, 1977, T5 for September 20, 1977 and T6 for September 21, 1977.~~

- ^{1/} The specific titles and positions sought by the Federation are listed in Joint Exhibit 7 ("Exhibit J7"). The undersigned has utilized the term "non-instructional TAs" in this Report as a shortened reference to this employment grouping. This term was utilized solely for ease of reference; conclusions reached concerning the functions performed by this group of titles are set forth below.
- ^{2/} The negotiations unit currently represented by the Federation is set forth in Exhibit J2 (Article 1 -- Recognition), the collective negotiations agreement between the College and the Federation, covering 1975-77, as follows:

The Board hereby recognizes the Union as the exclusive collective negotiations representative...of supportive staff in the following categories of employment: Admissions Clerk, Messenger Driver, Registrar Clerk, Library Clerk, Administrative Typist, Mail/Duplicating Clerk, Switchboard Receptionist, General Secretary, Counseling Secretary, Bookstore Clerk, Key punch Operator, Bookkeeper, Department Secretary, Film & Media Materials Specialist, Administrative Secretary, Senior Registrar Clerk, Bookstore Receiving Clerk, Sr. Key punch Operator, Sr. Bookkeeper, Financial Aid Assistant, Sr. Administrative Secretary, Computer Operator, Principal Bookkeeper, Public Affairs Assistant, Programmer, Recorder, Library Key punch Operator/ Clerk, Offset Operator, Senior Switchboard Receptionist.

Employees in the following offices are specifically excluded from the Unit: President, Assistant to the President, Dean for Planning & Development, Dean of Administrative Services, Director of Personnel Services.

tional TAs") ^{3/} -- to the negotiating unit represented by the Association. ^{4/}
 Pursuant to N.J.A.C. 19:11-7.4(b), on November 30, 1976, the Director of Representation issued an Order Consolidating Cases with reference to the above petitions. Pursuant to a Notice of Hearing, hearings were held before the undersigned Hearing Officer on March 1, April 1, May 3, September 19, 20 and 21, 1977, in Trenton, New Jersey, at which all parties were given an opportunity to examine witnesses, to present evidence and to argue orally. All briefs were submitted by the parties by February 3, 1978. Upon the entire record in this proceeding, the Hearing Officer finds:

1) Mercer County Community College is a Public Employer within the meaning of the Act, is subject to its provisions and is the employer of the employees who are the subject of this proceeding.

2) The Mercer County Community College Federation of Secretarial, Clerical and Technical Employees, Local 2319, AFT and the Mercer County Community College Faculty Association are public employee representatives within the meaning of the Act and are subject to its provisions.

^{3/} The specific titles and positions sought by the Association are listed in Exhibit J6. The undersigned has utilized the term "instructional TAs" in this Report as a shortened reference to this employment grouping. This term was utilized solely for ease of reference; conclusions reached concerning the functions performed by this group of titles are set forth below.

^{4/} The negotiations unit currently represented by the Association is set forth in Exhibit J1 (Article I -- Recognition), the collective negotiations agreement between the College and the Association, covering 1976-79, as follows:

The Board...hereby recognizes the Mercer County Community College Faculty Association, Inc. as the exclusive representative for collective negotiation in a unit of Mercer County Community College employees set forth in paragraph B hereof...

The employees included are: Full-time teaching faculty, full-time professional personnel of the Library, Media Center, Academic Skills Department, and Student Personnel Services with academic rank.

The employees excluded are: Administrative officers and administrative staff, part-time faculty and other part-time professional staff, Technical Assistants, non-professional staff, craft employees and policemen, supervisors and managerial executives and registrars, Professional Support Personnel (without faculty rank).

3) The Federation has filed a petition seeking to add the non-instructional TAs to the negotiations unit of supportive staff personnel ("Federation unit") which it currently represents; the Association filed a petition seeking to add the instructional TAs to the negotiations unit of faculty and certain professional personnel with academic rank ("Association unit") which it currently represents. The College objected to the appropriateness of the units sought and thus has declined to consent to a secret ballot election in either of the above matters. Accordingly, a question concerning representation exists and the matter is properly before the Hearing Officer for a Report and Recommendations.

I. POSITIONS OF THE PARTIES

(A) The Association Position

The Association contends that the instructional TAs perform teaching responsibilities and hence properly belong in the Association unit. In its brief, the Association refers to Exhibit J4, the "Report of the Joint Review Committee on TA Assignments and Supervision,"^{5/} wherein the Joint Review Committee ("JRC") found that TAs had supervised more than 800 instructional hours during one academic year. The Association points out that several academic departments indicated to the JRC that TAs teach.

The Association emphasized the testimony of the two instructional TAs and one faculty member who testified concerning the instructional role assumed by instructional TAs within the College structure. In his testimony, the President of the Association compared terms and conditions of employment of the Association unit to those of the instructional TAs and concluded that the terms

^{5/} The members of the Joint Review Committee ("JRC") were: Vernon O. Crawley, Associate Dean of Faculty - Chairman, Robert D. Bolge, President, Faculty Association, Thomas N. Wilfrid, Assistant Dean of Faculty (now Executive Assistant to the President), Francis A. Sakiey, Vice President, Faculty Association (now President of the Association), and Douglas L. Moser, Senior Technical Assistant.

and conditions of these two groups were quite similar.

Reviewing the testimony presented by the Federation's witnesses, the Association concluded that the functioning of the instructional TAs was different from that of the non-instructional TAs, who did not teach but performed a "supportive function."

Citing State of New Jersey v. Prof. Assn. of the New Jersey Dept. of Education, 64 N.J. 231 (1974), the Association contends that in creating units for collective negotiations, the principles of broad-based unit construction and avoidance of unit fragmentation must prevail. The Association argued that the instructional TAs are professional employees within the meaning of the Act. ^{6/}

The Association claims that a substantial community of interest exists between the instructional TAs and the Association unit employees such that would warrant the inclusion of the instructional TAs in the Association unit.

(B) The Federation Position

The Federation maintains that a community of interest exists between the non-instructional TAs and the Federation unit employees and accordingly that the non-instructional TAs should be added to the Federation unit.

The Federation adopted the various statements and conclusions set forth in the Association's brief. The Federation contended that various functions and terms and conditions of employment were similar for the non-instructional TAs and its unit. Finally, the Federation urges that the Commission utilize "an appropriate unit" standard rather than the most appropriate unit standard in rendering a determination herein.

^{6/} N.J.A.C. 19:10-1.1(a)(21).

(C) The College Position

The College disagrees with the unit placement sought for the TAs by both the Association and the Federation. The College contends that TAs are paraprofessional employees and accordingly that the appropriate unit herein is one of all TAs, both instructional and non-instructional.

The College notes that since their inception TAs have been viewed and treated as a distinct group of employees within the College community who were governed by certain specific terms and conditions of employment. The College claims that its use of TAs resulted from its policy of "differentiated staffing" -- that is, the premise that the teaching function can be separated into professional and paraprofessional components. The College claims that the TA role has been that of a paraprofessional -- clearly distinguishable from both the role of the professional staff and that of the supportive staff.

The educational background of TAs is claimed to be considerably different from that of both the professional and the supportive staff at the College. It is asserted that TAs operate with greater independence than the support staff but with less independence than the professional staff.

The College admits that instructional TAs do in fact teach but only to a limited extent and in a way much different from that teaching done by faculty. The College describes the role of the paraprofessional as being "primarily to supervise the learning activities" of students, which activities have been designed by the faculty.

The College notes that all TAs share the same terms and conditions of employment.

The College argues that in determining the most appropriate unit for negotiations the Commission should not only give due regard to community of interest among the employees concerned but that consideration should also be

given to the needs of the employer, the employees and the public.

Finally, in conjunction with its argument that TAs are paraprofessional employees with a strong community of interest among themselves, the College contends that four of the positions petitioned for by the Federation should be excluded from both the unit petitioned for by the Federation and the College's asserted most appropriate unit. The College contends that the positions of Publication Specialist (occupied by M. Schiff), Research Assistant (occupied by E. Rhodes) and Coordinator of Scheduling and Records (occupied by J. Sennett) are professional positions and accordingly should not be in the unit with TAs.

Finally, the College argues that the Senior TA position (occupied by T. Babbitts) within the Office of Personnel Services is a confidential position and hence should be excluded from any collective negotiations unit.

II. STATEMENT OF ISSUES

Based upon the foregoing positional statements of the parties and the record, the following primary issues are presented for determination herein:

- a) What is the most appropriate collective negotiations unit (or units) for the TAs and Senior TAs employed by MCCC?
- b) Are the titles of Publication Specialist, Research Assistant and Coordinator of Scheduling and Records appropriate for inclusion in a unit (or units) with TAs?
- c) Is the Senior TA position within the Office of Personnel Services a confidential position within the meaning of the Act and thus not appropriate for inclusion in a negotiations unit (or units) of TAs?

III. ANALYSIS AND DISCUSSION OF LAW AND FACTS

(A) The Appropriate Unit Issue: Discussion of Law

In the instant matter, the Hearing Officer must make recommendations for the appropriate unit (or units), in the first instance, for TAs employed by the College. The issues presented herein are not new to this agency; however, the particular facts of this case -- the employee positions involved, the functions associated with those positions, the requirements for the positions, the historical treatment of the positions, and the context in which they arise -- are unique. The findings and recommendations herein are based upon the record; however, the undersigned has looked for guidance from the Act, from decisions of the courts of this State and from prior decisions of the Commission which have dealt with similar subject matter. The undersigned also researched decisions from the courts and public sector labor relations agencies of other jurisdictions.

N.J.S.A. 34:13A-6(d) provides that the Commission shall determine the appropriate unit for collective negotiations. In State of New Jersey v. Prof. Assn. of the New Jersey Dept. of Education ("State Professional case"), ^{7/} the New Jersey Supreme Court stated:

Since, as already indicated, more than one proposed unit may well have attributes of appropriateness, and it is essential for the functioning of the statutory scheme that a designation of a single unit be arrived at in a contested case, as here, the Commission had no choice but to determine the unit it deemed best and accordingly to designate either a unit proposed by one of the parties or to specify one of its own conception, as guided by the evidence, its expertise and the statutory criteria. ^{8/}

^{7/} State of New Jersey v. Professional Association of the New Jersey Department of Education, 64 N.J. 231 (1974).

^{8/} Id. at 257.

Thus, the Commission must, in disputed cases as here, determine the unit it deems the most appropriate for purposes of collective negotiations. ^{9/}

N.J.S.A. 34:13A-5.3 further states that negotiations units shall be defined with due regard for community of interest. ^{10/} However, pursuant to the decision of the New Jersey Supreme Court in the State Professional case, giving due regard to community of interest does not require exclusive reliance be placed thereon. ^{11/} The Commission has made such unit determinations within the framework of the general statutory intent and purpose of promoting permanent employer-employee peace, ^{12/} or as the New Jersey Supreme Court has stated, "...the establishment and promotion of fair and harmonious employer-employee relations in the public sector." ^{13/}

The Commission has favored the formation of negotiations units in the public sector along broad-based, functional lines rather than by distinct occupational groupings. ^{14/} In several decisions involving employees of public

^{9/} In re City of Camden Board of Education, E.D. No. 76-32, 2 NJPER 123 (1976); In re Borough of New Milford, E.D. No. 76-42, 2 NJPER 199 (1976); In re Essex County Board of Chosen Freeholders, D.R. No. 78-16, 3 NJPER 336 (1977).

^{10/} While community of interest is an "elusive concept," the Commission has noted in various matters that a number of factors have been identified as useful indicators thereof. See generally, West Orange Bd. of Educ. v. Wilton, 57 N.J. 404, 420 (1971). In In re State of New Jersey, P.E.R.C. No. 68, p. 6 (1972), the Commission stated: "in given cases, some factors are emphasized over others, with still others regarded as insignificant; in other fact settings the weight given the same indicators may be substantially altered. It is essentially a question of weighing the facts in each case and deciding what will best serve the statutory policy."

^{11/} State Professional case, supra, n. 7. The Act does set forth some guidelines for the determination of units for negotiations; see, N.J.S.A. 34:13A-6(d).

^{12/} N.J.S.A. 34:13A-2.

^{13/} Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971).

^{14/} In ~~the~~ State Professional case, the Supreme Court endorsed the Commission's adoption of the concept of broad-based, functional negotiating units. See also, In re State of New Jersey (Neuro-Psychiatric Institute, et al.), P.E.R.C. No. 50 (1971), In re Bd. of Chosen Freeholders of the County of Burlington, P.E.R.C. No. 58 (1971), In re Bergen County Bd. of Chosen Freeholders, P.E.R.C. No. 69 (1972), and In re State of New Jersey (Prof. Association of N.J. Department of Education, et al.), P.E.R.C. No. 68 (1972).

boards of education, employers have claimed that a proposed unit of professional and nonprofessional school employees lacked a community of interest, and accordingly, refused to consent to elections in such units. The undersigned notes that the Commission has held that a community of interest exists between these professional and nonprofessional school employees. The Commission has found generally that a community of interest arises among employees in a school district because such employees have a common employer, generally common work sites and have similar goals and purposes -- to educate students. ^{15/}

Consistent with the foregoing policy favoring the formation of broad-based, functional units for negotiations, the Commission also developed a line of decisions which assert that an established structure for negotiations should not be altered or upset by the filing of a severance petition except for clear and compelling reasons. In In re South Plainfield Board of Education, ^{16/} the Commission considered the question of whether school nurses should be separated from an existing negotiations unit of teachers, nurses, counsellors and librarians. The Commission stated:

...under all the circumstances of this case, that it is not appropriate to permit the separation of nurses from the contract unit. It is not enough to observe that nurses enjoy a community of interest among themselves. Any group having common qualifications, duties and conditions of employment will meet this test. The issue is whether their interests are so distinct from those with whom they were formerly grouped as to negate a community of interest. ^{17/}

In another severance matter, In re Jefferson Township Board of Education, ^{18/} the Commission stated:

^{15/} See, In re Montgomery Twp. Bd. of Educ., P.E.R.C. No. 27 (1969); In re West Milford Twp. Bd. of Educ., P.E.R.C. No. 56 (1971); In re Asbury Park Bd. of Educ., E.D. No. 76-41, 2 NJPER 170 (1976); In re Wildwood Bd. of Educ., D.R. No. 79-20, 5 NJPER (Para 10054 1979).

^{16/} In re South Plainfield Bd. of Educ., P.E.R.C. No. 46 (1970).

^{17/} Id. at 6, 7.

^{18/} In re Jefferson Twp. Bd. of Educ., P.E.R.C. No. 61 (1971).

The underlying question is a policy one: assuming without deciding that a community of interests exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. ^{19/}

The Commission has also rejected requests for narrow units in the first instance where the record indicates the existence of a comparatively similar group of unrepresented employees. In In re New Jersey State College of Medicine and Dentistry ("N.J.C.M.D."), ^{20/} the Director of Representation dismissed a petition seeking the establishment of a unit limited to pharmacists at the College. The Director determined that the proposed unit was inappropriate in light of the large number of still unrepresented professional employees employed by the College and concluded that the record did not establish that pharmacists had such a unique set of interests as to warrant representation apart from the remaining professional employees of the College.

Indeed, these Commission unit determinations follow a central theme -- that the most appropriate unit normally consists of the broad-based unit. In upholding the Commission's decision ^{21/} in the State Professional case, the New Jersey Supreme Court quoted the "gravamen" of the Commission's decision:

Given the policy considerations of this statute, the Commission believes that the characteristics of a particular profession should not be the determinant in establishing units for negotiations. If community of interest is equated with and limited to such characteristics, the stability and harmony which this Act was designed to promote are in jeopardy. Potentially, every recognized professional group would be segregated, presenting the Employer with multiplicity of units and the likelihood of attendant problems of com-

^{19/} Id. at 4. Accord, In re Nassau County Bd. of Cooperative Educational Services, 4 P.E.R.B. 4023 (1971), In re Town of Hempstead School District, 5 P.E.R.B. 4034 (1972). See discussion infra at 25.

^{20/} In re New Jersey State College of Medicine and Dentistry, D.R. No. 77-17, 3 NJPER 178 (1977).

^{21/} In re State of New Jersey, P.E.R.C. No. 68 (1972).

peting demands, whipsawing, and continuous negotiations which, disregarding the Employer's inconvenience, are not judged to be in the public interest. Fragmentation to that degree cannot be justified.... 22/

The broad-based unit is considered preferable insofar as it eliminates the potential for fragmentation. However, as was recognized in the N.J.C.M.D. case, fragmentation is a relative consideration depending upon the circumstances in which it arises.

In the N.J.C.M.D. case, the Director of Representation stated:

First, the Society argues that it was improper for the Hearing Officer to speculate about the potentiality for fragmented units of professional employees in the absence of a factual record to demonstrate that the professionals, other than pharmacists, were moving in the direction of organizing along separate occupational lines. The undersigned does not agree. The potentiality for fragmentation was an appropriate and, indeed, necessary consideration for the Hearing Officer to take into account. The Commission need not be confronted with several representation petitions seeking separate and limited units, or a factual record indicating separate organization among groups of employees, to consider the effects of fragmentation....the concern for a proliferation of negotiations units is an integral factor in determining the threshold question of unit appropriateness and is part of the consideration relevant to an initial determination pursuant to the statutory community of interest standard. 23/ (emphasis added)

Fragmentation takes on different meanings depending upon the extent to which fragmentation is possible. Thus, a unit designation which leaves a residuum of unrepresented employees from which only one or two possible additional units may spring must be viewed differently from circumstances in which the residuum may constitute the basis for a multiplicity of possible units.

In considering the question of the appropriate unit for the TAs, several major alternative choices developed herein: (1) Petitioners' position --

22/ State of New Jersey v. Professional Assn. of N. J. Department of Education, 64 N.J. 231, 241 (1974), quoting In re State of New Jersey, P.E.R.C. No. 68 at 7 (1972).

23/ N.J.C.M.D. case, supra n. 17, at 5.

all instructional TAs be placed in the Association unit and all non-instructional TAs be placed in the Federation unit; (2) College's position -- all TAs be placed in one unit of paraprofessionals; (3) all TAs be placed in the Association unit; (4) all TAs be placed in the Federation unit; (5) all TAs be placed in the existing professional unit of educational administrators. Cases from other public sector jurisdictions concerning technical assistant-type titles ^{24/} reveal support for each of the above positions. A brief review of the most relevant cases follows:

In In re Allegheny County Community College, ^{25/} a petition was brought for a de novo unit ^{26/} of teaching faculty, librarians, lab technicians, audiovisual technicians, and library technicians at a newly created college. The Pennsylvania Board found that the technicians required an Associates degree, assisted the faculty and librarians, were treated as a distinct group of employees and were paraprofessionals. Deeming the petitioned-for unit to be appropriate, the Board ordered an election therein. ^{27/}

In In re San Diego Community College, ^{28/} the California Education Employment Relations Board upheld a hearing officer's inclusion of administrative aides in an office-technical unit. The Service Employees International Union ("SEIU") contended that the administrative aides and several other titles in issue were professional employees and thus should be included in a unit of

^{24/} The Hearing Officer utilizes the term technical assistant-type titles advisedly. Other public sector cases refer to a plethora of titles generally similar to the Technical Assistants herein; similarities may be based upon one or more of the following: level of skill and formal training, job functions, salary and fringe benefits and similarity of treatment in comparison to other employees of the employer. The titles themselves have been given a wide range of names: Technical Assistant, College Assistant, Instructional Assistant, Laboratory Assistant, Administrative Assistant, Faculty Aide, Teacher Aide, Administrative Aide, Staff Aide, etc.

^{25/} In re Allegheny County Community College, 1 P.P.E.R. 96 (1971).

^{26/} The undersigned has utilized the term de novo unit or de novo unit situation to indicate circumstances where there was no previous negotiations unit structure for the employees being sought.

^{27/} See generally, In re New York City Bd. of Higher Ed., 1 P.E.R.B. 4018 (1968).

^{28/} In re San Diego Community College, Cal. E.E.R.B. No. 28 (1977).

professional employees -- although no unit of professional employees was then extant. The College and the Classified Employees Association contended that the administrative aides were not professionals and that such employees had no separate community of interest. The College further contended that these employees were supervisory and/or confidential. The hearing officer found that administrative aides were employed to provide information and assistance to directors and administrative assistants, who are either managerial or supervisory personnel. The aides provided legislative analysis that was utilized in further research. Finding no supervisory or confidential components in the administrative aides' function and finding no support for the contention that the administrative aides lacked a community of interest with the office-technical unit, the hearing officer included the administrative aides in said unit. ^{29/}

In In re Great Neck Board of Education, ^{30/} the Paraprofessionals Association filed a petition for a unit of all paraprofessionals (all aides - instructional, non-instructional, cafeteria and clerical) employed by the board of education. The employer concurred with the unit of all paraprofessionals. The Office Staff Association contended that the clerical aides should be placed in its office services unit.

PERB determined that instructional aides assisted teachers in the classroom and were required to have two years of college and some teaching experience. Non-instructional aides and cafeteria aides supervised students during various activities on school grounds. They were required to have a high school diploma

^{29/} Cf., In re Nassau County Bd. of Cooperative Educational Services, 4 P.E.R.B. 4338 (1971), where in a severance context, the New York Public Employment Relations Board found that teacher aides who function at the direction of a teacher and who assist with instructional activity in the classroom, nevertheless share a sufficient community of interest in the overall non-professional unit so that a separate unit of teachers aides was not deemed the most appropriate unit. See, In re Town of Hempstead School District, 5 P.E.R.B. 4034 (1972).

^{30/} In re Great Neck Board of Education, 5 P.E.R.B. 4049 (1971).

and experience working with children. Clerical aides did not need a high school diploma but were required to type, file, record grades and take inventory. All aides took direction from teachers or administrators and there was significant interchange among the aides. PERB determined that the most appropriate unit therein was one of all aides employed by the board.

In In re Pittsburg Board of Education, ^{30/} the California School Employees Association filed a petition for all classified employees, including: instructional aides, clerical/secretarial employees, operations and maintenance employees, food service employees, and transportation employees. The Pittsburg Federation of Teachers filed a petition for all paraprofessional employees -- all aides (instructional, shop, clerical, health, campus and community aides) and pupil liaison personnel.

The California Board concluded that instructional aides worked in the classroom assisting in the instruction and supervision of students. The remaining aides and liaison employees performed a variety of specialized services including assisting with student health examinations and working with students, parents, teachers and administrative personnel to provide counselling and administrative services. Clerical aides performed traditional clerical functions.

The aides all worked a 10-month year and had different salary schedules and supervision from other board employees. The California Board concluded that a separate unit of paraprofessionals -- aides (except clerical aides) -- was appropriate. The overall unit sought by the Association was deemed inappropriate. ^{32/}

Clearly, both similarities and distinctions may be drawn from these cases to the instant matter.

30/ In re Pittsburg School District, Cal. EPER.B. No. 013 (1976).

32/ Accord, In re Swadlow High School District, Cal. EPER.B. No. 4 (1976).

The Allegheny case would tend to support placement of all paraprofessionals in the Association unit; however, it is distinguishable from the instant matter primarily and importantly on the basis of the unit standard which was applied by the Pennsylvania Board -- as they are statutorily required to do, the Board applied "an appropriate unit" standard. Under that standard, the Board determined that in a de novo unit situation, a unit comprised of professional and paraprofessional employees was appropriate for collective negotiations.

The San Diego matter mitigates in favor of placement of administrative-type employees into an office-technical unit. There was no finding as to whether these employees were professional or paraprofessional. Also occurring in a de novo unit situation, the California Board determined that the overall unit was inappropriate and that the administrative aides should be placed in the office-technical unit.

Finally, both the Great Neck and Pittsburg cases indicate that a unit of all paraprofessionals -- both administrative and instructional paraprofessionals -- was the most appropriate unit for collective negotiations. While both of these cases occurred in sizable school districts as opposed to a college situation, the undersigned is persuaded that they are appropriate for application herein. In the Great Neck matter, a group of previously unorganized employees -- all paraprofessionals (all aides) -- was sought by two organizations in two different unit configurations: the Paraprofessionals Association contended all paraprofessionals should be in one overall paraprofessional's unit; the Office Staff Association contended that one subgroup of the aides (clerical aides) should be placed in its office services unit. PERB determined the most appropriate unit was that of all aides in an overall unit of paraprofessionals. The titles at issue in the Pittsburg matter, although again a de novo unit situation, were quite similar to the titles at issue herein. These titles were para-

professionals who dealt with students and faculty in both instructional and administrative capacities and were clearly distinguishable from the wider group of classified employees into which one petitioning organization sought to place them. The California Board found the unit of all paraprofessionals (all aides) to be the appropriate unit.

Finally, the undersigned notes that in a recent situation wherein a ~~board of education refused to consent to an election~~ ^{The Appropriate Unit Issue: Discussion of Facts} in a unit of all aides employed by the board, the Director of Representation determined that the petitioned-for unit (all aides) was an appropriate unit for collective negotiations and directed an election therein. 33/

(B) The Appropriate Unit Issue: Discussion of Facts

MCCC is a two-year, publicly supported, coeducational institution within the State of New Jersey's higher education system. The collective negotiations unit structure of the College is as follows: (1) the Faculty Association unit, containing approximately 128 full-time teaching faculty, librarians and counselling personnel. (2) The Federation unit, containing approximately 80 employees in various secretarial, clerical and technical titles. (3) The Local 2473, AFSCME unit, containing employees in custodial, maintenance and security titles and (4) the Professional Staff Association, a newly formed unit containing employees in professional-administrative staff titles. The instructional TAs sought by the Association number 25; the non-instructional TAs sought by the Federation number 27, for a total of 52 TA employees.

(1) Instructional TAs

The instructional TAs are employed on a 12-month basis. They work a 35-hour week and some instructional TAs spend as much as 15-20 of those hours

in classroom contact with students during labs. ^{34/} Several instructional TAs testified that during the hiring process, they were interviewed by the Department Chairperson and either faculty members from that department or members of the professional administrative staff. While there is no requirement for an advanced degree set forth in the official TA job description, ^{35/} among the group of 25 instructional TAs sought by the Association, 3 hold no advanced degree, 10 hold an Associates degree, 11 hold a Bachelors degree and one holds a Masters degree.

The most prominent distinguishing feature about the instructional TAs is their role in laboratory sessions. Lab sessions are scheduled to complement the main course lectures, which are conducted by the regular teaching faculty. The instructional TAs are involved in conducting some, but not all, lab sessions. ^{36/} They are present during lab sessions to answer students' questions. During certain lab sessions, they supervise the students' activities. In some courses in the Biology/Chemistry Department, the instructional TAs conduct a 30 to 60-minute pre-lab discussion concerning the general topic area of the day's experiment, the object of the experiment, and the techniques which must be utilized to perform the exercise. In the Engineering/Architecture Department, in addition to discussing the general topic area and experimental technique, the instructional TAs also discuss potential hazards with materials and equipment and the proper operation of the equipment needed. The instructional TAs sometimes introduce new material or go over problems or prepared written materials distributed by the course coordinator. ^{37/} Instructional TAs have found it

^{34/} T1/39. T2/10.

^{35/} Exhibit J4, Appendix II.

^{36/} Instructional TAs become involved only in certain courses. Some courses' labs are deemed too complex for the TA function to operate properly. In other courses in which TAs are involved, their function is limited to "less instructional" portions of the activity, such as simply overseeing the lab. T1/53-56, 63, 68. T5/120-24, 126, 128.

^{37/} T1/40. T2/10, 89.

necessary to spend considerable time preparing for their instructional activities. Some instructional TAs maintain office hours for handling student questions about course material.

Instructional TAs in the Biology/Chemistry and the Engineering/Architecture Departments grade quizzes (not exams) given during the lab sessions which they conduct. The quiz grades plus review of assigned worksheets and lab performance constitute a student's "lab grade." Some instructional TAs are responsible for determining the lab grade, which never formally appears anywhere as such; rather, the lab grade becomes a component of the overall course grade, which is the responsibility of the course coordinator -- i.e., a faculty member. On the other hand, some instructional TAs do not prepare, administer or grade quizzes.

The instructional TAs have no responsibility for planning departmental curricula or for input into course outlines. ^{38/} The record indicates that they have no significant input into course content; ^{39/} that is clearly the domain of the teaching faculty. Most of the professional contact concerning course content between instructional TAs and faculty is undertaken to "coordinate" the materials presented in labs with those presented in the lectures.

An instructional TA may sometimes fill in for an absent faculty member who is the coordinator for a course in which the instructional TA conducts the lab; sometimes another faculty member fills in. Precisely who fills in would depend on a number of circumstances, including the general availability of staff. ^{40/} Conversely, when an instructional TA is absent, another TA usually fills in; however, in certain instances, a faculty member has filled in. ^{41/}

^{38/} T1/51. T2/93.

^{39/} T1/51. T2/17, 52.

^{40/} T1/45. T2/46. The record indicates that one instructional TA has filled in for a faculty member approximately twice per year, and when he has done so, that TA has utilized the faculty member's lecture notes. T2/70.

^{41/} T2/43.

The instructional TAs are evaluated twice per year, primarily by the Department Chairman, on a form specifically designed for that purpose. ^{42/} The faculty members for whom the instructional TA works have regular input into the evaluation. ^{43/} The instructional TAs attend faculty meetings within their respective departments. However, they participate in those meetings only when the topic discussed directly affects them and they are not permitted to vote at these meetings. ^{44/} Finally, the instructional TAs fully participate in the College Senate, as do the faculty, administrators and the students of the College.

In its final report, ^{45/} the Joint Review Committee on Technical Assistant Assignments and Supervision stated that instructional TAs supervised 835 instructional hours during fiscal 1974-75, which figure comprised 13.1% of the total instructional hours which took place during that year. The JRC also observed that the TA job description gave little recognition to the instructional component of the tasks performed by instructional TAs. ^{46/}

(2) Non-Instructional TAs

The non-instructional TAs are also employed on a 12-month, 35-hour per week basis. The non-instructional TAs are primarily located outside the academic departments -- of the 27 claimed non-instructional TAs, three are in academic departments, the balance in other departments. However, the non-instructional TAs work closely with both faculty and instructional TAs. The primary focus of

^{42/} Exhibit J4, Appendix 4.

^{43/} T1/45. T2/41. The Hearing Officer also notes that faculty members assigned to supervise TAs are compensated therefor. T5/36. Exhibit J1, Art. 12, Sec. D.

^{44/} T2/59, 42.

^{45/} The JRC's final report is Exhibit J4. The JRC was developed in response to an Association grievance contending that instructional TAs were teaching -- i.e. performing Association unit work. The JRC report was issued on May 7, 1975. The JRC contained representatives of the College, the Association and instructional TAs. The Report addresses (a) the utilization of instructional TAs and the concept of "differentiated staffing" by the College (b) problem areas concerning instructional TAs and (c) recommendations for alleviating some difficulties and identifying specific areas for attention.

^{46/} Exhibit J4, p. 2, 3.

the non-instructional TAs is to provide various non-instructional services to the College. Most non-instructional TAs provide services which are directly supportive of and are well-integrated into instructional activity at the College. On the other hand, a few of the non-instructional TAs provide services which are less directly related to instructional activity and are administratively oriented. Among the group of 27 non-instructional TAs sought by the Federation, 6 hold no advanced degree, 5 hold Associates degrees and 14 hold Bachelors degrees; the record lacks information on two of the non-instructional TAs.

In the Biology/Chemistry Department, there are two non-instructional TAs who are informally called "materials coordinators." They work closely with the instructional TAs and faculty members in the department. The non-instructional TAs share physical facilities with the instructional TAs. The non-instructional TAs coordinate materials and equipment for all the laboratories conducted by the department; they set up labs and assist instructional TAs in setting up labs. The instructional and non-instructional TAs work jointly on projects in the department's greenhouse.

The biology non-instructional TA (Mary McCollough) testified that she has responsibility for procuring technical equipment and materials for the department. In performing this task, she assesses departmental needs, consults with faculty concerning the need for the equipment, researches the types of equipment available and finally purchases the equipment. She is responsible for maintaining, repairing and securing repairs for equipment. She prepares memoranda concerning the proper use of and care for technical equipment. She does inventory and cost studies for budget purposes. She hires and supervises students who work for the department. In performing these tasks, Ms. McCollough indicated that she relies upon expertise gained from her Bachelor of Science degree (biology).^{47/}

The non-instructional TAs in the Academic Testing Center work closely with the faculty and the Center's Director to provide a variety of testing services. These TAs work with the faculty (1) in formulating test items for placement in a computer test-item bank, (2) in generating examinations from the item bank in accordance with instructions from the faculty and (3) completing statistical analyses on the "performance" of test items from the item bank and providing faculty members with that analysis and a recommendation to retain, delete, or modify various test items. 48/

The non-instructional TAs in the Media Center provide a range of different media-type services to assist the faculty in the development of instructional materials. The Media Center TAs assist faculty (a) in determining whether and how various media services may be used in various courses and academic programs and (b) with the development, production and delivery of specific materials for courses.

The Media Center TAs have specialized functions in various media areas -- graphics, photography, illustration, instructional development, television production and media distribution; these TAs perform such diverse tasks as coordination of the distribution of media equipment (which is physically done by students), performance of various tasks in the production of instructional television programs, and the development and production of other art work for use in instruction. 49/

Some of the non-instructional TAs are evaluated twice per year; others are evaluated but once. 50/ Those non-instructional TAs in the academic departments are supervised by the Department Chairperson; those in other areas, such

48/ T4/35-70; T5/14-17.

49/ T6/86-108.

50/ T4/23, 56.

as the Academic Testing Center, are supervised by the area Director. ^{51/} Typing and other such clerical tasks generated by the non-instructional TAs are done by members of the secretarial-clerical staff in the Federation unit. ^{52/}

(3) The Association Unit

Members of the regular faculty of the College are required to have at least a Bachelor of Arts degree; most have a Masters-level degree or higher. Promotions and tenure status are directly related to the level of formal education attained by a faculty member. They work between 35 - 50 hours per week. The Department Chairperson is the supervisor of the faculty members in a given department. Evaluations are completed annually for each faculty member. The Department Chairperson and one faculty member from the department perform evaluations. ^{53/} Faculty members formally participate in the College Senate. Faculty members are able to fully participate in department meetings and vote at said meetings. The department secretary performs all typing and most of the clerical work generated by each faculty member.

The College and the Association have memorialized the functional role of the faculty in Article IV of their collective negotiations agreement (Exhibit J1). The role of the teaching faculty is as follows:

1. Teaching and Advising:

- a. Presenting course content to students;
- b. Guiding student class discussions;
- c. Guiding and assisting students in laboratory, studio, field experience, clinical experience, work experience or other experiential learning activities;

^{51/} The undersigned notes that on Exhibit C-4, a line-chart showing the various divisions of the College and the distribution of faculty, other professionals and TAs therein, the "Director" title in the non-academic departments appears to be in a position similar to that occupied by the Department Chairperson title in the academic departments.

^{52/} T4/31.

^{53/} Faculty members who become involved in faculty evaluations are members of the department personnel committee. Membership on the committee is through election by members of the department.

- d. Evaluating student learning;
- e. Assisting students with coursework;
- f. Assisting students to make decisions regarding courses and programs of study;
- g. Performing essential preparation relative to assigned workload.

2. Instructional Support and Development:

- a. Coordinating courses of instruction;
 - i. managing learning systems;
 - ii. coordinating and/or supervising the instructional efforts of others.
- b. Designing, evaluating and improving courses of instruction, including:
 - i. course objectives;
 - ii. instructional strategies/modes/techniques;
 - iii. methods/systems for evaluating student learning.
- c. Coordinating programs of study:
 - i. coordinating advisement;
 - ii. performing liaison with outside agencies.
- d. Designing, evaluating and improving programs of study.

3. Other Contributions:

- a. Participating in College governance and operations through departmental or committee work, and the like;
- b. Advising extra-curricular student groups or activities;
- c. Representing the College in professional or community activities, student recruiting, and the like;
- d. Otherwise voluntarily contributing to the College or to the community as an identified member of the College Faculty.
- e. Developing individual ability for successful performance. 54/

(4) The Federation Unit

The Federation unit contains over two dozen separate non-professional titles performing various secretarial, clerical and technical functions. ^{55/} Included in the unit are titles such as computer operator, keypunch operator, mail clerk, department secretary, and switchboard operator. ^{56/}

The Federation unit members are supervised -- and evaluated -- by Department Chairpersons in the academic departments or by the Directors who head the various non-instructional departments. Generally, the employees in this unit are required to hold a high school diploma; a college degree is not required for these positions, although some of the employees in this unit do hold college degrees. The secretarial-clerical-technical unit is not represented in the College Senate. Their work week is 35 hours.

(C) The Appropriate Unit Issue: Analysis

The status of TAs within the College is not easily categorized. The Association contends the instructional TAs are professionals; with regard to the non-instructional TAs, the Federation has neither contended that they are professionals or non-professionals; the College contends all TAs are paraprofessionals.

The Commission's Rules define "professional employee" as follows:

...any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The Commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision

^{55/} Exhibit J2, Article I.

^{56/} T3/11-24.

of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists. ^{57/}

While there is no formal requirement that TAs have college training, in actual practice the overwhelming majority of the TAs (about 80%) hold an Associates-level degree or higher. The TA job description indicates that TAs "should have at least an Associates degree in a relevant curriculum, or equivalent"; ^{58/} In the job postings utilized by some departments for TA positions, a college degree is a requirement for the position. ^{59/}

The College has sought to utilize a system of "differentiated staffing" in providing instruction for students -- that is, the separation of the overall educational process into discrete components and the assignment of responsibility for each such component to an appropriately capable staff member. At MCCC, this has involved the assignment of various tasks to the faculty and to TAs. In its Final Report, the JRC addressed the issue of differentiated staffing at the College:

The members of the JRC agree that a differentiated staffing concept is appropriate for an institution such as MCCC. There are many areas in which the teaching function can reasonably be separated into professional and paraprofessional components, for the ultimate benefit of students. The traditional model for differentiated staffing in education is the use of graduate assistants at universities. Recent years have seen significant growth in the utilization of paraprofessionals in elementary and secondary education, and in community colleges. The diverse variety of career programs and specialized courses at MCCC present a number of

^{57/} N.J.A.C. 19:10-1.1(a)(21).

^{58/} Exhibit J4, Appendix II.

^{59/} T4/17, 40, 43. T6/102.

reasonable instructional roles for full-time para-professional employees. The committee also agrees, however, that the evolution of a differentiated staff from a traditional staff presents many problems which must be recognized clearly. ^{60/}

In utilizing the differentiated staffing approach to instruction, the College and its staff -- administrators, faculty and TAs -- have created a functional role for TAs within the College community. ^{61/} While the TA function at the College has not been uniform, ^{62/} a distinctive pattern of TA utilization emerges from the record herein. Generally, the TA role has been well-integrated with the functioning of other College staff -- most notably with faculty and administrative professionals. TAs function in a complementary manner vis-a-vis these two groups.

Some instructional TAs present material and answer students' questions in labs; some prepare, administer and grade lab quizzes and other lab work; some set up labs. The instructional TAs are clearly involved in performing some parts of the functional expectations of faculty as set forth in Article IV of the Association agreement with the College. More specifically, with reference to Article IV, some instructional TAs present "course content" to students (Exhibit J1, Art. IV, (3)(A)(1a)); they assist students in labs (1c); they perform some evaluation of student learning (1d); they assist students with course work (1e); and they perform preparation vis-a-vis assigned workload (1g).

Several observations are pertinent at this juncture. First, instructional TAs are assigned responsibility in only some of the areas of responsi-

^{60/} Exhibit J4, p. 2.

^{61/} There is further discussion of TA functions at p. 17 and at p. 31.

^{62/} The JRC Report buttresses this observation -- the Report is replete with references to a lack of consistency in the use of instructional TAs. Many of the Committee's suggestions for improvement of the overall TA situation involved the clear articulation of both the purpose and appropriate utilization of TAs within the College structure. See Exhibit J4.

bility of the teaching faculty. While these TAs are thus involved in some important aspects of the teaching faculty's role, so also they are never involved in other major aspects of the teaching faculty's role. Second, the primary responsibility for activity in any of the areas set forth above [i.e. J1, Art. IV, (3)(A)(1)(a), (c), (d), (e) and (g)] belongs to the faculty. For example, while TAs present material to students during labs, it is usually closely related and complementary to material already presented by the instructor during the regular class periods. Sometimes class material presented during regular classes is simply repeated during labs. Another example occurs in the area of student evaluation -- while some instructional TAs participate in this process, that participation is severely limited. Where an instructional TA is responsible for formulating a lab grade, that grade never appears in a student's record -- rather, it is given to the instructor to be averaged into the overall course grade. The course grade is strictly the instructor's realm. Finally, all of this involvement by the instructional TAs in the instructional process comes through interaction with and under the direction of the course instructor (a/k/a coordinator). The course instructor is responsible for coordinating and/or supervising the instructional and other efforts of the TAs. ^{63/} In fact, the overall responsibility for a course lies with the instructor -- its design, content, instructional strategies, student evaluation system and overall course improvement.

Non-instructional TAs are also highly interactive with faculty and administrators. Non-instructional TAs who perform a "materials coordinator" function have frequent and extensive interactions with faculty and instructional TAs as discussed above. Media TAs would have occasion to assist teaching faculty with the construction of instructional modes and techniques. The Academic Testing

^{63/} It is clear from the record that the faculty has certain responsibilities for the supervision of TAs. See Exhibit J4, Appendix III; Exhibit J1, Article 12.

Center TAs would have occasion to assist teaching faculty with the construction of systems for evaluating student learning. In addition to performing their functions in consultation with various faculty members, the Media, Academic Testing Center and other non-instructional TAs work under the guidance of their respective department directors and also work with various College administrators.

The foregoing observations are intended to place the various functions of the TAs at the College in some perspective regarding the overall functioning of the College. The TAs function as "assistants" or "resource people" to faculty and administrators. While faculty members or administrators may conceive of or design various "projects," TAs become involved in the execution of various aspects of those projects -- whether it be to assist in some way with the instruction of a course or to assist with developing a mode of instruction for a course. The "assistance" given is very often highly skilled and the people giving it are often highly trained.

While the level of function performed by TAs appears to be more complex in nature than the functions performed by secretarial support personnel -- department secretaries, keypunch operators, mail clerks, etc. -- it is something less than the level of function of faculty and administrative professionals. TAs perform some tasks requiring significant independent input; however, their overall tasks are generated and/or directed by either a faculty member or administrator. Thus, TAs perform some professional-type functions, such as instruction or computer analysis; but they also perform some typically unprofessional, more mundane chores -- setting up/tearing down lab equipment, taking inventory of equipment and supplies, distributing equipment, supplies and written material, and assisting in the supervision of exams.

In addition to the foregoing observation of how TAs have performed, it is interesting to note what "model" the College has sought to create. In attempt-

ing to use the differentiated staffing concept, the College has assigned some professional-level responsibilities to TAs. However, the responsibilities assigned have been specific and have been guided by a professional. Other, less professional functions were also intended for TAs. The TA job description 64/ refers to the TA as a "semi-professional employee." While the job description does not capture the full range of duties performed by TAs, it does show a wide range of functions -- some professional, some non-professional -- is expected. Additionally, the College has referred to the TAs as the "Paraprofessional Staff" in College catalogues dating back to 1971. 65/

TAs have not been historically treated as professionals; however, neither have they been treated as non-professionals. TAs are not required to have college-level training. In fact, most TAs hold at least an Associates degree. This is in notable distinction to faculty members who are required to have a Bachelors degree and whose compensation and rank are directly and closely linked to the level of education attained. On the other hand, secretarial/support personnel are not required to hold any college-level degree and in fact, most do not. TAs are allowed to attend and speak at their department's meetings; however, they cannot vote therein as the professional staff can. Other than TAs, only professional staff attends such meetings. TAs are full participants in the College Senate, with faculty, administrators and students. Neither secretarial/support personnel nor custodial personnel participate therein. TAs have in fact been treated as a separate and distinct, coherent entity by the College. 66/

64/ Exhibit J4, Appendix II.

65/ The undersigned notes that the 75-77 catalogue does not have "Paraprofessional Staff" at the top of the page listing TAs; however, the index of the 75-77 catalogue lists "paraprofessional staff" at page 248, the page on which the TA listing begins.

66/ TAs have a separate job description, personnel policy (setting forth their terms and conditions of employment), and evaluation form; they are separately described in the catalogues and they have a separate budget line from other groups of employees at the College.

Based upon the foregoing, the undersigned concludes that the TA position was conceived and implemented as a paraprofessional one, that by and large, they have been treated and have functioned as paraprofessionals and have been recognized as such by the College community. Accordingly, the undersigned determines that TAs are paraprofessionals.

In considering the unit placement of TAs, the following discussion and comparisons are helpful.

The educational background of TAs -- both instructional and non-instructional -- is somewhat varied. However, most appear to have at least an Associates-level degree. This may be contrasted with the faculty, most of whom hold a Masters-level degree, and the secretarial/support staff, most of whom hold no college degree.

The TAs function in an assistant-like, paraprofessional role vis-a-vis the faculty and other professional staff of the College. The TAs' Associates level of training (or higher level in some cases) appears necessary for the kinds of tasks which they perform. Faculty members clearly function at a professional level while secretarial/support personnel function at a non-professional level.

The record indicates that in each department or subdivision of the College, the line supervisor (within the meaning of the Act) for all employees in the department or subdivision is either the Department Chairperson or the Department Director.

In reviewing the salary and benefits accorded to faculty, secretarial/support staff and TAs, several preliminary observations are appropriate. Note that the salary and benefits of the Association and Federation units are collectively negotiated with the College; the salary and benefits of TAs are determined by the College. Similarities and differences may be discerned in comparing the

terms and conditions of employment of all three groupings of employees.

There is no salary distinction between instructional and non-instructional TAs. There is no increment schedule; rather, there is a minimum/maximum range for the TA and Senior TA positions. Neither the Association unit nor the Federation unit have increment systems. They too are paid on the basis of a minimum/maximum range for each position in the unit.

The minimum TA salary for 1976-77 was \$7900 per year; the maximum Senior TA annual salary was \$14,675. The minimum 12-month faculty salary (instructor) in 1976-77 was \$11,500; the maximum 12-month faculty salary for this period was \$27,750. The minimum salary for a Federation unit position (group A) in 1976-77 was \$5995 per year; the maximum salary (group E) was \$12,920 annually.

TAs receive 20 vacation days per year, as do 12-month faculty members. Federation unit employees receive 11 vacation days per year during the first five years of employment; thereafter, they receive 16 vacation days per year.

The sick leave provisions for TAs, faculty members and Federation unit employees are all very similar: the employees receive one sick day per month worked; a sick leave bank is established to draw upon; proof of illness may be required by the College and a physical examination of an employee who had been out on sick leave may be required by the College upon the employee's return to work.

TAs work 12 months per year, and 35 hours per week (excluding one hour for lunch each day) over five days. Work substantially beyond 35 hours per week is compensated on an hour for hour basis by compensatory time off or by supplemental pay where comp time cannot be arranged.

Faculty members work either ten months or 12 months per year. A full workload typically consists of 26 contact hours with 1100 student contact hours per academic year. Non-teaching faculty work 35 hours per week. Faculty members are compensated for supervising TAs. They are also compensated for "overload teaching" at a rate of \$290-\$305 per overload contact hour.

Secretarial/support personnel work a 35-hour week (excluding one hour for lunch each day) over five days; normally, these employees work Monday to Friday, 9 a.m. to 5 p.m. Work over 35 hours per week and up to 40 hours is compensated by an additional payment on an hour for hour basis. Work over 40 hours each week is compensated by payment at 1-1/2 times the normal rate of pay.

No clear pattern emerges herein. With regard to their terms and conditions of employment, TAs have neither been treated wholly as professionals nor wholly as non-professionals: salary structure for all three groups is similar; TA salary amounts are closer to those paid non-professionals; TA vacation benefits are similar to those accorded professionals; sick leave benefits are similar for all three groups.

Based upon careful consideration of the entire record herein and the foregoing discussion, the undersigned concludes that the most appropriate unit for collective negotiations for TAs is one employer-wide unit of all TAs and Senior TAs employed by the College.

In considering the TA unit placement question, it appears that TAs have various similarities and differences vis-a-vis other employees of the College. In the College, there exist several bargaining units: administrators, faculty, secretarial/support personnel and blue collar employees. The TAs -- both as one group and as functional subdivisions of the whole (instructional TAs, non-instructional TAs) -- have similar interests to and disparate interest from the other bargaining units.

Overall, there is the natural cohesion among all these employees which arises from their employment by the same employer and from their contributing toward the same overall goals of the College. There are further similarities between the TAs and the various negotiations units -- the instructional TAs and

faculty share certain common interests; the non-instructional TAs have certain similarities with the administrators unit and with the secretarial/support unit. However, there are differences -- significant ones -- between the TAs and these various groupings as well.

However, far and away, TAs as a group have the strongest community of interest with themselves. The TAs -- both instructional and non-instructional -- are all paraprofessionals. They have similar educational backgrounds. They have a similar functional role within the College structure -- that is, while certain differences are apparent in the day-to-day tasks performed by various TAs (as between a biology instructional TA and a media non-instructional TA), the nature of the functions rendered are similar: complexity of task, level of skill and training required to perform the task, decisional independence in performing the tasks, how and where the tasks performed by TAs fit into the College's operations. Salary and benefits for all TAs are virtually identical. They are supervised by either Department Chairpersons or Division Directors, positions which appear similarly situated in the College. TAs -- both instructional and non-instructional -- share physical facilities and often closely work with each other. Occasionally, they substitute for each other. Historically, TAs have been treated as a distinct group by the College. Thus, TAs exhibit a very close community of interest with each other.

In a de novo, uncontested unit situation, it is possible that any one of the unit structures postulated in the discussion supra at page 12 might be found appropriate. However, the instant matter does not involve a wholly de novo unit situation, but rather involves a well-established unit situation. Further, the TA unit configuration is a contested issue herein. Thus, the undersigned is constrained to determine the most appropriate unit for the TAs under the extant circumstances.

The instant matter also does not involve a severance of titles from an existing negotiations unit; hence, the proscriptions regarding the disturbance of existing negotiations units set forth in the Commission's severance decisions are not applicable herein.

As one group, the TAs evidence a close community of interest among themselves -- closer than that between TAs (or any subgroup thereof) and any other negotiations unit at the College. In fact, it should be noted that the Hearing Officer has not failed to consider the similar aspects of the employment relationship extant between TAs and the various negotiations units at the College. However, in the circumstances of this case, the undersigned is not persuaded that the similarities outweigh the differences.

In In re West Milford Township Board of Education, ^{67/} the Hearing Officer also found similarities and distinctions between the extant unit and the grouping of employees sought to be added thereto. However, the Hearing Officer further found that the differences did not constitute a conflict of interest nor did they detract from the overall community of interest found. The same conclusions may not be reached herein.

In the instant matter, no clear pattern of factors has emerged to establish a distinct community of interest between TAs and any extant negotiations unit. There are similarities of function and terms and conditions of employment; however, there are differences in these areas too. There are further significant differences in educational background and training, in the necessity therefor and in the historical origins and treatment of the TAs vis-a-vis other employee groupings. Further, the Act and decisional law directs the undersigned to look beyond community of interest factors -- inter alia, "...to the establishment and

^{67/} In re West Milford Twp. Bd. of Educ., P.E.R.C. No. 56 (1971).

promotion of fair and harmonious employer-employee relations...."

There are disadvantages to the placement of TAs into any of the various other configurations considered herein.

Placing all TAs in the Association unit would create a situation in which the instructional TAs and the faculty shared a "comparatively close" community of interest; however, the non-instructional TAs would have little community of interest with the faculty. Conversely, placing all TAs in the Federation unit (or in the professional/administrative staff unit) would create a situation in which the non-instructional TAs and the Federation unit employees shared a "comparatively close" community of interest; however, the instructional TAs would have little community of interest with the Federation unit employees.

Splitting the TAs and placing them into two extant negotiations units -- the instructional TAs into the Faculty Association unit, the non-instructional TAs into the Federation unit -- would not contribute to "the establishment and promotion of fair and harmonious employer-employee relations." While this unit placement would not create an additional negotiations unit, the problems normally associated with unit proliferation would be likely to arise. As a group, the TAs evidence a clear community of interest; they show numerous similarities. However, their being in two different negotiations units greatly increases the chances that the two TA subgroups -- instructional TAs and non-instructional TAs -- would receive different treatment in collective negotiations. A substantial disparity in the terms and conditions of employment of the two separated, but nonetheless similar, TA groups would create circumstances conducive to precisely those problems which the Supreme Court and the Commission sought to avoid in the State Professional case -- "...competing demands, whipsawing, and continuous negotiations which...are not judged to be in the public interest."

Finally, in finding a unit of all TAs to be the most appropriate unit for collective negotiations, the undersigned does not believe that the creation of such a unit of paraprofessionals at the College -- even though an additional unit -- would result in fragmentation to the degree which the Commission sought to avoid in the State Professional case. The potential for unit proliferation herein is small inasmuch as most of the College's employees are already organized and the record indicates that there are no other paraprofessional-type positions at the College besides those petitioned for herein. ^{68/}

(D) The Positions in Institutional Research, College Publications and Information Services, and Registration and Student Records.

The College contends that the positions occupied by Jillene Sennett (Office of Registration and Student Records), Margaret Schiff (Office of College Publications and Information Services), and Elizabeth Rhodes (Office of Institutional Research) are professional positions and hence should not be included in any unit configuration with TAs.

Ms. Sennett, formerly a TA in the Office of Institutional Research, was promoted to her current position: Coordinator of Scheduling and Records ("Coord/S&R") in the Office of Registration and Student Records. Formerly, the duties now performed by Sennett were done by the Assistant Registrar, a Range 4 professional position. ^{69/} After a reorganization in February 1977, the Assist-

^{68/} It should be noted that this determination is not simply that a unit of TAs is the most appropriate unit; rather, the determination is that a unit of all paraprofessionals -- those performing that level of function at the College -- is the most appropriate unit. Such a unit may encompass more than just the TA and Senior TA titles. However, the record indicates that there are no other employees of the College who are similarly situated to the titles petitioned for herein. See T6/42.

^{69/} Employees classified by the College as professionals (non-faculty) have been graded by the College on a scale of Range 1 to Range 13, one being the lowest.

ant Registrar was transferred to a position in another department. The Assistant Registrar position was revamped and downgraded and became the position into which Sennett was moved: Coord/S&R. 70/

The Coord/S&R is a Range 1 professional position. Sennett holds a BA degree and is now completing a Masters. The personnel in the Office of Scheduling and Records consists of a Director, Coordinator of Scheduling and Records and two clericals.

The Coord/S&R has assumed most of the duties previously performed by the Assistant Registrar. The Coord/S&R functions as the chief scheduling officer of the College. She also gathers information and recommendations for class scheduling, coordinates staffing, physical facilities and student needs and determines the College's instructional class schedule. These functions involve use of discretion and independent judgment in deciding upon the various alternatives which may be followed in the registration process. Sennett supervises the entire registration process. During the intense registration periods, Sennett supervises a group of 8-12 employees. Finally, during an extended period of absence (two months) of the Registrar, Sennett was formally appointed and functioned as Acting Registrar. 71/

Based upon the record herein, the undersigned concludes that Ms. Sennett is performing at a relatively high functional level wherein she is consistently required to make independent judgments and utilize some amount of individual discretion. Accordingly, the undersigned determines that she should not be included in the paraprofessional unit set forth above. It would appear from the record herein that this position is properly includable in the unit of non-teaching professional employees of the College.

70/ T5/48.

71/ T6/17, T5/51.

Ms. Schiff, in the Office of College Publications and Information Services, occupies a position which, the College contends, was formerly a Senior TA position held by Ms. Chen. Ms. Chen left the College.

Ms. Schiff's position is a Range 1 professional position. While the salary range is higher for Schiff than it was for Chen, the record indicates that Schiff's actual salary may be no higher than Chen's salary was. 72/ Schiff holds a BA degree. Chen holds a Masters degree. 73/

The College contends that the Director of this office had previously been responsible for all the professional functions performed by it. However, as the overall workload increased, it became necessary for the Director to delegate some of his functions to others.

When Chen was in the Publications office, she was responsible for providing graphic design services similar to those rendered by some of the Media Center TAs. After Chen left, the College asserts that a reassessment was made of this area and it was determined that a position was needed which would take on more independent responsibilities regarding both graphic and written materials which the office produced. Thus, they "upgraded" the TA position and hired Schiff to fill it. 74/

However, Schiff's work is still supervised and coordinated by the Director and is subject to his approval. All materials produced by the Publications Office are subject to the further scrutiny of the Executive Assistant to the College President. 75/

72/ T6/27-28.

73/ The undersigned notes that the record does not indicate that any of the terms and conditions of employment of the Schiff position or the Research Assistant position are materially different from those of TAs generally.

74/ T5/53.

75/ T6/31-32.

Based upon the record, the undersigned is unable to conclude that the Schiff position and the functions performed therein differ substantially from the TA position as performed by Chen. While there appears to be some independence of function associated with the position, it is no greater than that evidenced by the TA positions discussed earlier in this report. Much of the activity of the Schiff position appears coordinated and supervised by the office head. Finally, the testimony regarding the expanded and upgraded nature of the Schiff position is factually vague and largely ~~unconclusionary~~. Accordingly, the undersigned determines that this position is most appropriately included in the paraprofessional unit described above.

Elizabeth Rhodes is a Research Assistant in the Office of Institutional Research. The Research Assistant position was preceded by a TA position held by Sennett. Both Sennett and Rhodes have BA degrees.

When Sennett transferred out of the position, the College reassessed the position and decided to upgrade it. Thus, it is now classified as a Range 1 professional position. The College decided that it needed a position to perform independent research and report functions of a type which they assert had not been delegated to Sennett while she was in this office.

Rhodes has two major areas of activity: (a) Conducting research projects -- Rhodes is given full responsibility for some minor projects. (b) The rest of Rhodes' functions correspond to what Sennett did as a TA -- contributing to the design and execution of various research projects conducted by other employees. This involves Rhodes in various functions: computer programming, writing in conjunction with research reports in which she has assisted the main researcher, preparation of data, working with the graphics staff, and performing liaison work with various departments of the College. 76/

Again, based upon the record herein, the undersigned concludes that the Rhodes' position is not appreciably different from the Sennett TA position. The Rhodes' position is, on a functional level, analogous to various TA positions at the College -- while she may exercise discretion in some areas of her employment, much of Rhodes' work consists of assisting, in one fashion or another, another employee, who is usually a professional, in the performance of some primary, professional-level task. Testimony concerning the upgraded nature of the Rhodes' position is again largely conclusionary. Accordingly, the undersigned determines that this position is most appropriately included in the unit of paraprofessional employees described above.

(E) The TA Position in the Office of Personnel Services

The New Jersey Employer-Employee Relations Act defines confidential employee as:

employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties. ^{77/}

The Commission has addressed the issue of confidential employees in several prior decisions. ^{78/} The Commission has focused upon several principal factors in reaching determinations concerning the confidential issue: the functional involvement of the purported confidential employee with employees who have some measure of responsibility for formulation and execution of personnel and labor relations policies of the public employer; and whether in the regular

^{77/} N.J.S.A. 34:13A-3(g)

^{78/} In re Bd. of Educ. of West Milford, P.E.R.C. No. 56 (1971); In re Bloomfield Bd. of Educ., E.D. No. 76-40 (1976); In re Gloucester County College, D.R. No. 78-47, 4 NJPER 233 (11/16 1978); In re Springfield Bd. of Educ., E.D. No. 52 (1974).

exercise of his/her duties, the purported confidential employee has access to or handles confidential labor relations materials.

The TA in the Personnel Services Office is claimed by the College to be a confidential employee. The Personnel Services Office is the labor relations nerve center of the College. That office (and its personnel) is integrally and intimately involved with collective negotiations and grievance processing on behalf of the College. ^{79/} The Office is staffed by a Director, a Personnel Assistant, a TA and two clerical employees who are already designated as confidential employees. Personnel and labor relations functions are also performed in part in the Office of the President (where there are two confidential clerical employees) and in the Office of the Dean of Administrative Services (where there is one confidential clerical employee).

The Director of the Personnel Services Office (Keith Jones) and the Executive Assistant to the President are the chief architects of the various positions to be taken by the College in collective negotiations, although it was noted that the College Board of Trustees has the final say concerning the position of the College in such matters. ^{80/} Mr. Jones is also intimately involved in grievance processing: he is a step in the grievance procedure of in the Federation and AFSCME contracts with the College and he handles matters at the arbitration level under the Association contract.

Documents containing various potential positions for negotiations or documents utilized in developing negotiations positions have been typed by the five confidential clerical employees referred to above and by the Personnel Services TA (Babitts). ^{81/} Further, these documents are not widely disseminated;

^{79/} T6/36, 37.

^{80/} T6/36-38.

^{81/} T6/39-40.

rather, they are "kept internal" -- that is, among College staff involved in labor relations matters. Such documents are filed in the Personnel Services Office. The personnel in that office all have unrestricted access to that material and may be called upon to handle same in appropriate circumstances. 82/

Finally, the Personnel Services TA has assisted Mr. Jones in the preparation of salary analyses which were utilized by the Board in determining various aspects of the College's negotiations positions. It was testified that Mrs. Babitts works closely with all the personnel in the office on most or all of the functions which the office performs and that her functioning in the office inevitably brings her into close contact with Mr. Jones and his involvement in the preparation of the College's positions in collective negotiations matters.

Based upon the foregoing, the undersigned concludes that Mrs. Babitts works closely with persons who participate in the formulation and implementation of labor relations policy for the College and, further, that Mrs. Babitts both has access to and has handled confidential labor relations materials in the course of her duties in the Personnel Services Office. Accordingly, the undersigned determines that Mrs. Babitts, occupying the TA position in the Personnel Services Office, is a confidential employee within the meaning of the Act and should thus be excluded from the TA negotiations unit designated above.

IV. CONCLUSIONS AND RECOMMENDATIONS

Based upon the entire record and the findings derived therefrom, the Hearing Officer concludes:

a) The most appropriate unit for collective negotiations for TAs and Senior TAs is an employer-wide paraprofessional unit including all TAs and Senior

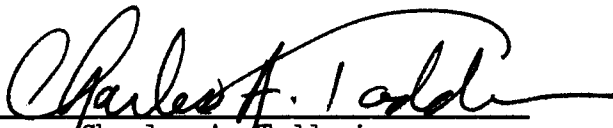
TAs employed by the College.

b) The position of Research Assistant (occupied by E. Rhodes) in the Office of Institutional Research and the position occupied by M. Schiff in the Office of College Publications and Information Services are paraprofessional positions and are appropriately included in the above-designated unit.

c) The position of Coordinator of Scheduling and Records (occupied by J. Sennett) in the Office of Registration and Student Records is a professional-level position, it is not appropriate for inclusion in the above-designated unit.

d) The Senior TA (T. Babitts) in the Office of Personnel Services is a confidential employee within the meaning of the Act; that position is not appropriate for inclusion in the above-designated unit.

Accordingly, inasmuch as the units petitioned for herein do not constitute the most appropriate unit for collective negotiations for TAs, Senior TAs and certain other employees of the College, the undersigned recommends that the instant petitions be dismissed.



Charles A. Tadduni
Hearing Officer

DATED: Trenton, New Jersey
July 26, 1979