

P.E.R.C. NO. 87-129

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY COLLEGE,

Public Employer,

-and-

Docket No. RO-81-150

SOMERSET COUNTY COLLEGE FACULTY
FEDERATION, LOCAL 2375, AFT,
AFL-CIO,

Employee Representative.

SYNOPSIS

The Public Employment Relations Commission, in a representation case on remand from the Appellate Division, finds that a negotiations unit of adjunct faculty members with regularity and continuity of employment at the Somerset County College is appropriate for collective negotiations.

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Employee Representative.

Appearances:

For the Public Employer, Shanley & Fisher, Esqs. (Ellen O'Connell, of counsel)

For the Employee Representative, Victor A. Casella,
Staff Representative

DECISION AND ORDER

On December 11, 1980, the Somerset County College Faculty Federation, Local 2375, AFT, AFL-CIO ("Federation") filed a Petition for Certification of Public Employee Representative. The Federation seeks to represent all adjunct faculty members employed by Somerset County College.

The College refused to consent to an election. It contended that adjunct faculty are not public employees within the meaning of the Act and the petitioned-for unit is not appropriate for collective negotiations. It requested a full evidentiary hearing.

On November 19, 1981, the Director of Representation, based on his administrative investigation, directed an election to

determine the majority representative of the adjunct faculty. D.R. No. 82-24, 8 NJPER 6 (¶13003 1981). Relying on Rutgers University, E.D. No. 76-35, 2 NJPER 176 (1976), aff'd P.E.R.C. No. 76-49, 2 NJPER 229 (1976), aff'd App. Div. Dkt. No. A-1652-76 (1977), certif. den. 76 N.J. 243 (1978), he found appropriate "a unit defined as all adjunct faculty members who have commenced employment for at least their second semester this academic year, and who express a willingness to be rehired to teach at least one semester during the next succeeding year." He determined that Rutgers held that the significant element which established the appropriateness of a negotiations unit of coadjutant faculty was its substantial rate of return and that the College's rate of return was similar to that in Rutgers. He denied the College's request for a hearing.

On January 13, 1982, the Commission denied the College's request for review. P.E.R.C. No. 82-68, 8 NJPER 106 (¶13043 1982). On February 4, 1982, the Appellate Division denied the College's request for a stay. On March 15, 1982, the Federation won a Commission conducted election. On March 23, 1982, the Commission certified the Federation as the exclusive majority representative.

On May 11, 1983, the Appellate Division reversed and determined that a hearing should have been held to consider the College's claims. It stated, in part:

the nature of the issues involved, the
"continuity and regularity of employment"
factors as they may apply to determine public
employee status in the circumstances of this
case, due regard for existence or absence of

"community of interest," and the right of a particular employee to be represented in the proposed bargaining unit, dictate that the request for a hearing should have been granted.

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We conclude that the "community of interest" requirement, which was conceded in Rutgers but is a contested issue here, presents questions of fact which cannot be resolved on this record. Continuity and regularity of employment and, conceivably other factors in the nature of the employment as well as the nature of an individual's primary occupation elsewhere, may be considered in determining not only "public employee" status and community of interest but also individual eligibility for membership in the proposed unit.

The Court further stated:

In resolving the "community of interest" question, consideration must be given to the degree of variation and differences of status among adjunct faculty members; the effect, if any, of differences between teachers of credit courses and non-credit courses; the rate of change in types of courses offered, the need for particular expertise, training or experience to teach various courses; and the expectations of faculty members with regard to compensation and working conditions. The college claims that "there are varying degrees of ability and professionalism between adjuncts who teach traditional academic disciplines for credit, versus the adjuncts who teach non-credit "community services" courses...not normally included in traditional curricula. If the college can support its contention that there are real differences or conflicts among the interests of its adjunct faculty members, such differences or conflicts must be weighed in determining their impact on the "community of interest" factor.

PERC may not assume that all personnel at the same level within an educational system, "regardless of their status with respect to each other, per se possess the community of interest which requires or justifies their inclusion in the same negotiating unit."

* * *

Our review of the record satisfies us that PERC gave inadequate consideration to the "community of interest" requirement and to the implications of the variety of "continuity and regularity" factors which may be appropriate for consideration with regard to those adjunct faculty members who are "employees" under the Act and those whose "services to the State are [so] ancillary to...their primary means of livelihood...[as to be] too ephemeral to carry with [them] the rights and obligations of the Act." In the Matter of State of New Jersey, 1 NJPER 2, 8 (1975). Simply screening out those lacking regularity or continuity of employment does not support the conclusion that those who remain necessarily share the same interests or are necessarily includable in the bargaining unit. In the circumstances of this case, we conclude that the request for a hearing should have been granted.

On September 13, 1983, Hearing Officer Charles A. Tadduni conducted a hearing. The College and the Federation introduced joint exhibits. These documents set forth the College's chain of command; campus locations; other negotiations units; student and faculty enrollment; adjunct faculty enrollment and compensation from Fall 1978 through Spring 1983; adjunct enrollment in the Public Employees' Retirement System; reemployment rate of adjuncts between Fall 1978 and Spring 1983 and year to year comparisons; the standard employment contract for adjunct faculty; adjunct faculty outside employment; and adjunct faculty job description. The College also

presented three witnesses. Patricia Sensi, Director of Personnel Services at the College, explained the preparation of the joint exhibits and the College's hiring procedures for adjunct faculty members. Sebastian Charles Irace, the College's President, testified concerning its organizational structure. Thomas Green, Executive Dean for academic and student affairs, testified concerning the employment contract for adjunct faculty and the College's policy concerning use, qualifications, compensation and supervision of the adjunct faculty. The parties filed briefs by December 21, 1983.

On December 22, 1986, the Hearing Officer issued his report and recommended decision. H.O. 87-7, 13 NJPER 100 (¶18045 1987). He determined that adjunct faculty are public employees and that adjuncts "who commence employment with the College for at least their second semester during a given academic year and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year" have a substantial employment nexus with the College. Therefore, he concluded the following unit is appropriate for collective negotiations:

Included: All adjunct faculty employees of Somerset County College who commenced employment for at least their second semester during a given academic year, and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year.

Excluded: Managerial executives, confidential employees, police employees, firefighters, craft employees, full-time employees and all other employees.

He recommended that the Commission conduct an election among eligible employees in the unit to determine if the employees seek to be represented by the Federation.

On January 12, 1987, the Federation filed exceptions. It contends the Hearing Officer erred in ordering an election because the Federation already won the election held in March 1982 and there has been no attack on its validity. In all other respects, it urges the adoption of the report.

On January 30, 1987, after receiving extensions of time, the College filed exceptions. It contends that: (1) the findings of fact are stale because the report was issued more than three years after hearing and is based on facts between four and nine years old; (2) the hearing should be reopened; (3) the report fails to exclude community education instructors pursuant to the parties' agreement; (4) the showing of interest is inadequate because it probably included community education instructors and is over seven years old; (5) the facts should include the Chancellor of Higher Education's opposition to the Commission's decision before the Appellate Division,^{1/} and (6) the Hearing Officer failed to consider that the employees had their primary occupation elsewhere. It contends the following findings are erroneous: (1) most adjuncts are enrolled in the Public Employees' Retirement System; (2) adjuncts have a stable employment relationship with the College; (3)

1/ The Chancellor did take that position.

the unit definition should include a consecutive years employment requirement, and (4) there was regularity and continuity of employment. It also excepts to the following aspects of his legal analysis: (1) finding that adjuncts are public employees and failing to consider continuity and regularity of employment, primary occupation elsewhere and community of interest in making this determination; (2) failing to analyze the sufficiency of the adjuncts' employment relationship with the College; (3) failing to follow the Appellate Division's directions concerning factors to consider; (4) not concluding that the adjunct's full-time employment elsewhere precludes, as a matter of law, a valid community of interest; (5) not concluding that the public interest would be disserved by granting adjuncts rights under the Act; and (6) distorting the Appellate Division's opinion by deleting aspects of its opinion.

We have reviewed the record, much of which consists of joint exhibits. The Hearing Officer's findings of fact (pp. 7-14) are generally accurate. We adopt and incorporate them here. We do modify his statement that "Most adjuncts are enrolled in the State of New Jersey Public Employees' Retirement System." (Sl.Op. at 29). The record instead reveals that less than 50% have been. His statement at p. 12 (Sl.Op.) indicates that "many adjuncts are [so]

enrolled."^{2/} The College's other exceptions to the findings of fact do not dispute the Hearing Officer's basic findings, but rather pertain to the ultimate conclusions. We therefore consider them in our analysis.

The College's first exception complains of the stale facts because of the delay in the issuance of the Hearing Officer's report -- the College, therefore, seeks a remand for a new hearing. This exception is most troubling. The record reveals no reason for a three year delay following a one day hearing. We doubt whether such a delay would ever be excusable. We feel this way in every case, but especially so in resolving representation disputes. We have repeatedly stressed that such disputes must be resolved expeditiously to prevent labor-management discord. E.g., Borough of Leonia, P.E.R.C. No. 86-143, 12 NJPER 523 (¶17195 1986); New Jersey Civil Service Association, D.R. No. 81-20, 7 NJPER 41, 45 (¶12019 1980). We therefore make the following very clear: the Commission does not excuse such a delay and will not tolerate such a delay in the future.

^{2/} Employees in the first year of employment are considered temporary employees and need not enroll in the pension system; in their second year they must enroll. This statistic is of marginal significance because the Federation does not seek to represent all adjuncts, but only those with continuity of employment as defined in Rutgers.

However, we do not believe that a remand is appropriate here. The College has not alleged any new post-hearing facts which require a remand. See State of New Jersey, P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985). The College has brought to our attention two new facts: "The College has a new Board of Trustees representing both Somerset and Hunterdon Counties. It has entered into an agreement with the Warren County Community College Commission to assist in the interim staffing of Warren County College, pending accreditation and construction of their facility." These alleged new facts are not relevant to whether certain adjunct faculty may form an appropriate unit. Nor do we believe the allegation that "few of those involved in the petition are employed in 1987" is sufficient to warrant reopening the hearing when there has been no demonstration that the new employees would raise different issues than those now present or that any other facts, such as the job duties of adjunct faculty or their relationship with the College, have changed since 1983. The long delay so far is not a reason, in itself, to have a longer delay.^{3/}

This case was remanded to us because the Appellate Division determined that we erred in not granting the College's request for an evidentiary hearing. The Court also directed that we consider certain factors (see discussion, supra at 2-4). We now have had the

^{3/} Nor does agreed-upon exclusion of community education instructors from the unit warrant reconsideration of the showing of interest. N.J.A.C. 19:11-2.1.

benefit of an evidentiary hearing and a Hearing Officer's report. We conclude that the petitioned-for negotiations unit is appropriate. We reach this conclusion for the following reasons.

First, this case does not involve all adjunct faculty members at the College. The dispute is much more limited: it involves only those members who were not community education instructors and who commenced employment for at least their second semester during a given academic year, and who express a willingness to be rehired to teach at least one semester during the next succeeding year. These employees constitute the petitioned-for unit. We recognize, given the Appellate Division's determination, that a unit definition with guarantees of continuity and regularity cannot dispositively answer the question whether the unit is appropriate. But it nevertheless is an important factor. Preliminarily, we believe it establishes that they are public employees since our Act defines that term as "any person holding a position, by appointment or contract of employment in the service of a public employer, except elected officials, members of boards and commissions, managerial executives and confidential employees." N.J.S.A. 34:13A-3(d).

The fact that these employees are "public employees" does not, however, answer the question whether the instant unit is appropriate. One of our most critical tasks is determining how negotiations affecting public sector employees should be structured so that negotiations can proceed smoothly and peaceably throughout

New Jersey. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272, 273 (¶15134 1984); State of New Jersey, E.D. No. 67, 1 NJPER 2 (1975); West Milford Bd. of Ed., P.E.R.C. No. 56 (1971).

Pursuant to that mandate, N.J.S.A. 34:13A-5.3 directs us to define negotiations units "with due regard for the community of interest among the employees concerned." Our Supreme Court, in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971) set forth certain relevant factors in making this determination:

In the private sector, the cases regard unity of interest, common control, dependent operation, sameness in character of work and unity of labor relations as pointing to common interest. They regard similarity of obligation to the employer as a factor; likewise similarity of working conditions; they consider the possible disruptive effect on employer-employee relations if the employees involved are admitted to one unit. They decide whether the group involved will operative cohesively as a unit; whether the unit will probably be effective in the public quest for industrial peace. Community of interest has been regarded as identity of interest. An important consideration is whether an employee sought to be included in a unit is one from whom the other employees may need protection; whether his inclusion will involve a potential conflict of interest. [Id. at 420-421]

See also State v. Prof. Ass'n of N.J., Dept. of Ed., 64 N.J. 231, 245-247 (1974).

In Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984), we summarized:

Community of interest is, of course, a term of art encompassing a multitude of factors, and the importance of any one factor in a particular case depends upon how it interrelates with other factors. In the final analysis, the Commission must weigh the facts of each case and the

concerns of the employer, employees and the public in order to decide what unit structure will promote the statutory goals of labor stability and peace. [Id. at 273; citations omitted]^{4/}

Thus, this representation dispute rests on whether the adjunct faculty members possess "a community of interest." We consider those factors the Appellate Division deemed relevant (See sl.op. at 6):

(1) "degree of variation and differences of status among adjunct faculty members." There is little variation. All adjunct faculty are under the Dean of Instruction and are directly supervised by their respective Department Chairpersons. They are assigned to teach based on need after the full-time faculty positions fill their teaching assignments. They each receive the same employment contract. None receive tenure.

(2) "the effect, if any, of differences between teachers of credit courses and no-credit courses." This factor has been essentially mooted since community education instructors are no longer petitioned-for. The remaining faculty members teach almost exclusively credit courses.

(3) "the rate of change in types of courses offered." There is little change apparent in the record.

(4) "the need for particular expertise, training or experience to teach various courses." We perceive a community of interest with respect to this factor: adjunct faculty are hired to teach based on their expertise within a discipline.

^{4/} Our Supreme Court has also noted that the community of interest is "very elastic" and such determinations "are more likely than in other administrative fields to be formed by subjective value judgments, frequently difficult to articulate with precision, concerning the relative weight of various relevant criteria. State v. Prof. Ass'n of N.J., Dept. of Ed., 64 N.J. at 252-253.

(5) "the expectations of faculty members with regard to compensation and working conditions." Adjuncts work under quite similar conditions. The salary may vary, but only slightly and based upon professional training and experience.

The Appellate Division was also concerned with possible conflicts of interest. There is simply no evidence that any petitioned-for adjunct faculty member possesses a conflict with any other. To the contrary, there is an absence of such a conflict because adjuncts do not supervise one another. Compare Wilton at 427 (1971); Elizabeth Fire Officers Ass'n v. Elizabeth, 114 N.J. Super. 33 (App. Div. 1971).

The Appellate Division also directed that we consider that the individual's primary occupation was elsewhere. We have done so but find that this factor standing alone does not negate community of interest. Employees working elsewhere may have less interest in part-time employment, but they certainly have a significant interest: these employees have demonstrated a willingness to return to work in the future. We also believe that this case differs significantly from Rutgers University, P.E.R.C. No. 82-55, 8 NJPER 28 (¶13012 1981) and State of New Jersey, E.D. No. 67, 1 NJPER 2 (1975). Rutgers involved residence counsellors: their employment status was tied into their student responsibilities. Here, the College's relationship with the faculty is strictly employment. State involved part-time consulting physicians. But the issue was whether they should be in a unit with full-time employees. They served with little supervision on an "as-needed basis" without a

written contract. Here, the unit will not have any full-time employees and the employment relationship is much more formal.

We, therefore, hold that the following unit is appropriate for collective negotiations:

Included: All adjunct faculty employees of Somerset County College who commenced employment for at least their second semester during a given academic year, and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year.

Excluded: Managerial executives, confidential employees, police employees, firefighters, craft employees, full-time employees, community education instructors and all other employees.^{5/}

Finally, there is no need for an election since one was already held and the Federation received a majority of the votes cast. The Appellate Division remand concerned only the appropriateness of the unit and directed that we conduct an

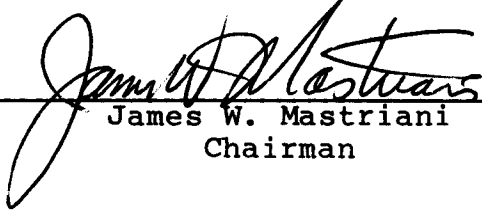
^{5/} Our determination is consistent with recent determinations by the National Labor Relations Board. New School for Social Research, 268 NLRB No. 154, 115 LRRM 1134, 1135 (1984); University of San Francisco, 265 NLRB No. 155, 112 LRRM 1113 (1982). Our Supreme Court has directed that resort to federal precedent is an appropriate tool to aid in interpreting our Act. E.g., Lullo v. Int'l Ass'n of Fire Fighters, 55 N.J. 409, 423 (1970).

evidentiary hearing: it did not address the election's validity nor has the College objected to the conduct of that election.^{6/}

ORDER

The matter is remanded to the Director of Representation for proceedings consistent with this opinion.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Smith and Wenzler voted in favor of this decision. Commissioner Reid was opposed.

DATED: Trenton, New Jersey
April 22, 1987
ISSUED: April 22, 1987

^{6/} A public employer may file an RE petition in the event it has a good faith doubt concerning the majority status of the representative of its employees. N.J.A.C. 19:11-1.1(a)(2).

H.O. NO. 87-7

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

In the Matter of

SOMERSET COUNTY COLLEGE,

Public Employer,

-and-

DOCKET NO. RO-81-150

SOMERSET COUNTY COLLEGE FACULTY
FEDERATION, LOCAL 2375, AFT, AFL-CIO,

Employee Representative.

SYNOPSIS

A Commission Hearing Officer recommends that the Commission determine that a unit of adjunct faculty members employed by Somerset County College is appropriate for collective negotiations. The Somerset County College Faculty Federation filed a petition seeking certification as the majority representative of a collective negotiations unit of adjunct faculty. The College opposed the petition, contending that adjunct faculty are not public employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), that the adjuncts' relationship with the College is insufficient to support collective negotiations and that the unit petitioned for is not appropriate for collective negotiations. The Hearing Officer concluded that the petitioned-for adjunct faculty members are public employees within the meaning of the Act; the adjuncts have a sufficient employment relationship with the College to support the right to form a collective negotiations unit and negotiate their terms and conditions of employment with the College; and the petitioned-for unit is appropriate for collective negotiations, giving due regard to community of interest and other unit structure factors.

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FEDERATION, LOCAL 2375, AFT, AFL-CIO,

Employee Representative.

Appearances:

For Somerset County College
Shanley & Fisher, Esqs.
(Ellen O'Connell, of counsel)

For Somerset County College Faculty Federation
Victor A. Casella, Staff Representative

HEARING OFFICER'S RECOMMENDED
REPORT AND DECISION

A Petition for Certification of Public Employee Representative, supported by an adequate showing of interest, was timely filed with the Public Employment Relations Commission ("Commission") on December 11, 1980 by the Somerset County College Faculty Federation, Local 2375, AFT, AFL-CIO ("Petitioner" or "Federation"). Through its petition, the Federation seeks certification as the exclusive majority representative of a collective negotiations unit comprised of all adjunct faculty members employed by Somerset County College ("Employer" or

"College"). The College opposed the instant Petition, contending that the adjunct faculty were not public employees within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and that the facts of this matter were distinguishable from prior Commission precedent. Accordingly, the College refused to consent to an election in this matter.

I Procedural Summary

After the filing of the Petition in this matter and the exchange of preliminary correspondence between the assigned Commission staff agent and the parties, an investigatory conference was held herein on January 27, 1981. On February 13, 1981, the College filed a statement of position wherein it contended that the adjunct faculty employees were not public employees under the Act and that this matter was distinguishable from Rutgers University, E.D. No. 76-35, 2 NJPER 176 (1976), aff'd P.E.R.C. No. 76-49, 2 NJPER 229 (1976), aff'd App. Div. Docket No. A-1652-76 (1977), certif. denied 76 N.J. 243 (1978), (hereinafter, "Rutgers adjuncts"). Further, the College requested that a full evidentiary hearing be conducted herein " ... to bring out all of the factors relating to Adjunct Faculty, continuity of employment, appropriateness of the unit and other related questions."

In correspondence to the parties dated May 13, 1981, the Director of Representation summarized the results of the administrative investigation conducted herein and stated that based upon the investigation, he intended to direct an election in this

matter. The parties were afforded seven days to provide the agency with any additional materials which they claimed to be relevant to the proceeding.

Having secured an extension of the above submission date, on May 29, 1981, the College submitted a brief in response to the Director's May 13, 1981 correspondence. In the brief, the College again contended that the adjunct faculty lacked any real continuity of employment and therefore were not public employees within the meaning of the Act. The College argued that the Rutgers decision, supra, was inapplicable herein and that it (the College) was entitled to a full evidentiary hearing in this matter.

On July 10, 1981, the Director of Representation reviewed the contentions raised by the College in its brief and granted an additional period for the filing of further evidentiary proffers. On July 27, 1981, the College filed a statement of position wherein it argued that adjunct faculty were hired by the College on an as needed basis and incurred no expectation of reemployment; that they lacked any continuity of employment and, therefore, were not employees within the meaning of the Act; and that the Rutgers adjuncts decision was inapplicable herein. The College again requested a hearing in this matter.

On November 19, 1981, Director of Representation Carl Kurtzman directed an election among the adjunct faculty. Somerset County College, D.R. No. 82-24, 8 NJPER 6 (¶13003 1981). Based upon the administrative investigation, the Director determined that the

adjunct faculty exhibited a regularity and continuity of employment and thus, were public employees; and that they had a substantial rate of return from year to year. Accordingly, the Director concluded that a unit of adjunct faculty was appropriate for collective negotiations and directed that an election be conducted therein.

On December 4, 1981, the College filed a request for review of the Director's decision with the Commission. On January 13, 1982, the Commission affirmed the Director's decision. Somerset County College, P.E.R.C. No. 82-68, 8 NJPER 106 (¶13043 1982). The College then sought a Stay of Enforcement from the Appellate Division of the Commission's decision ordering an election. On February 4, 1982, the Appellate Division denied the requested stay. App. Div. Dkt. No. A-2376-81T2 (1982).

On March 15, 1982, the Commission conducted an election among the adjunct faculty. The Federation won the election and on March 23, 1982, the Commission certified the Federation as the exclusive majority representative of a collective negotiations unit described as follows:

All adjunct faculty members who commence employment with Somerset County College for at least their second semester during a given academic year and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year excluding all other employees, craft employees, nonprofessional employees, policemen, managerial executives, confidential employees, and supervisors within the meaning of the Act.

Subsequently, the College appealed the Commission's issuance of the above-referred Certification of Representative and on May 11, 1983, the Appellate Division issued its decision remanding the matter to the Commission for an evidentiary hearing. The Court stated:

Our review of the record satisfies us that PERC gave inadequate consideration to the "community of interest" requirement and to the implications of the variety of "continuity and regularity" factors which may be appropriate for consideration with regard to those adjunct faculty members who are "employees" under the Act and those whose "services to the State are [so] ancillary to ... their primary means of livelihood ... [as to be] too ephemeral to carry with [them] the rights and obligations of the Act." In the Matter of State of New Jersey, 1 NJPER 2, 8 (1975). Simply screening out those lacking regularity or continuity of employment does not support the conclusion that those who remain necessarily share the same interests or are necessarily includable in the bargaining unit. In the circumstances of this case, we conclude that the request for a hearing should have been granted.

Somerset County College, App. Div. Dkt. No. A-3629-81T2 (1982).

Accordingly, pursuant to a Notice of Hearing issued by the Director of Representation, a hearing was held on September 13, 1983 before the undersigned Hearing Officer at which all parties were given an opportunity to present evidence, examine and cross-examine witnesses and to argue orally. Further documentary evidence was

placed in the record by stipulation on November 10, 1983. On December 21, 1983, briefs were filed.^{1/}

II Positions of the Parties

The College argues that the adjunct faculty are not employees within the meaning of the Act -- or at least, that even if they meet the technical definition of "public employee", the employment relationship between the College and the adjuncts is "too ephemeral" to support the employees' right to collective negotiations. The College further contends that if an employment relationship is found which is sufficiently substantial to support the right to collective negotiations, the petitioned-for unit is not appropriate for collective negotiations. The College points to several factors in support of these arguments. The College notes that decisions to hire adjuncts are based upon enrollment levels, that adjuncts have a high turnover rate and that the need for them is "seasonal"; that there are conflicting loyalties between the adjuncts' full-time employment positions and their duties at the College; that adjuncts spend little time on campus; that there is no uniformity of supervision; and that adjuncts have no statutory entitlement to tenure and have no health insurance benefits.

^{1/} A brief was filed on behalf of the Council of County Colleges, who was granted amicus curiae status, by Thomas E. Kopil, Esq. of the firm of Smith, Stratton, Wise, Heher, & Brennan.

The College further argues that the purpose of the Act will not be advanced by granting adjuncts the right of collective negotiations. The College notes that its utilization of adjuncts is essential to its operation and it could not afford to hire additional full-time faculty with the backgrounds and expertise brought to the College by the adjuncts. Further, the College argues that adjuncts would have little to negotiate about and that the Rutgers adjunct experience has not been successful from a collective negotiations viewpoint.

The Federation contends that adjuncts are public employees within the meaning of the Act; that they have an employment relationship with the College which is sufficient to entitle them to collective negotiations rights and that the petitioned-for unit is appropriate.

III Findings of Fact

Having considered the entire record in this matter, the Hearing Officer makes the following factual determinations:

Somerset County College is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is subject to its provisions and is the employer of the adjunct faculty members who are involved herein.

The Somerset County College Faculty Federation, Local 2375, AFT, AFL-CIO is an employee organization within the meaning of the Act and is subject to its provisions.

The Federation having petitioned for certification as majority representative in a negotiations unit comprised of adjunct faculty employed by the College, and the College having declined to consent to an election therein, there is a question concerning representation and the matter is properly before the Hearing Officer for a Report and Recommendations.

The hierarchical structure of Somerset County College (as it relates to adjunct faculty) is as follows: College Board of Trustees -- President -- Executive Dean for Academic & Student Affairs -- Dean of Instruction -- Assistant Dean of Instruction -- Department Chairpersons -- Faculty [in which adjunct faculty is included]^{2/} Adjunct faculty, as does regular faculty, come under the authority of the Dean of Instruction. They are directly supervised by their respective Department Chairpersons.

The collective negotiations unit structure at the College is as follows: (a) faculty unit (full-time), approximately 93 employees, represented by AFT; (b) support staff unit, approximately 100 employees, represented by AFT; (c) administrators' unit, approximately 33 employees, represented by Somerset County College Administrative Society. The following employees are not now included in any negotiations units: adjunct faculty, security guards, confidential secretaries, confidential administrators, managerial employees, the College President, Executive Deans and Deans.

^{2/} See Exhibit J-1, Tr. p. 44.

There are approximately 1,427 full-time students and 3,046 part-time students at the College. The main campus of the College is at North Branch, New Jersey. There are also 11 regularly utilized off-campus teaching locations (area high schools) and 11 occasionally utilized off-campus locations (private corporate facilities in the area).

The hiring process for adjunct faculty is centered in the department wherein the adjunct will teach. Initially, applications and resumes are directed to and collected by the Personnel Office. The applications filed with Personnel are listed by discipline. When the need for an adjunct arises within a department, the Department Chairperson requests applications from Personnel; the Department Chairperson then reviews the applications, decides whom to call in for an interview, conducts the interviews and makes hiring recommendations to the Dean of Instruction. The Dean of Instruction, in turn, makes hiring recommendations to the Executive Dean for Academic & Student Affairs. Thereupon, a contract is tendered to the recommended applicant.

The determination to utilize adjuncts is made at varying points prior to the start of a given semester. For each semester, the College constructs a master schedule of courses and course sections, based in part upon student enrollment, available space and full-time faculty. The College then makes preliminary course teaching assignments to full-time faculty. Of the courses thereafter remaining unassigned, the College then makes assignments to adjunct faculty.

Utilization of adjuncts at Somerset County College may result from several different circumstances. After course teaching assignments to full-time faculty have been made, certain courses (or sections) may be left "uncovered" -- that is, in need of an instructor. Adjuncts are utilized to teach these courses. Additional course sections are often added to the master class schedule just prior to the start of a given semester. Such additions are usually occasioned by high levels of enrollment in certain courses. Adjuncts are utilized to teach these additional sections. Certain courses, though offered by the College, do not generate enough student demand to occupy a full-time faculty member with the expertise to teach such a course. Adjuncts are utilized to teach such courses. Adjunct faculty may teach any course offered by the College.

Upon being hired, an adjunct faculty member is proffered for his or her signature, a one-page, printed document entitled "Adjunct Faculty Contract" (Exhibit J-8) which sets forth the adjunct's name and address, a notice of assignment, the semester during which the course will be taught, the course(s) to be taught, the number of credits and contract hours of the course, when the course will be taught (time and days of week), the rate of pay and the starting date for the course. The printed contract language also provides that the adjunct's employment is contingent upon sufficient course enrollment and that the College may cancel the adjunct's contract, without financial obligation, due to either

insufficient course enrollment or circumstances requiring that the course be reassigned to a full-time faculty member.

Adjuncts teach courses in the same basic way as do the full-time faculty. They are obligated to teach classes; obligated to prepare lessons and lectures for classes; compose, administer and grade exams; assign and supervise the writing of student papers; grade papers; timely submit course grades; conduct conferences with students and perform such other duties as outlined in the Adjunct Faculty Handbook. While their contract indicates that adjuncts must attend faculty meetings, the testimony indicates that they are encouraged, but not required, to attend such meetings.

Adjuncts are evaluated each semester by the Dean of Instruction and/or Assistant Dean of Instruction and/or Department Chairperson. Their evaluations consist of a classroom observation (conducted by the Department Chairperson or designated full-time faculty member), student evaluation and Department Chairperson recommendation. Based upon the foregoing materials, the Dean of Instruction and Assistant Dean of Instruction determine whether the adjunct will continue to be employed and whether or not an increment is warranted.

The adjunct's salary schedule ^{3/} is comprised of three experiential tiers: an adjunct is initially placed in a tier based upon his/her professional training and experience. Within each

^{3/} See Exhibit R-4.

tier, there are incremental increases which may be achieved, based upon the individual's satisfactory evaluation.

Many adjuncts are enrolled in the State of New Jersey Public Employees Retirement System ("PERS"). In their first year of employment as adjuncts, they may be considered as temporary employees and need not enroll in the PERS. However, in their second year of employment as an adjunct, they are required to be enrolled in the PERS. Once enrolled in the system, an adjunct who does not teach in any given academic year shall automatically be re-enrolled in PERS upon his return to teach at the School in any future year. When enrolled in PERS, adjuncts automatically are provided with a life insurance benefit.

Adjuncts teach at the main campus and at off-campus locations. They teach in day and evening sessions, in the fall, spring and summer semesters, and teach both matriculated and nonmatriculated students -- as do full-time faculty. However, at least 75% of the adjunct faculty teach at the main campus and teach evening classes. Adjuncts are paid by the College every two weeks. Most adjuncts have full-time employment in their fields outside the College.

During the 1982-83 school year (for that part of the year for which data was available: Fall 1982, Spring 1983), the College employed approximately 169 individual adjunct faculty members. Of those 169 adjuncts, 77 or 46%, taught in more than one semester

during the 1982-83 school year. ^{4/} In fact, over the past five academic years (1978-83), of the 415 adjuncts employed, 167 or 40% were employed for only one semester; however, 248 or 60% were employed for two or more semesters. ^{5/}

Several indicia of adjunct employment all indicate a substantial measure of stability in their employment relationship with the College. For example, an inspection of exhibit J-5 indicates that employment tends to occur in adjacent temporal segments -- i.e., the pattern of employment which emerges as dominant is one where an individual is employed during 1980-81 and also in either 1979-80 or 1981-82 or continuously. An employment pattern where an individual is employed in 1978-79 and then is not employed again until 1982-83, is clearly unusual.

Exhibit J-11 indicates that during academic years 1981-82 and 1982-83, a total of 234 adjuncts were employed; 99 (or 42%) were employed during at least one semester of each academic year;

-- during academic years 1980-81 and 1981-82, 229 adjuncts were employed; 95 (or 41%) were employed during at least one semester of each academic year.

^{4/} See Exhibit J-5. Calculations for school year 1982-83 were based upon manually counting names set forth in Exhibit J-5 for Fall 1982 and Spring 1983. Based upon the College's own calculations in Exhibit J-10, in school year 1978-79, 54% of the adjuncts taught two or more semesters, in 1979-80, 53% (73 of 139) taught two or more semesters; in 1980-81, 46% (or 76 of 165) taught two or more semesters, and in 1981-82, 49% (or 78 of 161) taught two or more semesters.

^{5/} See Exhibit J-7.

-- during academic years 1979-80 and 1980-81, 223 adjuncts were employed; 79 (or 35%) were employed during at least one semester of each academic year.

-- during academic years 1978-79 and 1979-80, 209 adjuncts were employed; 78 (or 37%) were employed during at least one semester of each academic year.

During the 1982-83 academic year (Fall 1982, Spring 1983), 169 adjuncts were employed. Of those 169 adjuncts, 125 of them (or 74%) either had been employed by the College during a previous academic year or had been employed for two semesters during the 1982-83 academic year.

Thus, Exhibit J-11 reveals that a relatively large number of adjuncts (an average of approximately 40% of the adjuncts employed during a given academic year -- 85 employees) have had a continuing and substantial employment relationship with the College. This is the group of employees which the Petitioner seeks to represent.

IV Discussion of Law & Analysis

In Somerset Cty. College, D.R. No. 82-24, 8 NJPER 6 (¶13003 1981), on the basis of an administrative investigation, the Director of Representation determined the appropriate unit for collective negotiations as "all adjunct faculty members who commenced employment for at least their second semester during a given academic year, and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year,

excluding all other employees...."^{6/} In his Somerset decision, the Director analyzed the Commission decision in Rutgers, supra, and concluded that "it appears that the significant element which established the appropriateness of a negotiations unit of coadjutant faculty was the substantial rate of return of the coadjutant faculty."^{7/} In Rutgers, the Commission found that coadjutant faculty were regular part-time employees who were entitled to representation under the Act where regularity of employment was demonstrated by employment for more than one semester coupled with a willingness to be rehired in future semesters. Accordingly, the Director determined, and the Commission affirmed, the following unit to be appropriate for collective negotiations and ordered an election to be held therein:

all coadjutant faculty members who commence employment for at least their second semester during a given academic year, and who express a willingness to be rehired and teach at least one semester during the next succeeding academic year.
Rutgers, supra, at p. 229.

The Director noted that approximately two thirds of the Rutgers coadjutant faculty were "returnees" (i.e., persons having previous coadjutant employment experience with the University). By comparison, at Somerset College, the Director noted that 66% of the adjunct faculty employed by Somerset College in 1980-81 had previous adjunct teaching experience at the College.

^{6/} Somerset County College, supra, at p. 8.

^{7/} Id. p. 8.

The Commission denied the College's request for a review of the Director's order directing an election; the Appellate Division declined to stay the Director's order of an election. ^{8/} Having won the election, the Federation was certified by the Director on March 23, 1982, as the exclusive majority representative of a unit of adjunct faculty at the College. In a decision issued on May 11, 1983, the Appellate Division reversed and remanded the matter for a full evidentiary hearing. The Court stated:

Here the nature of the issues involved, the "continuity and regularity of employment" factors as they may apply to determine public employee status in the circumstances of this case, due regard for existence or absence of "community of interest," and the right of a particular employee to be represented in the proposed bargaining unit, dictate that the request for a hearing should have been granted. ...the "community of interest" requirement ... presents questions of fact which cannot be resolved on this record. Continuity and regularity of employment and, conceivably other factors in the nature of the employment as well as the nature of an individual's primary occupation elsewhere, may be considered in determining not only "public employee" status and community of interest but also individual eligibility for membership in the proposed unit.

Somerset County College, App. Div. Dkt. No. A-3629-81T2 (1982).

Accordingly, in conducting the hearing in this matter, the Hearing Officer directed the parties to address the issues raised by

^{8/} Somerset College, P.E.R.C. No. 82-68, 8 NJPER 106 (¶13043 1982); mot. to stay den. 2/4/82 App. Div. Docket No. A-2376-81T2.

the court. In reviewing and evaluating the record herein, the Hearing Officer has addressed the following issues: (1) whether those persons employed by the College as "adjunct faculty" are public employees within the meaning of the Act; (2) if said persons are public employees within the meaning of the Act, whether the extent of their employment relationship with the College is sufficient to support an asserted right to collective negotiations; and (3) whether the unit petitioned for herein is appropriate for collective negotiations, giving due regard to community of interest factors and such other factors as the Commission may deem appropriate.

N.J.S.A. 34:13A-3(d) states:

The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer unless this Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment. This term, however, shall not include any individual taking the place of any employee whose work has ceased as aforesaid, nor shall it include any individual employed by his parent or spouse, or in the domestic service of any person in the home of the employer, or employed by any company owning or operating a railroad or railway express subject to the provisions of the Railway Labor Act. This term shall include any public employee, i.e., any person holding a position, by appointment or contract, of employment, in the service of a public employer, except elected officials, members of boards and commissions, managerial executives and confidential employees (emphasis added).

Having reviewed this statutory language, whether it is read narrowly or expansively, I can discern no basis upon which to exclude adjunct faculty from coverage thereunder. Note, the provision states, "The term employee shall include any employee...." It further states that, "this term shall include any public employee, i.e., any person holding a position, by appointment or contract, ... in the service of a public employer...." The exclusions from coverage are clearly articulated within the provision: (a) persons employed by a parent or spouse; (b) persons in the domestic service of any person; (c) persons employed by any company owning or operating a railroad subject to the Railway Labor Act; (d) persons taking the place of any individual whose work has ceased in connection with any current labor dispute; (e) elected officials; (f) members of boards and commissions; (g) managerial executives; and (h) confidential employees.^{9/}

The provision's inclusions are broad-based; the exclusions are narrow and very specific. Clearly, all adjunct faculty at the College in the collective negotiations unit in which the Director of Representation ordered an election herein fall within the inclusion language: any person holding a position, by appointment or contract, within the service of a public employer. These adjunct

^{9/} See, State of New Jersey, E.D. No. 67 (1975); Rutgers University (adjuncts), supra; Burlington County, P.E.R.C. No. 14 (1969); Cherry Hill Township, P.E.R.C. No. 30 (1970) and Clearview Reg. Board of Education, E.D. No. 76-24, 2 NJPER 63 (1976).

faculty clearly would not be excluded under any of the enumerated statutory exclusions. Accordingly, in addressing the first part of the inquiry herein, I conclude that adjunct faculty at the College are public employees within the meaning of the Act. 10/

* * *

Having determined that the adjuncts are public employees within the meaning of the Act, the next issue for consideration herein is whether there is a sufficient employment nexus to warrant the creation of a collective negotiations relationship between the College and the adjuncts.

Initially, the undersigned notes that there is no limiting language in the Act which confers rights upon public employees in "degrees". More specifically, there is nothing in the Act which indicates that part-time employees or summer employees or ten-month employees, etc., are entitled to fewer or lesser rights and protections under the Act than are "regular" full-time employees.

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

Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees ...

10/ See, Rutgers University (adjuncts), supra; Bridgewater Raritan Reg. Bd. of Ed., D.R. No. 79-12, 4 NJPER 12 (¶4201 1978); and Borough of Seaside Park. P.E.R.C. No. 81-18, 6 NJPER 392 (¶11203 1980).

This provision of the Act, which confers the general rights and protections of the Act upon public employees, is constructed in a manner consistent with §3(d): rights and protections are given to all public employees, with the exception of several specifically enumerated classes of employees. Further, no other provision of the Act would suggest that a contrary interpretation be given to subsection 5.3.^{11/} Accordingly, the undersigned concludes that in order to reach a determination which denies the rights and protections of the Act to persons found to be public employees, a cogent and specific factual and legal argument must be proffered.

Several cases have been decided by this Commission and other labor relations agencies dismissing certification petitions on the basis that the employees sought did not comprise an appropriate negotiations unit under the standards of the Act. These determinations were most often premised upon the attenuated nature of the employment relationship between employer and employees. In San Francisco Art Institute, 226 NLRB No. 204, 93 LRRM 1505 (1976), the National Labor Relations Board considered the organizational rights of certain part-time university employees. The Board found that the student/part-time custodial employees did not have a sufficient employment nexus to warrant a collective negotiations relationship with the employer. The dissent summarized the existing Board law on this topic:

^{11/} See also, N.J.S.A. 34:13A-5.4 and N.J.S.A. 34:13A-6. Compare, N.J.S.A. 34:13A-14 through 21.

Under established Board law the determination of whether student or other part-time employees are entitled to collective-bargaining representation depends upon whether the nature of their employment gives them a sufficient interest in wages, hours, and other working conditions to justify such representation. The sufficiency of this interest will ordinarily turn upon such factors as continuity of employment, regularity of work, the relationship of the work performed to the needs of the employer, and the substantiality of their hours of work.

San Francisco Art Institute, supra, at p. 1508 (dissenting opinion).

The College cited several cases in support of the proposition that the adjuncts do not have a sufficient employment relationship with the College to entitle them to collective negotiations. In State of New Jersey, E.D. No. 67, 1 NJPER 2 (1975), the State challenged the ballots of certain part-time employees -- denominated consulting physicians. The challenges were determinative, and a hearing was held to resolve the challenges. The State contended that the consulting physicians should be excluded from the broad-based negotiations unit comprised of all professional employees of the State (which included, inter alia, full-time physicians) because (1) they were not public employees, (2) these persons were independent contractors, and (3) they did not share a community of interest with employees in the State Professional Unit.

The Executive Director noted a number of similarities between part-time consulting physicians and regular full-time physicians: consulting physicians work in proximity to full-time

unit physicians; they each have similar work-related concerns; they have a high degree of independent decision making authority and they belong to the PERS.

However, the Executive Director also noted several important differences: the consulting physicians worked far fewer hours per week than did their full-time counterparts; their work schedules were flexible while those of full-time physicians were permanent; the compensation scheme for consulting physicians was totally different than that for full-time physicians -- both in amount and in structure -- it (consulting physicians' salary plan) contained no rate range or provision for increments; consulting physicians had outside practices which were their top priority; consulting physicians received no fringe benefits; the State institutions where they were employed exercised little administrative/supervisory control over the consulting physicians; and finally, these employees were employed on an open-ended, as-needed, terminate-at-will basis without any written contract.

In reaching his determination, the Executive Director set forth a framework for analysis as follows:

... the instant matter can be and is better resolved not on the basis that consulting physicians are not public employees but by an examination of the appropriateness of including them within the negotiating unit herein. The question of the application or coverage of the Act to casual or part-time employees should be decided when that issue is fully and specifically litigated. Suffice it to say that, on the basis of the record herein, it cannot be determined that part-time employees, per se, are excluded from the coverage of the Act.....

... This discussion compels the conclusion that it would not be appropriate to include consulting physicians in the negotiating unit at issue. Their services to the State are ancillary to their private practices which are their primary means of livelihood. In sum, their employment relationship is too ephemeral to carry with it the rights and obligations of the Act....

... Accordingly, it is found that ... they should not be included in the negotiating unit. 12/

The essential holding of the Executive Director's decision was that consulting physicians would not be included in the negotiations unit with other State professional employees. That determination was reached after a conventional community of interest analysis -- the conclusion reached was that these part-time consulting physicians lacked a sufficient community of interest with regular, full-time State professional employees (including full-time physicians) to warrant their inclusion in the State professional unit. 13/

The College also relies upon Rutgers, the State University, D.R. No. 82-55, 8 NJPER 28 (¶13012 1981), aff'g D.R. No. 82-6, 7 NJPER 546 (¶12242 1981). In that matter, the Director stated:

The residence counselors herein work variable hours, tailor their schedules to meet their academic requirements, and must be concerned

12/ State of New Jersey, E.D. No. 67, 1 NJPER 2 (1975) at p. 8.

13/ The undersigned believes that the statement in State of New Jersey, supra, concerning the extent of the employment relationship between the State and the consulting physicians was dicta -- i.e., it was neither necessary nor integral to the ultimate conclusion reached in the decision. See, Rutgers University, supra, at p. 178.

primarily with their academic commitments rather than their part-time employment...

... The factors cited above indicate that the work performed by the residence counselors is not regular, but rather sporadic, and that the relationship of the work performed to the needs of the employer is secondary to the employer's concern for the academic obligations of the employees as students. The continuity of employment of the residence counselors over the last five years is measured by an annual turnover rate of 45 to 50%. The substantiality of the residence counselors' hours of work was estimated at an average of 17 hours per week.

...it would not effectuate the purposes of the Act to grant the residence counselors herein the right to collectively negotiate pursuant to the Act,...^{14/}

Rutgers, (Residence Counsellors), supra, at p.

549.

The Commission held that while Rutgers' Residence Counsellors were employees within the meaning of the Act, based upon the totality of circumstances presented therein, Residence Counsellors did not possess a sufficient interest in their employment relationship with Rutgers to warrant the right to collective negotiations under the Act. Accordingly, the petition was dismissed.^{15/}

^{14/} See also, Suffolk County, BOCES III, 15 PERB 3015 (NY PERB 1982), where the New York Public Employment Relations Board held that teachers in a school district's continuing education program were casual employees inasmuch as they lacked the level of continuity and regularity of employment necessary for status as a public employee within the meaning of the Act. The Board cited three factors: these teachers did not teach in the school district's primary education program; they taught only 3 1/2 hours a week and taught only 1/5 of the days that school was in session.

^{15/} See also, San Francisco Art Institute, 226 NLRB 204, 93 LRRM 1505 (1976); Suffolk Cty. Boces, 15 PERB 3015 (1982).

However, a closer look at the State of New Jersey and Rutgers (Residence Counsellors) cases reveals that their applicability to this case is limited. In State of New Jersey, supra, the issues of public employee status and sufficient employment nexus were not the basis for the Commission's decision. Instead, the Commission based its decision sustaining the challenges to the ballots of the part-time physicians upon a lack of community of interest between the other professional unit employees and the consulting physicians. In Rutgers, (Residence Counsellors), the Commission concluded that the counsellors, though public employees, lacked the requisite employment nexus to qualify for organizational rights under the Act. The counsellors were students and the Commission cited as a significant factor in its decision the fact that the counsellors' employment relationship with the University was clearly subordinate to their student relationship.

In the instant matter, the petitioner does not seek to accrete the adjunct faculty to a unit of full-time faculty; rather, it seeks to create a unit of only adjunct faculty -- and not all adjunct faculty, but only those meeting the regularity and continuity requirements. Thus, the community of interest problems noted in State of New Jersey are not present here. Also, the adjuncts are not students; there is no other relationship which they have with the College which is superior to their employment relationship.

In Borough of Avalon, H.E. No. 79-30, 5 NJPER 71 (¶10044 1979), specifically adopted by the Commission in Borough of Seaside Park, supra, the Hearing Examiner noted the factors which the National Labor Relations Board relies upon to determine employment regularity and continuity:

...when the employees are drawn from the same labor force each season (Kelly Brothers Nurseries Inc., 140 NLRB 82, 51 LRRM 1572 (1962)), where former employees are given preference in rehiring (Aspen Skiing Corp., 143 NLRB 707, 53 LRRM 1397 (1963)), and where there is a relatively stabilized demand for, and dependence on, such employees by the employer and, likewise, a reliance on such employment by a substantial number of employees who return each year (California Vegetable Concentrates, Inc., 137 NLRB 1779, 50 LRRM 1510 (1962)).

Avalon at p. 74.

In Somerset County Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976), the Director of Representation determined that part-time psychiatrists were employees within the meaning of the Act, shared a community of interest with other Guidance Center professionals and displayed a continuity and regularity of employment sufficient to entitle them to the rights and protections of the Act and, therefore, were properly included in a unit of all professional employees. The Director stated:

...The total number of hours worked per week, the regularity of hours kept during each week and the continuity of such employment combine to create a regularity of employment which is indicative of a far more substantial employment relationship than was present in In re State of New Jersey.

Somerset County, at p. 360.

In Joclin Mfg. Co., 144 NLRB No. 74, 54 LRRM 1128 (1963), the Board found that having been employed for only a short period of time was not dispositive of a part-time employee's unit membership status. In Leaders-Nameoki, Inc., 237 NLRB 202, 99 LRRM 1132 (1978), the Board held that although a part-time employee of Leaders-Nameoki was a full-time employee of another employer, the part-time employee was appropriately included in the Leaders-Nameoki collective negotiations unit.^{16/}

Continuity of employment for the adjuncts herein is demonstrated by their rate of return to teach at the College (see, Findings of Fact at pp. 12-13, supra). Over a period of 5 years (1978-83), after having taught in one semester, adjuncts' rate of return to teach in a second, or more, semesters is between 40-55%. It is this group of employees -- employees who are actually returning -- who comprise the collective negotiations unit sought herein.^{17/}

Based upon the foregoing, I conclude that the adjuncts sought by this petition -- all those who commence employment with the College for at least their second semester during a given academic year and who express a willingness to be rehired to teach

^{16/} In Somerset County, Joclin and Leaders, the part-time employees involved worked between 4 and 20 hours per week.

^{17/} The continuity of employment factor is measured by means of a ballot question which asks each adjunct whether he/she intends to return to teach during the next academic year.

at least one semester during the next succeeding academic year -- have a substantial employment nexus with the College which is sufficient to support the creation of a collective negotiations relationship between the College and the adjuncts.

* * * *

Having determined that the adjuncts are public employees and that they have a sufficient employment nexus to enable them to seek collective negotiations rights, the final issue for determination is whether the unit petitioned-for -- adjunct faculty -- is appropriate for collective negotiations. As indicated above, the Commission has found units of part-time employees appropriate for collective negotiations. In Rutgers (adjuncts), supra, the Commission found a unit of adjuncts who met the Commission's regularity and continuity requirements appropriate for collective negotiations.

Similarly, in the instant matter, the Commission found appropriate and ordered an election in a unit of "...all adjunct faculty members who commenced employment for at least their second semester during a given academic year, and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year, excluding all other employees." Somerset, supra, at p. 8.

Aside from the continuity and regularity factors, -- which the Hearing Officer has determined to have been met -- the petitioned-for unit is appropriate for collective negotiations. The

College regularly plans to use adjuncts to teach courses during each semester. In fact, the College has stated that it could not properly function without a complement of adjuncts. The employees in the petitioned-for unit share a strong community of interest (See, Findings of Fact at pp. 7-13). They are all hired in the same manner, through a process centered in the department where the adjunct will teach. They all sign the same employment contract. The substance of each adjunct's work for the College -- teaching classes -- is similar. The evaluation process for all adjuncts is the same. All adjuncts are paid in accordance with the same salary schedule. Most adjuncts are enrolled in the State of New Jersey Public Employees Retirement System. Most adjuncts teach on the main campus at Somerset College. Most adjuncts teach evening courses.

The fact that most adjuncts have other employment outside the College does not remove their community of interest. There is great diversity in any collective negotiations unit, once you move away from the conditions of employment which all unit members share. Their race, religion, marital status, parent/non-parent status, homeowner/renter status, etc., all are likely to greatly differ over the entire population of a negotiations unit. However, their education and training are likely to be similar as is their interest in compensation and general conditions of work. While the fact that adjuncts are also employed elsewhere may affect the measure of value which they attach to their employment with the College, it does not remove the common interest which they have with other unit members in their employment relationship with the College. See, Leaders Nameoki, supra.

In San Francisco University, 265 NLRB No. 155, 112 LRRM 1113 (1982), the Board determined that a unit of part-time faculty members shared a substantial community of interest and have a reasonable expectation of future employment. The Board concluded that the part-time faculty unit was appropriate for collective negotiations.^{18/}

Based upon the foregoing, the Hearing Officer concludes that the petitioned-for unit is appropriate for collective negotiations.

Conclusions and Recommendations

Based upon the entire record in this proceeding and the foregoing discussion, I conclude and recommend as follows:

1. The petitioned-for adjunct faculty members are public employees within the meaning of the Act;
2. The petitioned-for adjunct faculty members have a sufficient employment relationship with Somerset County College to support the right to form a collective negotiations unit and negotiate their terms and conditions of employment with the College;
3. The petitioned-for adjunct faculty unit is appropriate for collective negotiations.

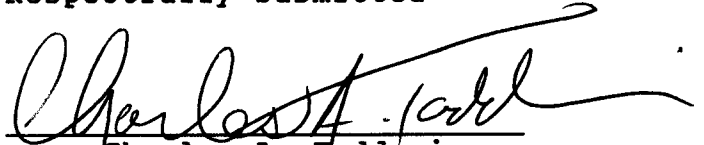
Accordingly, I recommend that the Commission direct the conduct of an election in a unit comprised as follows:

^{18/} Cf., Goddard College, 216 NLRB No. 81, 88 LRRM 1228 (1975), where the Board determined a unit of part-time faculty was not appropriate, based upon their lacking a community of interest.

Included: All adjunct faculty employees of Somerset County College who commenced employment for at least their second semester during a given academic year, and who express a willingness to be rehired to teach at least one semester during the next succeeding academic year.

Excluded: Managerial executives, confidential employees, police employees, firefighters, craft employees, full-time employees and all other employees.

Respectfully Submitted

A handwritten signature in cursive script, appearing to read "Charles A. Tadduni", written over a horizontal line.

Charles A. Tadduni
Hearing Officer

DATED: December 22, 1986
Trenton, New Jersey