

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF

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Case No. PERA-R-10-444-E
(PERA-R-1123-E)

TEMPLE UNIVERSITY

AMENDED PROPOSED ORDER OF DISMISSAL¹

On December 20, 2010, the Temple Association of University Professionals (Union) filed with the Pennsylvania Labor Relations Board (Board) a petition for representation pursuant to the Public Employee Relations Act (PERA). The petition alleges that thirty percent or more of the unrepresented part-time faculty employed at certain schools and colleges of Temple University (Temple) wish to be exclusively represented by the Union for the purpose of collective bargaining and accreted into an existing bargaining unit of full-time faculty.² The existing unit certification explicitly excludes Temple's law, medical and dental schools. The list of Temple schools and colleges included in the petition is as follows: Tyier School of Art, Fox School of Business and Management, College of Education, College of Engineering, College of Health Profession and Social Work, College of Liberal Arts, Esther Boyer College of Music and Dance, School of Pharmacy, College of Science and Technology, School of Tourism and Hospitality Management.

On January 5, 2011, the Secretary of the Board issued an order and notice of hearing directing that a hearing be held on Monday, March 21, 2011, in Harrisburg. Four days of hearing were held on the following dates: March 21, 2011, April 11, 2011, May 23, 2011 and June 21, 2011. Throughout these proceedings, Temple preserved its objection to my ruling excluding consideration of Temple's position that part-time faculty at the professional schools (i.e., law, medicine, dentistry and podiatry) should also be included for consideration in the proposed unit of regular part-time and full-time faculty. Temple also consistently maintained the position that the part-time faculty does not share an identifiable community of interest with the full-time faculty. The question regarding the existence of an identifiable community of interest remained the primary issue in dispute over four days of hearing.³

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. Temple is a public employer within the meaning of Section 301(1) of PERA. (PERA-R-1123-E, Nisi Order of Election, 1972; Nisi Order of Certification, 1973; Final Order, 1973; 43 P.S. §1101.301(1)).

2. The Union is an employee organization which membership includes public employees and which exists to deal with public employers regarding labor disputes and terms and conditions of employment within the meaning of Section 301(3) of PERA. (PERA-R-1123-E, Nisi Order of Election, 1972; Nisi Order of Certification, 1973; Final Order, 1973; 43 P.S. § 1101.301(3)).

3. During the hearing on May 23, 2011, the parties submitted Joint Exhibit 1, which contains a set of stipulations. For purposes of determining the adequacy of the showing of interest, the parties stipulated and agreed to the following criteria for regular part-time faculty:

1. Employment in at least two of the following semesters: Spring 2009, Fall 2009, Spring 2010, Fall 2010; and
2. The employment referenced in criterion #1 must include at least one occasion of employment in Spring 2010 or Fall 2010.

(Joint Exhibit 1).

¹ In the original proposed order of dismissal issued August 9, 2011, I mistakenly wrote on page 2 that "there is an adequate showing of interest in support of the Union's petition, and the petition must be dismissed." The underlined word "adequate" should have read "inadequate." The change to "inadequate" has been made herein and underlined for clarity.

² The petition was filed as a representation matter because of Westmoreland Intermediate Unit, 12 PPER I 12347 (Order and Notice of Election, 1981), which held that when a party seeks to accrete a number of unrepresented employees that amounts to fifteen percent or more of the existing bargaining unit, an election must be held among the employees sought to be included.

³ The parties also disagree over whether managers and supervisors, who also teach part-time, should be included in the proposed unit of full-time and regular part-time faculty. Temple has also preserved its objection to my prior rulings on its motion to partially quash subpoena and motion for recusal of hearing examiner.

4. On July 20, 2011, Temple submitted to the Board (via e-mail transmission to the Representation Coordinator) an employee list containing the names of 1,259 regular part-time faculty employees, who purportedly meet the criteria established by the parties in Joint Exhibit 1.

DISCUSSION

Both PERA and the Board's regulations require that a petition for representation be supported by, at least, a thirty percent showing of interest. 43 P.S. § 1101.603; 35 Pa. Code §§ 95.12-95.14. The showing of interest must accompany the petition. In the Matter of the Employees of Neshannock Township School District, 17 PPER 17153 (Final Order, 1986). In this case, the parties stipulated and agreed to a formula for determining which part-time faculty employees at Temple would be properly included in a list of regular part-time employees for purposes of determining the showing of interest. The list filed by Temple with the Board contains the names of 1,259 employees. The valid authorization cards submitted with the petition constitute less than the requisite thirty percent of 1, 259. Accordingly, there is an inadequate showing of interest in support of the Union's petition, and the petition must be dismissed.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. Temple University is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employee organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
5. The petition for representation filed by the Union is not supported by a thirty percent showing of interest.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the petition for representation is dismissed.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be and shall become final and absolute.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this seventeenth day of August, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner