

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF

:

:

Case No. PERA-R-15-236-W

:

BEAVER COUNTY COMMUNITY COLLEGE

:

FINAL ORDER

A Petition for Representation under the Public Employe Relations Act (PERA) was filed with the Pennsylvania Labor Relations Board (Board) on August 18, 2015, by the United Steel, Paper, Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (Petitioner), alleging that it represented thirty percent or more of the professional part-time faculty of Beaver County Community College (Employer) and requesting pursuant to Section 603(c) of PERA that the Board schedule a hearing and order an election. The Petition was accompanied by a showing of interest to support the Petitioner's contention that at least thirty percent of the eligible professional part-time faculty desired to be represented by the Petitioner.

On September 2, 2015, the Secretary of the Board dismissed the Petition for Representation, stating that a unit limited to only part-time faculty is inappropriate under the Board's broad-based bargaining unit policy, citing **Allentown City School District**, 38 PPER 100 (Final Order, 2007). The Secretary further stated that absent any statutory exclusion, the part-time faculty are appropriately included in the existing professional unit represented by the Community College of Beaver County Society of the Faculty, PSEA/NEA (Incumbent Union) certified at Case No. PERA-R-1070-W,¹ citing **Richland School Board**, 8 PPER 76 (Nisi Decision and Order, 1977), 8 PPER 314 (Final Order, 1977), **aff'd on other grounds sub nom. Richland Education Association v. PLRB**, 403 A.2d 1008 (Pa.Cmwlth. 1979) (certification of unit of professional employees including "teachers" implicitly included both full-time and regular part-time teachers).

On September 18, 2015, the Petitioner filed timely exceptions with the Board challenging the Secretary's dismissal of the Petition for Representation. Pursuant to an extension of time granted by the Secretary, the Petitioner timely filed a brief in support of the exceptions on September 30, 2015. On October 8, 2015, the Employer filed a response to the Petitioner's exceptions. Following an extension granted by the Secretary, the Employer filed a brief on October 21, 2015.

In the exceptions, the Petitioner alleges that application of the Board's broad-based bargaining unit policy in this case deprives the part-time faculty of their right under PERA to choose a bargaining representative. The Petitioner further alleges that the Secretary erred in concluding that the part-time faculty are included in the professional unit represented by the Incumbent Union because they are not members of the Incumbent Union, they do not pay union dues or fair share fees to the Incumbent Union, and the Incumbent Union does not represent them for purposes of collective bargaining or the filing of grievances. The Petitioner asserts that its position is supported by the decision of a Board Hearing Examiner in **McDonald Borough**, 43 PPER 42 (Order Directing Submission of Eligibility List, 2011).

In making unit determinations, the Board is guided by its longstanding, broad-based bargaining unit policy. That policy is based on Section 604(1)(ii) of PERA, which directs the Board, when determining the appropriateness of a unit, to take into account the effects of overfragmentation. In **City of Philadelphia**, 10 PPER ¶ 10059 (Final Order, 1979), the Board stated that:

The public policy of the Commonwealth and the purpose of the Act as set forth in Section 101 is to promote orderly and

¹ On June 11, 1971, the Board certified the Incumbent Union as the exclusive bargaining representative for all "faculty, counselors, librarians, co-ordinators; and excluding all non-professional employes, supervisors, first level supervisors, and confidential employes...."

constructive relationships between public employers and their employes and to preserve at the same time the rights of the citizens of the Commonwealth to keep inviolate the guarantees for their health, safety and welfare. It is our considered judgment that the public policy of the Act will best be effectuated by avoiding the dangers of overfragmentation inherent in the certification of a bargaining unit limited to a small number of employes from among a much larger group. The whipsaw effect bargaining with a myriad of fragmented bargaining units has on an employer undermines rather than fosters harmonious employee-employer relations and the rights of the public.

Id. at 97. In furtherance of its broad-based bargaining unit policy, the Board includes all regular part-time employes in the same unit as their full-time counterparts. **Pittsburgh Board of Public Education**, 24 PPER ¶ 24170 (Final Order, 1993); **Philadelphia County Court of Common Pleas**, 22 PPER ¶ 22126 (Final Order, 1991); **Philadelphia Community College**, 19 PPER ¶ 19110 (Final Order, 1988); **Borough of Mechanicsburg**, 9 PPER ¶ 9024 (Order and Notice of Hearing, 1978). The Board will only deviate from its broad-based bargaining unit policy upon a showing that an identifiable community of interest is completely lacking between the employes who are included in the unit and the employes who are excluded from the unit. **Commonwealth of Pennsylvania, Pennsylvania Board of Probation and Parole**, 43 PPER 20 (Final Order, 2011); **Allentown City School District, *supra***.

Not only does the Petitioner fail to allege that an identifiable community of interest is completely lacking between the part-time and full-time faculty, but a similar argument was recently rejected in **Temple University**, 47 PPER 54 (Order Directing Submission of Eligibility List, 2015) (part-time faculty accreted to existing unit of full-time faculty because they share a community of interest with members of the existing unit). Thus, the Petitioner's allegations, even if proven, would not warrant a departure from the Board's broad-based bargaining unit policy. **Pennsylvania Board of Probation and Parole, *supra*; Allentown City School District, *supra***.

Moreover, the Board included "faculty" in the professional bargaining unit certified at Case No. PERA-R-1070-W, with no specific inclusion of only full-time faculty or exclusion of part-time faculty. Thus, in accordance with **Richland School Board, *supra***, that certification encompassed all full-time and regular part-time faculty. As the Board stated in **City of Reading**, 23 PPER ¶ 23134 (Final Order, 1992):

The Board has previously held that in certifying bargaining units, where the Board includes all employes of a particular category, the certification includes all full-time and regular part-time employes, unless the regular part-time employes are specifically excluded by the Board or the certification refers specifically to only full-time employes as being included.

Richland School Board ... See also Northeastern School District, 9 PPER ¶ 9102 (Nisi Decision and Order, 1978) (Board certification that did not specifically exclude regular part-time employes includes regular part-time employes). So too here, the Board's original certification of the nonprofessional bargaining unit did not specifically exclude part-time employes and is to be interpreted, consistent with previous holdings of the Board, to include regular part-time employes.

23 PPER at 344. Likewise here, the certification of the professional bargaining unit included "faculty" and did not specifically include only full-time faculty nor exclude regular part-time faculty. Therefore, consistent with previous decisions of the Board, the 1971 certification is to be interpreted as including regular part-time faculty in the professional unit.

The Petitioner's allegations that the regular part-time faculty are not members of the Incumbent Union and do not pay union dues or fair share fees does not affect the conclusion herein that they are members of the certified bargaining unit. An employe's status as a

member of the bargaining unit is not determined by the employee's membership in the union or obligation to pay fair share fees pursuant to a collective bargaining agreement.²

Additionally, the Petitioner's reliance on **McDonald Borough** is misplaced. In that case, a rival union raised a question of representation when it filed a petition to represent a unit of all full-time and regular part-time police officers where the incumbent union was not certified by the Board and the collective bargaining agreement between the incumbent union and the employer only covered full-time police officers. The employer argued that even though the collective bargaining agreement did not apply to part-time police officers, it nevertheless barred the rival union's petition. However, the Board's Hearing Examiner rejected that argument and held that the agreement did not bar an election for the appropriate unit of all full-time and regular part-time police officers because it did not address the wages, hours and working conditions of the regular part-time officers. Furthermore, as acknowledged by the Petitioner, the issue of whether a separate unit of regular part-time employees would be appropriate was not even discussed by the Hearing Examiner in **McDonald Borough** because the petitioner in that case was seeking to represent the broad-based unit of all full-time **and** regular part-time employees.

Unlike **McDonald Borough**, the Petitioner here is not seeking to represent all of the full-time and regular part-time employees, but is only seeking to represent the regular part-time faculty. To permit the Petitioner to proceed on its Petition would not only violate PERA's admonition under Section 604(1)(ii) against overfragmentation, but would be contrary to the Board's policy of conducting rival representation proceedings in the unit as previously certified. **Commonwealth of Pennsylvania, Pennsylvania Board of Probation and Parole, supra.** Here the previously certified unit includes both full-time and regular part-time faculty and thus the Petition for Representation was properly dismissed for seeking an election among only a splinter group of an existing certified unit. **Id.** Therefore, the Secretary properly dismissed the Petition for Representation, which was filed for an inappropriate unit.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the Petitioner's exceptions and affirm the Secretary's decision not to direct a hearing on the representation petition.

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Petitioner are hereby dismissed and the Secretary's decision declining to direct a hearing on the Petition for Representation be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this sixteenth day of February, 2016. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

CHAIRMAN L. DENNIS MARTIRE DISSENTS.

I must respectfully dissent from the majority opinion. In 1971, the Incumbent Union was certified through a joint request for certification filed with the Employer, rather than through an election among the employees. During the 45 years since the 1971 certification, the Incumbent Union and the Employer have only negotiated over the full-time faculty and the Incumbent Union has not sought to represent the part-time adjunct

² Furthermore, as members of the professional bargaining unit, the part-time faculty are owed a duty of fair representation by the Incumbent Union. **Ziccardi v. Commonwealth of Pennsylvania, Department of General Services**, 500 Pa. 326, 456 A.2d 979 (1982); **Falsetti v. Local Union No. 2026**, 400 Pa. 145, 161 A.2d 882 (1960).

faculty in collective bargaining or the grievance procedure. Thus, contrary to the conclusion reached in the majority opinion, the Incumbent Union and the Employer do not consider the adjuncts to be part of the certified bargaining unit and the Incumbent Union has demonstrated no interest in representing these employes.

Furthermore, the Incumbent Union has chosen not to represent the part-time faculty even though they greatly outnumber the full-time faculty. Indeed, the record indicates that there are approximately 108 adjuncts and that the number of adjuncts substantially exceeds the number of full-time faculty. Nevertheless, the Incumbent Union has provided no representation to the part-time faculty, and the majority decision permits this situation to continue with no recourse for the adjuncts even though they make up most of the Employer's faculty.

The fact that the Incumbent Union has simply ignored the adjuncts is shown by its failure to collect union dues or fair share fees from them, even though Pennsylvania law requires deduction of union dues or fair share fees where, as here, the collective bargaining agreement contains both a maintenance of membership provision for union members and a fair share fee provision for non-members. Contrary to the majority's view that the certified bargaining unit includes part-time faculty, neither the Incumbent Union nor the Employer have ever recognized the adjunct group as part of the bargaining unit. When hired, adjuncts are not given dues checkoff cards to authorize deduction of union dues, and there are no fair share fee deductions from their pay when they opt not to join the union. This situation of no representation for the adjuncts has continued for 45 years and will remain unchanged under the majority decision.

While a broad-based bargaining unit is generally favored as a means of providing labor stability, the effective severing of the full-time and part-time faculty in this case was through action or inaction of the Incumbent Union and the Employer, and not by decision of the Board. Further, the Board's policy against promoting overfragmentation of employes is not implicated by this case where the employes have since 1971 been effectively fragmented into two groups by the Incumbent Union and the Employer. After 45 years of being denied representation by the Incumbent Union, the adjuncts are entitled to the opportunity to exercise their right under PERA to seek representation in collective bargaining with their Employer. They should not be denied that opportunity because, in the majority's view, the Incumbent Union could have sought to bargain on their behalf under the existing certification, but declined to do so.

In sum, for nearly a half century, the Incumbent Union and the Employer have made it clear that they do not consider the part-time faculty to be part of the certified unit and have no desire to bargain over the terms and conditions of their employment. Thus, regardless of whether the certification could be construed to include the adjuncts, dismissal of the Petition for Representation will only undermine the efforts of the part-time faculty to choose a representative who will bargain on their behalf, as is their right under PERA. In my view, the only adequate means of affording the adjuncts their right under the law to choose a bargaining representative is for the Board to process the Petition for Representation. Accordingly, I dissent from the majority opinion and would remand the Petition to the Board Secretary with direction to order a hearing.