

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of

**CAYUGA COMMUNITY COLLEGE PART-TIME
FACULTY ASSOCIATION,**

Petitioner,

CASE NO. C-6254

- and -

**CAYUGA COMMUNITY COLLEGE and COUNTY
OF CAYUGA,**

Employer,

-and-

**CAYUGA COMMUNITY COLLEGE FACULTY
ASSOCIATION,**

Intervenor.

**TRUDY RUDNICK, LABOR RELATIONS SPECIALIST AND ORGANIZER, for
Petitioner**

**BOND, SCHOENECK & KING (COLIN M. LEONARD of counsel), for
Employer**

SUSAN M. DECARLO, LABOR RELATIONS SPECIALIST, for Intervenor

DECISION OF ADMINISTRATIVE LAW JUDGE

On April 22, 2014, the Cayuga Community College Part-Time Faculty Association (Part-Time Faculty Association) filed a petition seeking certification as the exclusive collective bargaining agent for a previously unrepresented unit of employees of Cayuga County and Cayuga Community College (College). The Cayuga Community College Faculty Association (Faculty Association), which represents the full-time faculty at the College, intervened in support of the petition. The College responded to the

petition, asserting that the petitioned-for unit was not appropriate and that the titles petitioned for are more appropriately placed in the unit currently represented by the Faculty Association.

FACTS

Currently, there are four bargaining units at the College. The Faculty Association has approximately 60 members, including division chairs.¹ The other units are the administrative professionals group, the educational support professionals and the maintenance and custodial staff.²

The unit sought by the Part-Time Faculty Association consists of approximately 200 adjunct faculty members, each of whom can teach up to 12 credits per semester.³ Adjuncts are compensated on a per credit hour basis, at a rate equivalent to the rate paid to full-time faculty for teaching an "overload" course, as set out in Article XV of the current collectively negotiated agreement between the College and the Faculty Association.⁴ Adjuncts include not only former full-time faculty and administrators but current members of the administrative professionals group.

There are four divisions at the College, and the division chairs assign courses to

¹ The current collective bargaining agreement between the College and the Faculty Association, for the period September 1, 2011 through August 31, 2016, was signed on April 9, 2014. It was ratified by the Faculty Association's membership on April 11, 2014 and by the College Board of Trustees on April 16, 2014. On April 22, 2014, the Cayuga County Legislature approved the agreement by resolution, thereby providing the funding necessary to implement the Agreement. Stipulation of Facts dated March 12, 2015.

² Joint Exhibit 1

³ Transcript, vol. 2, p. 15.

⁴ Full-time faculty generally teach 15 credit hours per semester, for which they are paid a salary, but may also teach overload courses for which they are compensated at a dollar amount per credit hour.

both full-time and adjunct faculty. Division chairs are also responsible for hiring and firing adjunct faculty, either directly or through a designee. Full-time faculty members have a just cause disciplinary process that ends in binding arbitration. Full-time faculty are hired after the recommendation of a search committee to the appropriate vice president and then to the College president and with the approval of the Board of Trustees, which is specified in the Faculty Association's collective bargaining agreement.⁵

Adjuncts are not eligible for health insurance or dental insurance, which full-time faculty receive. Adjuncts may participate in the State and Local Employees' Retirement System or the Teachers' Retirement System. The same two systems are available to full-time faculty, though full-time faculty are also eligible to participate in the TIAA CREF retirement program.⁶ Adjuncts receive no paid leave time. Full-time faculty receive paid sick leave and personal leave, and are eligible for paid sabbatical leave after six years of service with the College.⁷

The minimum full-time faculty starting salary for the 2013-2014 academic year was \$54,741 for an instructor, \$61,374 for an assistant professor, \$67,851 for an associate professor, and \$80,518 for a full professor.⁸ In addition, full-time faculty are eligible for longevity payments, faculty development funding, paid special service work,

⁵ Joint Exhibit 3, pp. 34-36.

⁶ Joint Exhibit 1.

⁷ Joint Exhibit 3, at pp. 67-72.

⁸ Joint Exhibit 1, ¶17.

overload pay, promotional stipends and the faculty award for excellence.⁹

For the 2013-2014 academic year, adjunct faculty were paid at one of the following per credit hour rates: \$966 per credit hour for an instructor level adjunct; \$1064 for an assistant professor level adjunct; \$1178 for an associate professor level adjunct; and \$1301 for a full professor level adjunct.¹⁰ Adjunct faculty receive none of the extra economic benefits that are available to full-time faculty.

In addition to teaching courses, full-time faculty are required to hold office hours, to advise students, to serve on college committees, and to attend departmental and divisional meetings. None of these requirements apply to adjuncts, though adjuncts have been given advisement duties on occasion,¹¹ adjuncts have attended some meetings of the mathematics department¹² and some adjuncts have office hours.¹³

It is through these committees that full-time faculty participate in the development of new courses for the college. Full-time faculty serve on the curriculum committee, where courses developed by faculty members are reviewed. If approved by the curriculum committee, a course is then voted on by the entire full-time faculty.¹⁴ Once a course is approved, it is the full-time faculty on the division level that decides whether changes in the syllabus should be made, and decides which textbooks will be used for

⁹ *Id.* at ¶18.

¹⁰ Joint Exhibit 3, p. 60.

¹¹ Transcript, vol. 2, pp. 53-57.

¹² Transcript, vol. 2, pp. 33-39.

¹³ Transcript, vol. 1, p. 32.

¹⁴ Transcript, vol. 1, p. 87.

each course.¹⁵

College courses that are required for a specific major often are taught in multiple sections. Adjuncts and full-time faculty can teach sections of the same course, using the same syllabus. They use the same classrooms, enforce the same attendance policy and use the same grading system.

Scott Whelan, the College's human resources director, testified that his office, which consists of himself and one human resources assistant, is the College's representative for negotiations with all four existing units.¹⁶ Whelan estimated that some 50 to 60 negotiating sessions were required to reach agreements for all four units.¹⁷ Whelan also testified that the College did not want a fifth bargaining unit and gave as a reason for that opinion: "[j]ust due to the size and nature of the college, they prefer to maintain four bargaining units."¹⁸

DISCUSSION

The issue presented by this case is whether the adjunct faculty should be placed in the unit represented by the Faculty Association, as the College argues, or placed in a separate unit, as both the Faculty Association and the Part-Time Faculty Association urge. All parties are in agreement that adjunct faculty should be represented by one organization or the other.

There is no question that "[i]t is the policy of the Act to find appropriate the largest

¹⁵ Transcript, vol. 1, p. 98.

¹⁶ Transcript, vol. 2, pp. 84-85.

¹⁷ Transcript, vol. 2, p. 85.

¹⁸ Transcript, vol. 2, pp. 85-86.

unit permitting for effective negotiations.”¹⁹ I find, however, that the adjunct faculty is appropriately placed in a separate unit from that of the full-time faculty, because of the significant conflicts that exist between part-time and full-time faculty which will prevent effective negotiations.^{20 21}

Every aspect of the job of an adjunct faculty member, from hiring to course selection to the number of courses available, is determined by the members of the Faculty Association. Members of the Faculty Association, either individually, in committees or as a group, decide whether an adjunct teaches a course at all, which course is taught, what the syllabus and textbooks used for the course will be and whether an adjunct should be removed. Members of the Faculty Association, because they have first choice over the courses available on an overload basis, have a significant impact on the number and nature of courses left for adjuncts to teach. When this is added to the disparities between the salaries and benefits available to adjunct faculty when compared to full-time faculty, the potential for conflicts is clear. The adjunct faculty is not entitled to any of the fringe benefits received by full-time faculty,

¹⁹ *Town of North Castle*, 19 PERB ¶4049, at 4071 (1986).

²⁰ I need not reach, therefore, the Faculty Association’s argument that placement of the adjunct faculty into the unit it represents would violate the “contract bar” which exists once a bargaining unit has a contract in place.

²¹ The joint employer did raise administrative convenience as a basis for objecting to a fifth bargaining unit at the College. The evidence in support of that argument is limited to Whelan’s description of the number of negotiating sessions he estimated were required to reach agreements with the certified representatives of all four bargaining units, the fact that his office consists of himself and one human resources assistant and the College’s position that it prefers four bargaining units to five. This administrative convenience argument does not outweigh the conflict of interest that would exist if the adjunct faculty were placed in the Faculty Association’s unit. See, e.g., *City of Rye*, 33 PERB ¶3035 (2000).

except for retirement benefits. The adjunct faculty is paid only for the courses taught and not for things such as longevity, promotional stipends or faculty development, all of which are available to full-time faculty. Placing the adjunct faculty into the unit of full-time faculty could result in a non-cohesive unit which would "serve neither the need of the employees to share a community of interest nor the administrative convenience of the employer."²²

There are, of course, occupational similarities between full-time faculty and adjunct faculty. As the Board held in *Legislative Conference of the City University of New York*, occupational similarities alone do not require the amalgamation of part-time faculty into a unit of full-time, tenured faculty.²³ In that case, the Board determined that part-time lecturers should not be placed in the unit with full-time, tenured faculty, despite the occupational similarities between them:

All members of the instructional staff may teach the same subjects to the same students. All teachers grade, evaluate and are authorized to discipline students. They instruct in the same buildings, use the same classrooms and laboratories, and have the same privileges with regard to use of the dining room and other facilities.²⁴

The Board noted, however, the differences between tenured faculty and "nonannual" lecturers in terms of differences in status (tenured vs. nontenured), benefit levels, and committee service as significant factors in placing them in separate units.²⁵ In other cases we have found separate units to be appropriate when presented with a marked

²² *Lawrence Union Free School Dist*, 13 PERB ¶¶3072, 3118 (1980).

²³ 2 PERB ¶¶3056, 3470 (1969).

²⁴ *Id.* at 3469.

²⁵ *Id.* at 3470.

disparity or gross distinction between benefit levels.²⁶

Based on the above, a separate unit, as next defined, is most appropriate:

Included: All adjunct faculty

Excluded: All other employees

The College is hereby directed to submit to me, within ten days of its receipt of this decision, with a copy to the other parties, an alphabetized list of the employees within the unit determined to be appropriate. The Director of Public Employment Practices and Representation has determined that an election by secret mail ballot will be held unless the Part-Time Faculty Association submits to me, within fifteen days from the date of its receipt of this decision, evidence to satisfy §201.9(g) (1) of PERB's Rules of Procedure for certification without an election.

Dated at Albany, New York
this 8th day of April, 2015



Nancy L. Burritt
Administrative Law Judge

²⁶ *North Syracuse Cent Sch Dist*, 15 PERB ¶4060, *affd* 15 PERB 3108 (1982), and cases cited therein.

The following is an extract of PERB's Rules of Procedure, 4 N.Y.C.R.R. Parts 200-215. Any party filing exceptions or other papers with the Board should consult the Rules of Procedure to ensure compliance with all requirements.

Exceptions to Decision of Director; Exceptions to Administrative Law Judge's (ALJ) Decision and Recommended Order; Action by Board

(a) Within 15 working days after receipt of the decision of the Director or the decision and recommended order of the ALJ, a party may file with the Board an original and three copies of a statement in writing setting forth any exceptions thereto, and a separate original and three copies of a brief in support thereof, together with proof of service of copies of such exceptions and brief upon each party.

(b) The exceptions shall:

- (1) Set forth specifically the questions of procedure, fact, law or policy to which exceptions are taken;
- (2) Identify that part of the decision or order to which objection is made;
- (3) Designate by page citation the portions of the record relied upon; and
- (4) State the grounds for exceptions. An exception to a ruling, finding, conclusion or recommendation which is not specifically urged is waived.

Cross-Exceptions

Within seven working days after receipt of exceptions, any party may file an original and three copies of a response thereto, or cross-exceptions and a separate brief in support thereof, together with proof of service of copies of these documents upon each party to the proceeding. Within seven working days after receipt of cross-exceptions, any party may file an original and three copies of a response thereto, together with proof of service of a copy thereof upon each party to the proceeding.

Request for Extension of Time

A request for an extension of time within which to file exceptions and briefs shall be in writing, and filed with the Board at least three working days before the expiration of the required time for filing, provided that the Board may extend the time during which to request an extension of time because of extraordinary circumstances. A party requesting an extension of time shall notify all the parties to the proceeding of its request and shall indicate to the Board the position of each other party with regard to such request.

Objection to Certification Without Election

A written objection to the Director's determination that an employee organization should be certified without an election may be filed within five working days after receipt of the Director's determination. A party may file a response to the objection within five working days after its receipt of the objection. The objection and any response must be served on all parties.

Oral Argument Before the Board

If a party desires to argue orally before the Board, a written request with reasons therefore shall accompany the exceptions filed, the response thereto, or the cross-exceptions filed. The Board may grant such a request; it may also direct oral argument on its own motion.

Board Action

(a) Upon receipt of the case, the Board may adopt, modify or reverse the Director's or ALJ's decision or order.

(b) Unless a party files exceptions to the decision and recommended order of the Director or ALJ within 15 working days after receipt thereof, the decision and any accompanying order will be final, except that the Board may, on its own motion, decide to review any remedial action recommended within 20 working days after receipt by the parties of the decision and recommended order.

Party

The term "party", as used in PERB's Rules of Procedure, means any person, organization or public employer filing a charge, petition or application under the Act or these Rules; any person, organization or public employer named as a party in a charge, petition or application, filed under the Act or these Rules; or any other person, organization or public employer whose timely motion to intervene in a proceeding has been granted.

Working Days

The term "working days", as used in PERB's Rules of Procedure, shall not include a Saturday, Sunday or legal holiday.

Filing; Service

(a) The term "filing", as used in PERB's Rules of Procedure, shall mean delivery to the Board or an agent thereof, or the act of mailing to the Board, or deposit with an overnight delivery service for overnight delivery.

(b) The term "service", as used in PERB's Rules of Procedure, shall mean delivery to a party or the act of mailing to a party, or deposit with an overnight delivery service for overnight delivery.

NOTICE TO PARTIES

Judicial Appeal of Board Orders.

A party may appeal a final order of the Board by filing with the court and serving the necessary parties the pleadings and papers required by Article 78 of the New York Civil Practice Law and Rules (CPLR) and New York Civil Service Law (CSL) §213 within thirty days after service of the Board's order. The Board's "filing" and "service" definitions (above) do not govern the filing and service requirements of the CPLR or CSL, which are covered by the terms of those statutes. Failure to comply with a final order of this agency will result in an enforcement proceeding in New York Supreme Court pursuant to CSL §213.