

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-R-99-58-E
TEMPLE UNIVERSITY OF THE COMMONWEALTH :
SYSTEM OF HIGHER EDUCATION :

FINAL ORDER

On April 26, 2001, Temple University of the Commonwealth System of Higher Education (Employer) filed a timely exception to a Nisi Order of Certification issued on April 6, 2001 by the Pennsylvania Labor Relations Board (Board) certifying the Temple University Graduate Students Association, AFT, AFL-CIO (Association) as the exclusive bargaining representative of teaching assistants, training grant holders, graduate assistants and research assistants (collectively referred to as "graduate assistants") of the Employer. The certification was issued pursuant to a representation election conducted on March 28, 2001, in which two hundred ninety (290) graduate assistants cast ballots in favor of representation by the Association and sixteen (16) graduate assistants voted against such representation. The Employer's exception was accompanied by a letter requesting an extension of time in which to file its brief in support of its exception, which was granted by the Board Secretary by letter dated May 1, 2001. On May 25, 2001, the Employer filed its brief in support of its exception to which the Association filed its response on June 13, 2001.

In its single exception to the Nisi Order of Certification, the Employer objects to the Board's conclusion that the graduate assistants are "employees" under the Public Employee Relations Act (PERA), relying upon our Supreme Court's decision in Philadelphia Association of Interns and Residents v. Albert Einstein Medical Center, 470 Pa. 562, 369 A.2d 711 (1976)(PAIR). The Board extensively addressed this issue in its Order Directing Remand To The Hearing Examiner For Further Proceedings that was previously issued in this case. See Temple University, 32 PPER ¶ 32044 (Order Directing Remand To The Hearing Examiner For Further Proceedings, 2000). In that order, the Board rejected the Employer's contention that PAIR controlled the employe status of the graduate assistants in this case. In PAIR, our Supreme Court concluded that medical interns, residents and clinical fellows were not "public employes" within the meaning of PERA. The Supreme Court relied upon Cedars-Sinai Medical Center, 91 LRRM 1398 (1976), in which the National Labor Relations Board (NLRB) concluded that medical interns, residents and clinical fellows were not "employees" within the meaning of the National Labor Relations Act (NLRA).

The NLRB recently reversed this decision in Cedars-Sinai Medical Center, concluding in Boston Medical Center Corporation, 162 LRRM 1329 (1999), that interns, residents and fellows fall within the NLRA's definition of "employee." The NLRB noted that the NLRA's definition of "employee" does not contain an exclusion for "students" and that there exists no other statutory or policy reason for excluding those individuals from the NLRA's coverage. The NLRB relied upon its

experience and understanding of developments in labor relations in educational institutions in the years since Cedars-Sinai Medical Center was decided and upon the nearly unanimous decisions of the courts, agencies and legal analysts that concluded that interns, residents and clinical fellows are entitled to collective bargaining rights under the various statutory schemes.

In our previous remand order, we noted the NLRB's recent reversal of Cedars-Sinai Medical Center and factually distinguished the graduate assistants in this case from the residents, interns and clinical fellows in PAIR by noting that the graduate assistants perform vital teaching and research services for the Employer not as a required part of their educational curriculum, as was true in PAIR, but by their own choice. There is no requirement that a graduate student perform graduate assistant work in order to obtain a graduate degree. The graduate assistants receive no academic credit for their performance of graduate assistant work. The Board also noted that the graduate assistants receive compensation from the Employer in the form of stipends/pay and tuition and book allowances and are required to perform services for the Employer in exchange for that compensation, evidencing an employer-employee relationship.

Shortly after the Board's remand order in this case, the NLRB dealt squarely with the employe status of graduate assistants. In New York University, 165 LRRM 1241 (2000), the NLRB (Chairman Truesdale and Member Liebman) concluded that the graduate assistants at New York University are "employees" within the meaning of the NLRA. Member Peter Hurtgen, concurring, determined that graduate assistants are at least distinguishable from medical interns and residents because attending to patients was a requirement for completion of graduate medical education. It is noteworthy that the position advanced by the Employer here received no support from the members of the NLRB regarding the status of non-medical graduate assistants.

The determination that the graduate assistants are employes is also consistent with the vast majority of other jurisdictions which have examined this issue. See Regents of the University of California, 22 PERC ¶ 29084 (Cal. PERB 1998); CWA-Graduate Student Employees Union, AFL-CIO, 24 NYPER ¶ 3035 (NY PERB 1991), aff'd, 586 NYS.2d 662 (NY App. Div. 1992); Regents of the University of Michigan, Case No. C76K-370 (MPERC 1981); University of Oregon Graduate Teaching Fellows Association, Case No. C-207-75 (Oregon PERB 1977). The only case to the contrary cited by the Employer is a recent case from Illinois in which the statutory scheme, unlike PERA and the NLRA, specifically excludes "students" from its definition of covered employes. Board of Trustees-University of Illinois at Urbana-Champaign, No. 96-RC-0013-S (IELRB, 2001). Because of this critical difference in the statutory provisions, the Illinois case provides no support for the Employer's argument under PERA.

The Employer also argues that the graduate assistants should be denied bargaining rights under PERA because their work as graduate assistants, in some but not all instances, is tailored to their individual academic interests and provides them with academic training for their eventual careers. The NLRB in New York University addressed and rejected the same argument as follows:

We recognize that working as a graduate assistant may yield an educational benefit, such as learning to teach or research. But, surely the house staff work in Boston Medical Center affords an equal, if not greater, educational benefit, because that work, in part, provides training in furtherance of becoming certified in a medical specialty. Even in those circumstances, however, the Board determined that the fact that house staff "obtain educational benefits from their employment" is not inconsistent with employee status. 330 NLRB No. 30, slip op. at 10 [162 LRRM 1329]. Nor is it inconsistent here. Indeed, it is undisputed that working as a graduate assistant is not a requirement for obtaining a graduate degree in most departments. Nor is it a part of the graduate student curriculum in most departments. Therefore, notwithstanding any educational benefit derived from graduate assistants' employment, we reject the premise of the Employer's argument that graduate assistants should be denied collective bargaining rights because their work is primarily educational.

165 LRRM 164-5.

In New York University the NLRB also rejected the argument, raised here by the Employer, that extending collective bargaining rights to graduate assistants would infringe upon the academic independence of the Employer. In doing so, the NLRB stated as follows:

Thirty years ago the Board asserted jurisdiction over private, nonprofit universities and colleges. Cornell University, 183 NLRB 329 [74 LRRM 1269](1971). Shortly thereafter, the Board approved units composed of faculty members, and it continues to do so today. [citations omitted]. And recently the Board in Boston Medical Center squarely addressed and rejected the argument that granting employee status to employees who are also students would improperly permit intrusion by collective bargaining into areas of academic freedom. 330 NLRB No. 30, slip. op. at 13 [162 LRRM 1329]. After nearly thirty years of experience with bargaining units of faculty members, we are confident that in bargaining concerning units of graduate assistants, the parties can "confront any issues of academic freedom as they would any other issue in collective bargaining." Id.

The Employer's concerns about the potential for infringement with academic freedom that collective bargaining with graduate assistants might impose turn largely on speculation over what the Petitioner might seek to achieve in collective bargaining, or what might become part of an agreement between the Employer and the Petitioner. Such conjecture does not, however, establish infringement. See, e.g. University of Pennsylvania v. EOC, 493 U.S. 182, 195-202 (1990), which rejected as attenuated and speculative claims of injury to academic freedom from enforcement of a subpoena for confidential peer review materials. As the Court explained, the so called academic freedom cases involve attempts to control or direct the content of speech engaged in by the university, or those affiliated with it, or "direct infringements" on the asserted right to determine on academic grounds who may teach. In any event it is long established that

"[t]he Act does not compel agreements between employers and employees. It does not compel any agreement whatever... The theory of the Act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the Act in itself does not attempt to compel."

NLRB v. Jones and Laughlin Steel Corp., 301 U.S. 1, 45 (1937).

165 LRRM at 1244. The NLRB in New York University went on to quote Boston Medical Center in rejecting a similar academic freedom claim where the NLRB stated that this argument

puts the proverbial cart before the horse. The contour of collective bargaining is dynamic with new issues frequently arising out of new factual contexts: what can be bargained about, what the parties wish to bargain about or concentrate on, and what the parties are free to bargain about, may change. But such problems have not proven to be insurmountable in the administration of the Act... If there is anything we have learned in the long history of the Act, it is that unionism and collective bargaining are dynamic institutions capable of adjusting to new and changing work contexts and demands in every sector of our evolving economy. We have no doubt that they can also adjust to accommodate the special functions of medical help staff. To assume otherwise is not only needlessly pessimistic, but gives little credit to the intelligence and ingenuity of the parties.

165 LRRM at 1244-45, quoting 330 NLRB slip. op. at 13-14. We are persuaded by experience and authority of the NLRB and other state agencies that have certified bargaining units in the higher education setting, including our own, that the exercise of collective bargaining rights by the graduate assistants in this case will similarly not infringe upon the Employer's exercise of core academic decision-making and accordingly, reject the Employer's academic freedom argument. It is noteworthy that Temple University has maintained a long-standing bargaining relationship with its full-time faculty but introduced no evidence in this record that would lend support for its argument that collective bargaining in a higher education setting will interfere with academic freedom.

The Employer has similarly failed to show either on this record or through reliance upon any other federal or state precedent that the extension of collective bargaining rights to graduate assistants such as those at issue in this case will or has in any way infringed upon an institution's ability to carry out its core educational mission.

The Employer also argues that the graduate assistants should be denied bargaining rights under PERA because of the transitory nature of their relationship with the Employer. The facts reveal that the graduate assistants here have an established relationship with the Employer for periods of one to five years. The notion that an individual whose relationship with an employer lasts for a period of more than one year would be denied employe status under PERA is

contrary to our case law regarding regular part-time employees. See School District of the Township of Millcreek v. Millcreek Education Association, 440 A.2d 673 (1982). This result is consistent with the Commonwealth Court's decision in In re Employees of Student Services, Inc., 435 A.2d 297 (Pa. Cmwlth. 1981) which affirmed the certification of a unit that contained part-time student workers who performed the same duties as non-student employees. The rate of return from semester to semester of the part-time students in Student Services was similar to the rate of return of the graduate students here.

In sum, the Board reaffirms its decision that graduate assistants are "employees" within the meaning of PERA and may properly exercise collective bargaining rights in relation to wages, hours and working conditions. Accordingly, the exception filed by the Employer must be dismissed and the Nisi Order of Certification shall be affirmed.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exception filed in the above-captioned matter be and the same is hereby dismissed and the Nisi Order of Certification issued by the Board Representative be and the same is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this twenty-first day of August, 2001. 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.