



COMMONWEALTH OF PENNSYLVANIA

September 29, 2015

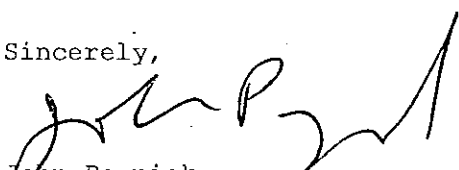
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TEMPLE UNIVERSITY
Case No.: PERA-R-14-400-E
(PERA-R-1123-E)

Enclosed is a copy of the Order Directing Submission of Eligibility List issued in the above-captioned matter.

Sincerely,


John Pozniak
Hearing Examiner

JP:cif

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COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
: :
: Case No. PERA-R-14-400-E
: (PERA-R-1123-E)
TEMPLE UNIVERSITY :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

On December 17, 2014, the Temple Association of University Professionals (TAUP or Union) filed a Petition for Representation with the Pennsylvania Labor Relations Board (Board), alleging a thirty percent showing of interest among the part-time faculty employed at the undergraduate schools and colleges of Temple University (Temple or Employer) and seeking to accrete those employees into an existing bargaining unit of full-time faculty.¹ On January 12, 2015, the Secretary of the Board issued an Order and Notice of Hearing, in which the matter was assigned to a pre-hearing conference, and designating February 17, 2015, in Harrisburg, as the time and place of hearing, if necessary.

TAUP filed amendments to its Representation Petition on January 26, 2015 and March 4, 2015. On February 5, 2015, the hearing was continued to March 19, 2015 at TAUP's request and without objection from Temple.

Hearings were necessary and were held before the undersigned Hearing Examiner of the Board on March 19, 2015, April 21, 2015, June 5, 2015, July 23, 2015, July 30, 2015, and August 10, 2015, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. TAUP filed a post-hearing brief in support of its position on September 1, 2015, while Temple filed a post-hearing brief in support of its position on September 4, 2015.

The Examiner, on the basis of the testimony and exhibits presented at the hearing, and from all of the matters and documents of record, makes the following:

FINDINGS OF FACT

1. Temple is a public employer within the meaning of Section 301(1) of the Public Employe Relations Act (PERA or Act). (N.T. 7)
2. TAUP is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7-8)
3. TAUP is the certified bargaining agent for a unit of full-time professional employes, including faculty, librarians, and academic

¹ The Petition was filed as a representation matter pursuant to Westmoreland Intermediate Unit, 12 PPER § 12347 (Order and Notice of Election, 1981), which held that when a party seeks to accrete a number of unrepresented employes, which is 15 percent or more of the existing unit, an election must be held among the employes sought to be included.

professionals at Temple. (Nisi Order of Certification in PERA-R-1123-E, as amended at PERA-U-87-266-E, PERA-U-90-265-E, and PERA-U-12-323-E)

4. Temple is comprised of 17 schools and colleges, and one division. The full-time faculty in the following schools, colleges, and division are included in the bargaining unit currently represented by TAUP: Boyer College of Music and Dance, College of Public Health, School of Social Work, College of Liberal Arts, School of Environmental Design, College of Science and Technology, Division of Theater and Film and Media Arts, College of Education, College of Engineering, Fox School of Business and Management, School of Pharmacy, School of Media and Communication, School of Tourism and Hospitality Management, and the Tyler School of Art. The TAUP bargaining unit also includes librarians and academic professionals from those schools and colleges and from the division. The Schools of Law, Medicine, Dentistry, and Podiatric Medicine are excluded from the TAUP bargaining unit. (Joint Exhibit 2)

5. Temple and TAUP are parties to a collective bargaining agreement (CBA) effective from October 15, 2014 to October 15, 2018, which governs the terms and conditions of employment for full-time faculty, librarians, and academic professionals in the TAUP bargaining unit. (Joint Exhibits 2, 3, 4)

6. Within the category of full-time faculty are tenured, tenure track, and non-tenure track faculty. Tenured faculty members have passed their probationary period and have been granted tenure by Temple. Tenured faculty members are evaluated on the basis of scholarship and teaching primarily, and on the basis of their service secondarily. Tenure track faculty members are hired with the expectation that they will come up for tenure review within the sixth year of their employment at Temple. Non-tenure track faculty members are ineligible for tenure and are hired under contract for a fixed period of time ranging from one to five years. (N.T. 228-229, 609, 631, 652-653, 716; Joint Exhibit 2; Union Exhibit 15, 16)

7. Tenured and tenure track faculty are charged with the tripartite mission of teaching, performing scholarship activities, and performing service activities. Tenured and tenure track faculty sometimes receive release time, or a reduction in their teaching load, to allow them to perform scholarship activities and service. (N.T. 231-236, 282, 641; Joint Exhibit 3, Article 19)

8. Non-tenure track faculty members are not charged with the tripartite mission of teaching, scholarship, and service. Non-tenure track faculty members may have a workload made up entirely of teaching, without release time for scholarship activities and/or service. (N.T. 610, 614, 617, 632, 641, 686, 717; Joint Exhibit 3, Article 15, Union Exhibits 15, 16, 17)

9. Academic professionals include lab technicians and academic advisors. Academic professionals are not charged with Temple's tripartite mission, do not carry a teaching load, and are not granted release. (N.T. 228, 236, 295)

10. Librarians have a number of different jobs, including cataloguing, working with students and faculty on research, teaching students about using available library resources, and maintaining the library's computer databases. Librarians are not subject to Temple's tripartite mission, but do have a mission that includes research/scholarship and service. Librarians do not get release time. (N.T. 227, 236, 295)

11. Temple also employs adjunct faculty, who are not presently included in any Temple bargaining unit. (Joint Exhibit 2)
12. The parties stipulated that the adjunct faculty members are professional employes within the meaning of PERA. (N.T. 714, 740)
13. Full-time faculty members are expected to have a terminal degree, but Temple makes exceptions to this expectation. Adjunct faculty members normally are required to have a terminal degree in their field, though not all do. (N.T. 105, 172, 230-231, 480, 601, 607, 630, 642; Joint Exhibit 5)
14. Temple hires adjunct faculty members every semester. (N.T. 599)
15. Adjunct faculty members often are long-term employes of Temple who teach every semester for years. (N.T. 30, 106, 473)
16. Department chairs effectively recommend the hiring and reappointment of adjunct faculty members to the Dean. The Dean signs the adjunct faculty member's appointment letter. (N.T. 46, 115-116, 144, 161, 443, 652, 717; Joint Exhibit 2; Union Exhibits 2, 3, 4A, 4B, 4C, 7A, 7B, 8A, 8B, 11A, 11B, 11D, 11E, 11F, 11G)
17. Department chairs effectively recommend the hiring and reappointment of non-tenure track faculty to the Dean. The Dean signs the non-tenure track faculty member's contract. (N.T. 443-444, 631-632; Union Exhibits 12A, 12B, 15, 16, 17)
18. In the Fox School of Business, one of the largest schools in the University, a representative from the Dean's office interviews all possible faculty candidates, adjunct and full-time, prior to hiring them. (N.T. 46-47, 684)
19. According to the Adjunct Faculty Handbook, "adjunct faculty are persons appointed to conduct the teaching, scholarship or creative work, and/or service activities of the University on a less than full-time basis." (Joint Exhibit 2)
20. Adjunct faculty members' role is often focused on teaching, although they also engage in scholarly activity and service to the Temple community. (N.T. 39-46, 112-114, 140-144, 615-616, 619; Union Exhibits 5, 6)
21. Adjunct faculty members engage in scholarly activity and service even when such responsibilities are not specifically included in their appointment letters. (N.T. 54-56, 76, 130-133)
22. Non-tenure track faculty members also engage in scholarly activity and service even when their appointment letters specifically state that they are not required to engage in such activities. (N.T. 143, 610-611, 614-617, 641; Union Exhibits 15, 16, 17; Temple Exhibits 58, 59, 60)
23. The teaching responsibilities of adjunct faculty members include preparing the syllabus, researching in preparation to teach, selecting course materials and readings, preparing assignments, writing exams, communicating with students, planning and teaching classes, preparing and delivering lectures, and evaluating and grading students. (N.T. 35-36, 69, 108, 137, 157, 175-176, 545-546, 622-625, 646-648, 727-730)

24. The teaching responsibilities of full-time faculty members include preparing the syllabus, researching in preparation to teach, selecting course materials and readings, preparing assignments, writing exams, communicating with students, planning and teaching classes, preparing and delivering lectures, and evaluating and grading students. (N.T. 219-220, 478-479, 622-625, 645-646, 727-730)

25. Adjunct faculty members may and do develop courses. Full-time faculty members may and do teach the courses developed by adjunct faculty members, though some courses developed by adjunct faculty members are taught only by adjunct faculty members. (N.T. 33-35, 68-69, 722-724)

26. Adjunct faculty members may teach from previously developed syllabi or develop their own syllabi from which to teach. (N.T. 71, 109-110, 138-139, 157-158, 623, 650, 727)

27. Adjunct faculty members work on the same campuses and in the same classrooms as full-time faculty and other bargaining unit members. (N.T. 67, 106, 136, 153-154, 218, 227-230, 547, 600-601, 620-621, 642-643, 693, 725)

28. Adjunct faculty members teach the same courses as full-time faculty members. (N.T. 32-33, 67-68, 107, 136-137, 154-155, 174-175, 219, 441, 472-473, 544-545, 598-599, 613, 621-622, 643-645, 693, 725-727)

29. Adjunct faculty members have offices in the same areas as full-time faculty members. In some cases, adjunct faculty members and full-time faculty members share an office. (N.T. 37, 70, 138, 153-154, 220, 627, 648, 731-732)

30. Full-time faculty members interact with adjunct faculty members on a regular basis. Adjunct and full-time faculty members see each other in between classes at Temple's academic buildings and discuss and share ideas about their courses and/or shared students. Adjunct and full-time faculty members discuss academic programs, teaching methods and information, and curriculum development. In some departments, adjunct faculty members develop courses with full-time faculty members. (N.T. 72-73, 110-111, 140-141, 155, 158-159, 221-223, 629-630, 648-649, 651, 722-723, 728-729)

31. Several of Temple's policies apply to full-time and adjunct faculty members, including the policies on faculty office hours, academic honesty, course syllabi, grading, course and teaching evaluations, conflicts of interest, discrimination, and evaluating student athletes and ROTC students. (N.T. 37-38, 75, 117-118, 145, 160, 224-225, 441-442, 480, 547, 598-599, 626, 692, 731; Union Exhibits 2, 3, 4A, 4B, 4C, 7A, 7B, 8A, 8B, 11A, 11B, 11D, 11E, 11F, 11G)

32. Adjunct and full-time faculty members are required to complete online training on subjects such as sexual harassment, the Clery Act, discrimination, and hazardous materials. (N.T. 75, 145-146, 160-161, 223, 225-226, 305-307, 480, 547-548)

33. Adjunct and full-time faculty members are subject to the student grievance procedure. (N.T. 72, 110, 139, 225, 480, 546, 651, 732-733)

34. Adjunct and full-time faculty members hold office hours for students. (N.T. 37, 70, 109, 138, 220, 479, 546, 626-627, 646-647)

35. Adjunct and full-time faculty members write letters of recommendation for students. (N.T. 37, 70-71, 138, 224, 479, 546, 625-626, 646-647, 730-731)

36. Adjunct and full-time faculty are evaluated by students using the same evaluation forms, Student Feedback Forms (SFFs). (N.T. 38-39, 69-70, 139, 158, 224, 479-480, 546, 598-599, 628-629, 650-651, 732)

37. In the bargaining unit, Temple employs approximately 500 tenured faculty members, 150 tenure track faculty members, 600 non-tenure track faculty members, 25 librarians, and 25 academic professionals, for a total of approximately 1,300 employees. (N.T. 226-227, 353)

DISCUSSION

TAUP has petitioned to accrete the adjunct faculty in the schools and colleges set forth above into the existing unit of full-time faculty at Temple. However, Temple opposes the Petition on the grounds that the adjunct faculty members lack a community of interest under Section 604 of PERA with the employees in the existing bargaining unit. Temple also contends that the Petition should be dismissed due to an alleged discrepancy with the authorization cards, alleged misrepresentations during the organizing drive, and concerns regarding over-fragmentization.

Section 604 of PERA provides, in relevant part, as follows:

The board shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the board shall:

(1) Take into consideration but shall not be limited to the following: (i) public employes must have an identifiable community of interest, and (ii) the effects of over fragmentation.

43 P.S. § 1101.604.

In determining whether employes share an identifiable community of interest, the Board considers such factors as the type of work performed, educational and skill requirements, pay scales, hours and benefits, working conditions, interchange of employes, grievance procedures, bargaining history, and employes' desires. West Perry School District v. PLRB, 752 A.2d 461, 464 (Pa. Cmwlth. 2000). An identifiable community of interest does not require perfect uniformity in conditions of employment and can exist despite differences in wages, hours, working conditions, or other factors. *Id.* at 464.

In this case, the record shows that the adjunct faculty members clearly share an identifiable community of interest with the employes in the existing bargaining unit. First of all, the adjunct and full-time faculty members have identical teaching responsibilities, which include preparing the syllabus, researching in preparation to teach, selecting course materials and readings, preparing assignments, writing exams, communicating with students, planning and teaching classes, preparing and delivering lectures, and evaluating and grading students. Likewise, adjunct faculty members work on the same campuses and in the same classrooms as full-time faculty and other bargaining unit members. Similarly, adjunct faculty members teach the same

courses as full-time faculty members, and have nearly the same educational requirements. Indeed, adjunct and full-time faculty members are both typically expected to have a terminal degree in their field. Further, adjunct faculty members have offices in the same areas as full-time faculty members, and sometimes even share offices with each other.

If that were not enough, adjunct faculty members interact with full-time faculty members on a regular basis. Adjunct and full-time faculty members see each other in between classes at Temple's academic buildings and discuss and share ideas about their courses and/or shared students. Adjunct and full-time faculty members discuss academic programs, teaching methods and information, and curriculum development. In some departments, adjunct faculty members develop courses with full-time faculty members. In addition, several of Temple's policies apply to full-time and adjunct faculty members, including the policies on faculty office hours, academic honesty, course syllabi, grading, course and teaching evaluations, conflicts of interest, discrimination, and evaluating student athletes and ROTC students. What is more, adjunct and full-time faculty members are required to complete online training on subjects such as sexual harassment, the Clery Act, discrimination, and hazardous materials. And, adjunct and full-time faculty members are both subject to the student grievance procedure, hold office hours for students, write letters of recommendation for students, and are evaluated by students using the same SFF forms. As a result, it cannot be seriously contended that the adjunct faculty members lack an identifiable community of interest with the employees in the existing unit.

Temple went to great lengths at the hearing and in its brief pointing out various differences between the adjunct and full-time faculty members, including participation in shared governance, research and service requirements, levels of benefits, compensation structure and workload, and eligibility for tenure. However, I find that such minor differences simply reflect the division of labor at a major university and do not destroy the clearly identifiable community of interest based on the findings of fact set forth herein. See In the Matter of the Employees of Temple University Health System Episcopal Hospital, 41 PPER 177 (Order Directing Submission of Eligibility List, 2010) citing Pennsylvania State University v. PLRB, 24 PPER ¶ 24117 (Court of Common Pleas of Centre County, 1993) (the Board need not find an **identical** community of interest but merely an **identifiable** community of interest) (emphasis added).

Temple argues that this matter is controlled by Community College of Philadelphia, 10 PPER ¶ 10020 (Final Order, 1978) wherein the Board held that the part-time instructors and visiting lecturers did not share an identifiable community of interest with the full-time faculty. Temple's argument is without merit. The Board's decision in Community College of Philadelphia is readily distinguishable from the instant matter. In that case, the Board stressed that neither the part-time instructors nor the visiting lecturers were eligible for tenure, while the full-time faculty were. In this case, the existing unit is already comprised of a significant number of employees, the non-tenure track faculty, who are not eligible for tenure. Moreover, the Board in Community College of Philadelphia emphasized that the part-time instructors and visiting lecturers had little to no impact on curriculum development. This is in stark contrast to the instant matter where the record shows that the adjunct faculty members sometimes develop their own courses and syllabi. In any case, the Union correctly points out that the Board has long since adopted a policy of favoring broad-based units. In the Matter of the Employees of University of Pittsburgh, 16 PPER ¶ 16205

(Order Directing Amendment of or Request to Withdraw Petition for Representation, 1985) citing Athens Area School District, 10 PPER ¶ 10128 Order and Notice of Election, 1978). Therefore, this matter is not controlled by Community College of Philadelphia.

In any event, the parties stipulated that the adjunct faculty members are professional employes within the meaning of PERA. Therefore, the adjunct faculty members, by operation of law, share an identifiable community of interest with the employes in the existing professional unit. Indeed, the same factors, such as work performed, educational, and skill requirements, which support professional status also support the conclusion that the adjunct faculty members in question share an identifiable community of interest with the existing bargaining unit of full-time faculty, librarians, and academic professionals. See In the Matter of the Employes of Temple University Health System Episcopal Hospital, 41 PPER 177 (Order Directing Submission of Eligibility List, 2010) citing In the Matter of the Employes of Riverview Intermediate Unit, 37 PPER 106 (Final Order, 2006) (holding that professional status of both the employes at issue and the employes in the existing bargaining unit speaks to the question of whether an identifiable community of interest exists). The 1973 certification described the unit as follows:

...all full-time faculty including department chairmen employed at Temple University including professional Librarians on the Paley Library budget, librarians in the School of Administration, the College of Education, and the College of Allied Health Professions; counselors and academic advisors at the College of Liberal Arts, Counseling Center and Student Resources Center; supervisors of practice teaching at the College of Education; non-faculty support professionals in the intern teaching program for college graduates; other support professionals who meet the definition of being necessary or adjunct to the teaching of students or research projects of the University, excluding the faculty at Rome, Italy, and the faculty at the Medical School, Law School and Dental School and the Hospital, and further excluding **all other** non-faculty and **professional employes**, computer personnel, management, supervisors, first-level supervisors and confidential employes as defined in Act 195.

In the Matter of the Employes of Temple University of the Commonwealth System of Higher Education, PERA-R-1123-E, (Nisi Order of Certification, 1973) (emphasis added). Thus, the Board clearly certified this unit as a professional unit under Section 301(7) of the Act. As such, the adjunct faculty members by operation of law share an identifiable community of interest with the employes in the existing unit.²

² Temple's argument that there is an alleged conflict of interest between the adjunct and full-time faculty, which destroys any community of interest, is untenable. There is always a potential for tension between full and part-time employes or different classifications of employes in the same unit; however, the Board, as set forth above, has long favored a policy of certifying broad-based units. In fact, the Board has been certifying full and part-time employes in the same unit with appellate court approval at least as far back as 1975. See Albert Einstein Medical Center v. PLRB, 330 A.2d 264 (Pa. Cmwlth. 1975). The potential that one group of employe interests might predominate in bargaining is hardly a reason to find no community of interest. Temple's claim that there is a conflict between the adjunct and full-time faculty members due to an alleged supervisory role that

Temple contends that the Petition should be dismissed because it is facially inconsistent with the authorization cards, which make up the showing of interest. Specifically, the authorization cards provide as follows:

By signing below, I hereby authorize Temple Association of University Professionals, United Academics of Philadelphia, AFT-PA, AFT, AFL-CIO to be my exclusive representative for purposes of collective bargaining with my employer.

(Temple Exhibit 3). Temple maintains that this is different than the petitioning party in this matter, which is TAUP, and not TAUP, United Academic Professionals (UAP). Temple asserts that, because the signed cards authorize representation by TAUP, UAP, and the Petition was filed by TAUP, there are no signed cards authorizing the employe organization filing the Petition to be the employes' designated representative for the purpose of collective bargaining as required by the Act. In addition, Temple posits that UAP cannot be part of the Petition because an accretion must be filed for by the current bargaining representative. Furthermore, Temple submits that the Petition should be dismissed because of alleged misrepresentations in the organizing drive. Once again, Temple's argument is without merit.

The Board, acting pursuant to Section 603(c) of the Act³, will dismiss a petition for representation if it finds that the petition is not supported by a showing of interest from 30 percent of the employes in the petitioned-for unit. In the Matter of the Employes of Commonwealth of Pennsylvania, Dept. of Corrections, 20 PPER ¶ 20130 (Proposed Order of Dismissal, 1989), 21 PPER ¶ 21148 (Final Order, 1990). The Board has consistently held for decades that the adequacy of the showing of interest is an administrative matter that is not subject to collateral attack. In the Matter of the Employes of Commonwealth of Pennsylvania, 47 PPER 28 (Order Directing Remand to Secretary for Further Proceedings, 2015) citing Plains Township Sewer Authority, 8 PPER 318 (Final Order, 1977), aff'd, 9 PPER ¶ 9153 (Court of Common Pleas of Luzerne County, 1978); Pennsbury School District, 15 PPER ¶ 15202 (Order and Notice of Election, 1984); County of Berks, 4 PPER 8 (Order and Notice of Election, 1974). Indeed, the Board specifically adheres to this policy where an employer alleges that the showing of interest itself (*i.e.*, the authorization cards or signature petition) is somehow deficient. Commonwealth of Pennsylvania, supra. Instead, the Board holds that such

full-time faculty play towards the adjunct faculty is equally untenable. Section 301(6) of the Act provides that "...[i]n determining supervisory status the board may take into consideration the extent to which supervisory and nonsupervisory functions are performed." 43 P.S. § 1101.604(5). Thus, the Act expressly contemplates the inclusion of employes with some role of supervisory authority being included in a unit with more traditional rank and file employes. As a result, Temple's argument in this regard must fail.

³ Section 603(c) of the Act provides that "[i]f a public employer refuses to consent to an election, the party making the request may file a petition with the board alleging that thirty per cent or more of the public employes in an appropriate unit wish to be exclusively represented for collective bargaining purposes by a designated representative. The board shall send a copy of the petition to the public employer and provide for an appropriate hearing upon due notice. If it deems the allegations in the petition to be valid and the unit to be appropriate it shall order an election. If it finds to the contrary it may dismiss the petition or permit its amendment in accordance with procedures established by the board. 43 P.S. § 1101.603(c).

issues are best resolved on the basis of an election by secret ballot. Lancaster County, 11 PPER ¶ 11117 (Order and Notice of Election, 1980).

In this case, Temple relies on Dept. of Corrections, supra, for authority to challenge the showing of interest. In Dept. of Corrections, the Board found that the language on the authorization cards was sufficiently ambiguous for it to determine if they were executed for the purpose of supporting the filing of a representation petition. In that case, the language on the authorization cards provided as follows:

I, _____, am interested in what the Independent Correctional Officers of Pennsylvania can do for me for the purposes of collective bargaining.

In deciding that case, the Board agreed with the Hearing Examiner's decision that the language on the cards neither authorized the union to act as the employees' collective bargaining representative, nor requested the Board to conduct an election. In this matter, however, the authorization cards expressly authorize TAUP, UAP, AFT-PA, AFT, AFL-CIO to be the employees' exclusive representative. What is more, the Hearing Examiner in Dept. of Corrections dismissed the petition after finding that five of the cards had been improperly obtained by misrepresentations as to their purpose and refused to count them as part of the union's showing of interest, which resulted in less than 30 percent. Here, the record is devoid of any evidence whatsoever that any of the authorization cards were improperly obtained by misrepresentation as to their purpose, let alone that the showing of interest dropped below 30 percent if those cards were not counted.

As the Union points out, Temple did not present any testimony that an individual who signed an authorization card that could have been part of the showing of interest was misled or confused about the identity of the bargaining agent or nature of the unit. Temple presented testimony from just one witness, adjunct professor Kathleen Stengel, who testified that she signed a card in the spring of 2015, after the filing of the Petition, and whose card therefore was not part of the showing of interest. (N.T. 541-542, 549).⁴ As the Union further points out, every adjunct faculty member who testified about the matter, including Temple's own witness, understood that the Petition seeks to accrete adjunct faculty into the existing TAUP bargaining unit, to be represented by TAUP. (N.T. 82-83, 100-101, 122-123, 127-128, 164, 166, 550). Furthermore, Temple Deputy Provost Michael Stitler sent an email to all adjunct faculty members specifically explaining that the Petition seeks to merge the adjunct faculty into the full-time faculty unit. (N.T. 601-603; Union Exhibit 14B). In light of these facts, the Board's decision in Dept. of Corrections does not support Temple's position.

In the same vein, Temple's contention regarding the identity of the bargaining representative is unavailing. In 1973, the Board certified the American Association of University Professors, Temple University Chapter as the exclusive representative. The name of the exclusive representative was subsequently changed to Temple Chapter AAUP, American Federation of Teachers, AFL-CIO in July 1987 at Case No. PERA-U-87-266-E. On May 29, 1990, the Board issued a Nisi Order of Amended Certification, which amended the original certification in PERA-R-1123-E, as amended at PERA-U-87-266-E, to Temple

⁴ Notably, Stengel testified that she understands now that the election will be for a single union comprised of both full-time and adjunct faculty members. (N.T. 550).

Association of University Professionals, American Federation of Teachers Local 4531, AFL-CIO in PERA-U-90-265-E. In the instant matter, the petitioning party is TAUP. Likewise, TAUP as the exclusive bargaining representative will appear on any ballot pursuant to an election. In addition, TAUP is listed first on the authorization cards collected pursuant to the showing of interest.

As such, I find there is no merit to the Employer's contention that there are no signed cards authorizing the employe organization filing the Petition to be the employes' designated representative for the purpose of collective bargaining as required by the Act. To hold otherwise would be to exalt form over substance in the most specious manner. See the Administrative Law Judge's Decision in Abramson, LLC and United Brotherhood of Carpenters and Joiners of America, Local 127, 345 NLRB 171, 192 (2005). It is of no consequence that UAP is also listed as part of the designated representative on the cards. Indeed, the National Board "has always accepted showing of interest cards designating a labor organization, affiliated with, as here, the labor organization appearing on the ballot." *Id.* at 192 quoting New Hotel.Monteleone, 127 NLRB 1092 (1968). Although these National Board cases relate to situations where the designation of a parent organization is a valid designation of its affiliate, I see no reason not to have the same rule here in the public sector, where the case is even stronger since TAUP itself is actually designated as the exclusive representative on the authorization cards. In fact, the National Board has accepted authorization cards used for a showing of interest, which were made out to the Joint Organizing Committee for the Automotive Industry, AFL, when the petitioners were District #15, International Association of Machinists, AFL, and Local 917, International Brotherhood of Teamsters, AFL, because the Committee was acting on behalf of the petitioners. See Cab Service & Parts Corporation, 114 NLRB 1294 (1955). Accordingly, Temple's argument in this regard is rejected.

Finally, Temple submits that the Petition for Representation should be dismissed because it improperly seeks to exclude a significant number of adjunct faculty members who are employed at the University's professional schools. Specifically, Temple maintains that the adjunct faculty members at the University's undergraduate schools should be included in a unit with the adjunct faculty members at the professional schools, and not with the full-time faculty members at the undergraduate schools. As the Union correctly notes, however, that question is not ripe for adjudication, as it is not before the Hearing Examiner. It is well settled that the Board's obligation is not to certify the most appropriate unit, which may be advanced by a party in a Board proceeding, but rather to find an appropriate unit. In the Matter of the Employes of Philadelphia Housing Authority, 22 PPER ¶ 22206 (Final Order, 1991) *aff'd sub nom. Philadelphia Housing Authority v. PLRB*, 23 Phila. 524 (Philadelphia Common Pleas Court, 1992). As previously set forth above, the adjunct faculty members clearly share an identifiable community of interest with the employes in the existing unit. Therefore, the petitioned-for unit is appropriate.⁵

⁵ Temple's claim that the petition seeks to accrete an inappropriate number of employes also lacks merit. There are approximately 1,300 employes in the existing unit, and Temple estimates that if adjunct faculty members are included in the unit, it would amount to approximately 1,400 to 2,000 new bargaining unit members. (N.T. 353). However, Temple cites no authority whatsoever for the proposition that these figures somehow render the unit inappropriate as a matter of law. Nor would the petitioned-for unit result

On this record, I must conclude that an election is warranted consistent with Section 603(c) of the Act and Westmoreland Intermediate Unit, 12 PPER ¶ 12347 (Order and Notice of Election, 1981). Should the unrepresented employees vote not to be included in the existing TAUP bargaining unit, then the Petition for Representation will be dismissed.

CONCLUSIONS

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

1. Temple is a public employer within the meaning of Section 301(1) of PERA.
2. TAUP is an employee organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. Temple's adjunct faculty members employed at its undergraduate schools and colleges share an identifiable community of interest with the employees in the existing bargaining unit.
5. Should the adjuncts vote for inclusion with the employees in the existing bargaining unit, then the unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time faculty employed at Temple University including professional librarians on the Paley Library budget, librarians in the School of Administration, the College of Education, and the College of Allied Health Professions; counselors and academic advisors at the College of Liberal Arts, Counseling Center and Student Resources Center; supervisors of practice teaching at the College of Education; non-faculty support professionals in the intern teaching program for college graduates; other support professionals who meet the definition of being necessary or adjunct to the teaching of students or research projects of the University, excluding the faculty at Rome, Italy, and the faculty at the Medical School, Law School and Dental School and the Hospital, and further excluding all other non-faculty and professional employees, computer personnel, management, supervisors, first-level supervisors and confidential employees as defined in Act 195.^{6 7}

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the Examiner

in over-fragmentization, as Temple alleges. To the contrary, the number of bargaining units will remain the same if the petitioned-for adjunct faculty members are accreted into the existing unit.

⁶ The Board recently affirmed the exclusion of department chairs from the existing unit due to their supervisory and managerial status under Section 301(6) and 301(16) of PERA, respectively. Temple University, 46 PPER ¶ 93 (Final Order, 2015).

⁷ The parties stipulated to a formula in Joint Exhibit 1 for determining the status of regular part-time faculty in the event of a representation election.

HEREBY ORDERS AND DIRECTS

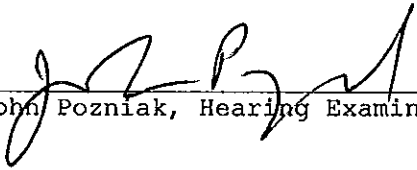
that Temple shall within ten (10) days from the date hereof submit to the Board a current alphabetized list of the names and addresses of the employees eligible for inclusion in the unit set forth in Conclusion 5 above, as more fully set forth and stipulated to in Joint Exhibit 1.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this decision and order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b).

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this 29th day of September, 2015.

PENNSYLVANIA LABOR RELATION BOARD



John Pozniak, Hearing Examiner