

FRANKLIN INSTITUTE OF BOSTON AND SEIU, LOCAL 254, AFL-CIO, MCR-3409 (7/18/85).

- 34.1 appropriate unit
- 34.2 community of interest
- 34.4 efficiency of operation (fragmentation)
- 34.8 similarity of work (interchangeability)
- 35.7 supervisory and managerial employees

Commissioners participating:

Paul T. Edgar, Chairman
 Gary D. Altman, Commissioner
 Maria C. Walsh, Commissioner

Appearances:

- Neil Jacobs, Esq. - Representing the Franklin Institute of Boston
- E.W. Buffum - Representing Service Employees International Union, Local 254

DECISION

On October 12, 1983 Service Employees International Union, Local 254, AFL-CIO (Union) filed a petition with the Labor Relations Commission (Commission) seeking certification as the exclusive bargaining representative of all custodians employed by the Franklin Institute of Boston (Institute).

On October 11, 1983, the Union filed a charge of prohibited practice with the Commission alleging that the Institute had violated Massachusetts General Laws, Chapter 150E (the Law) by discriminatorily discharging three custodians in retaliation for their union activities (Case No. MUP-5398). The Commission held the Union's petition for representation in abeyance pending resolution of Case No. MUP-5398. On January 10, 1985, the Commission issued its decision in Case No. MUP-5398, holding that the Institute had violated Sections 10(a)(3) and (1) of the Law.

On May 2, 1985, a Formal Hearing regarding the Union's petition for representation was held before Sarah Kerr Garraty, a duly designated hearing officer of the Commission. At the hearing, the Union took the position that the Maintenance Man/Custodian should be excluded from a bargaining unit of custodians on the grounds that he lacks a community of interest with the custodial employees because he performs "light maintenance" as well as custodial functions. The Institute contended that the Maintenance Man/Custodian should be included in a unit of custodians. Each party was afforded an opportunity and to examine and cross-examine witnesses. Subsequently, both parties submitted written briefs in support of their positions which have been fully considered.

Based upon the record as a whole, and for the reasons set forth below, we find that a unit of custodians including the Maintenance Man/Custodian is



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appropriate and we order an election to determine the exclusive bargaining representative of these employees.¹

Findings of Fact

The Institute is a technical college administered by the City of Boston. See, Franklin Institute of Boston, 12 MLC 1063 (January 10, 1985). It employs three custodians (Peter Mack, Robert Charpentier and George Pinieri) and one Maintenance Man/Custodian (DeWayne Thompson). All four are supervised by Lloyd Cormier, who also works for the Institute as a Computer Technician. Cormier, in turn, reports to Institute President Mazzola and Vice-President D'Onofrio.

Thompson was hired by the Institute in September 1984. He worked part-time until February 1985, when he commenced full-time employment as a Maintenance Man/Custodian. Mack, Charpentier and Pinieri were employed by the Institute as Custodians until October 1983, when they were discharged. On January 10, 1985, the Commission issued the decision in MUP-5398. The Commission found that Mack, Charpentier and Pinieri were discharged because of their union activities and ordered them reinstated.

In February 1985, Mack, Charpentier and Pinieri returned to work. At that time, Cormier handed all four custodial employees schedules directing them to clean certain areas of the Institute at certain times. For example, Charpentier was directed to clean the Institute's Main Building. Mack was responsible for the "B" Building and Pinieri was assigned to the Administration Building. Thompson's schedule designated him as Maintenance Man/Custodian whereas the other three were referred to simply as Custodians. Thompson's schedule also differed from that of the other three in that it called for a two-hour period each day for "maintenance and/or cleaning as required." Thompson and Cormier each estimated that Thompson performs approximately five hours per week of "light maintenance" work, including such tasks as changing light bulbs, fixing broken doorstops, and performing minor plumbing repairs such as replacing washers and tightening pipes. He receives "work request forms," designating needed repairs, from anyone at the Institute, including other Custodians. Cormier is responsible for approving work before it is performed.

In the past, custodians have performed such "light maintenance" from time to time, particularly during the summer months. Since February 1985, custodians have been asked to do light maintenance when Thompson is unavailable. For example, at the time of the hearing in this case, Thompson was on an extended leave due to knee surgery, and his duties had been assigned to the three remaining custodians.

All four custodial employees are paid a rate of between \$5.35 and \$5.55 per

¹ Neither party contests the jurisdiction of the Commission to hear this case. The Commission has asserted jurisdiction over the Institute previously and finds no change in the prior jurisdictional facts. See Franklin Institute of Boston 12 MLC 1063 (1985).



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hour. They receive identical sick leave, pension, vacation, and holiday benefits, and health insurance. They work the same number of hours per day.² Thompson occasionally works additional hours on an overtime basis during special events such as an open house or an antique show. He is also on call should the Institute's alarm system go off. For this, he receives a pay differential of twelve cents per hour.

Opinion

Pursuant to Section 3 of the Law, the Commission is empowered to determine appropriate bargaining units:

...which shall be consistent with the purposes of providing for stable and continuing labor relations, giving due regard to such criteria as community of interest, efficiency of operations and effective dealings, and to safeguarding the rights of employees to effective representation.

The Union contends that the Maintenance Man/Custodian does not share a community of interest with the Custodians since only he performs maintenance as well as custodial functions. The Union also argues that the Maintenance Man/Custodian works different hours than other Custodians, receives a higher rate of pay, works overtime and on call, and exercises some supervisory authority over the Custodians. The Institute counters that the job duties of Custodian and Maintenance Man/Custodian are almost indistinguishable and that they should therefore be placed in the same bargaining unit.

We are persuaded that the Maintenance Man/Custodian and the Custodians do share a community of interest and that the purposes of Section 3 of the Law will be best fulfilled if these two positions are placed in a single unit. Employees holding these positions work under the same supervision, enjoy the same employment benefits, received almost the same rate of pay, work the same number of hours and at the same locations, and perform the same custodial services during most of their work days.

The Commission has repeatedly expressed a policy favoring broad, comprehensive units over small, fragmented ones. University of Massachusetts, 3 MLC 1179, 1186 (1976). In keeping with this policy, we do not require that employees share an identity of interest in order to share a community of interest. City of Worcester, 11 MLC 1364, 1365 (1985); City of Malden, 9 MLC 1073, 1080 (1982). Only significant differences that would produce inevitable conflicts constitute a basis for excluding employees from a bargaining unit on the grounds that they lack a community of interest with other unit members. University of Massachusetts, 4 MLC 1384, 1392 (1977).

²Thompson is required to be off of his feet for two hours during the middle of the day because of a knee injury. To accommodate this need, he takes a two-hour lunch period and works an additional hour at the end of the day to make up the time.



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The distinctions between the working conditions of the Maintenance Man/Custodian and those of the Custodians are not of the type that would produce such conflicts. The Maintenance Man/Custodian performs light maintenance tasks as part of his regular work schedule, but this amounts to only approximately five hours per week. When he is absent, custodians perform these tasks. We note that even if a significantly larger portion of his time was taken up with maintenance as opposed to custodial duties, this would not constitute grounds for excluding the Maintenance Man/Custodian from a unit of custodians given the many similarities between the two positions. The Commission favors broad units of blue-collar employees over bargaining units broken down by craft. See, Marblehead Municipal Light, 9 MLC 1312 (1982); Policy Statement for Creation of Statewide Units, 1 MLC 1318, 1337 (1975).

The other differences between the Maintenance Man/Custodian's working conditions and those of Custodians are similarly insignificant. The difference in his hours of work is due solely to the incumbent's physical condition. He has opted to work overtime on a few occasions and receives a twelve-cent per hour differential for agreeing to be on call should the Institute's alarm system be activated. These are minor distinctions that in no way interfere with his community of interest with Custodians. Nor is the Maintenance Man/Custodian a supervisor because he directs Custodians to fill out "work request" forms when they notice that repairs are needed. Supervisory employees are those that have power to resolve employee grievances, make personnel decisions, or effectively recommend personnel action such as hiring or disciplining employees. University of Massachusetts, 3 MLC at 1204-1212. For all of the foregoing reasons, we conclude that the Maintenance Man/Custodian shares a community of interest with Custodians and should be included in a custodial bargaining unit.

Direction of Election

We therefore conclude that a question has arisen concerning the representation of certain employees of the Franklin Institute of Boston within the meaning of Section 4 of the Law.

The unit appropriate for the purpose of collective bargaining shall consist of:

All regular full-time and regular part-time Custodians and Maintenance Man/Custodians and excluding all other employees.

IT IS HEREBY ORDERED that an election shall be held for the purpose of determining whether a majority of employees in the above-described unit desire to be represented by Service Employees International Union, Local 254, AFL-CIO, or by no employee organization.

The eligible voters shall include all those persons within the above-described unit whose names appear on the payroll of the Employer on July 1, 1985 and have not since quit or been discharged for cause.



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In order to ensure that all eligible voters shall have the opportunity to be informed of the issues and of their statutory right to vote, all parties to this election shall have access to a list of voters and the addresses which may be used to communicate with them.

Accordingly, IT IS HEREBY FURTHER ORDERED that three (3) copies of an election eligibility list containing the names and addresses of all eligible voters must be filed by the Employer with the Executive Secretary of the Commission, Room 1604, Leverett Saltonstall Building, 100 Cambridge Street, Boston, Massachusetts 02202 no later than fourteen (14) days from the date of this decision.

The Executive Secretary shall make the list available to all the parties to the election. Since failure to make the timely submission of this list may result in substantial prejudice to the rights of the employees and the parties, no extension of time for the filing thereof will be granted except under extraordinary circumstances. Failure to comply with this direction may be grounds for setting aside the election should proper and timely objections be filed.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman
GARY D. ALTMAN, Commissioner
MARIA C. WALSH, Commissioner

