

CITY OF QUINCY LIBRARY DEPARTMENT AND LIBRARY EMPLOYEES ASSOC. H.L.P.E.,  
MCR-2434 (3/10/77) Decision on Appeal of Hearing Officer's Decision.

(30 Bargaining Unit Determination)  
34.3 desires of employees  
34.9 unit modification  
34.94 fringe groups  
35.11 regular part-time employees

Commissioners participating: James S. Cooper, Chairman; Garry J. Wooters,  
Commissioner.

Appearances:

Joseph P. McParland, Esq. - Counsel for the City of Quincy  
John J. Keefe - Representing the Library Employees  
Association, H.L.P.E.

DECISION ON APPEAL OF  
HEARING OFFICER'S DECISION

On December 28, 1976 Commission Hearing Officer Karen L. Zweig issued a decision pursuant to the expedited hearing procedure of G.L. c.150E §4, directing that an election be held to determine the representation of certain employees of the City of Quincy Library Department (City). The Hearing Officer determined that the unit appropriate for the purposes of collective bargaining consists of all full-time and permanent part-time employees of the City of Quincy Library Department, excluding the Director, Assistant Director and Business Manager. She ordered that an election be held to determine whether a majority of the permanent part-time employees working less than twenty (20) hours per week wish to be included in the existing bargaining unit currently represented by the Library Employees Association (Association) or whether they wish to be represented by No Employee Organization.<sup>1</sup>

On January 5, 1977 the City filed a timely appeal of the decision to the full Commission.<sup>2</sup> Pursuant to MLRC Rules, Art. II, §11, on January 6, 1977 the Hearing Officer submitted her decision issued December 28, 1977 as her written Statement of the Case. The Association's timely filed Supplementary Statement has been duly considered.

<sup>1</sup>The certification issued in MCR-1311 described the collective bargaining unit for Library Department employees as follows: "all employees of the City of Quincy Library Department excluding the Director, Assistant Director and Business Manager, part-time employees working less than twenty hours per week, and all other employees of the City of Quincy."

<sup>2</sup>The City further moved that the Commission stay that portion of the Hearing Officer's decision requesting that the names and addresses of eligible voters be filed by the employer within fourteen (14) days of her decision. By letter dated January 14, 1977, the Commission notified the City that the standard policy is that the filing of an appeal automatically stays the notice and direction of election in a representation case.



City of Quincy Library Department and Library Employees Assoc. H.L.P.E.,  
3 MLC 1517

Opinion

The three major issues were addressed by the Hearing Officer in her decision in this matter. The first of these was whether persons working less than twenty hours per week for the City Library Department were "students" and not "employees" and were therefore ineligible to bargain collectively. We agree with the Hearing Officer's conclusions<sup>3</sup> that full-time students who perform part-time work for an employer separate and apart from their educational responsibilities are not precluded from exercising collective bargaining rights because of their student status or because their turnover rate may be higher than that of other employees. See County of Plymouth, 2 MLC 1106 (1975); City of Cambridge, 2 MLC 1450 (1976).

Secondly, as to the proper unit placement of such employees, the Hearing Officer considered the factors of community of interest, efficiency of operations and effective dealings, with a view toward safeguarding employee rights and effective representation as required by law.<sup>4</sup> Massachusetts Board of Regional Community Colleges, 1 MLC 1426 (1975). Finding no error in the application of the proper standard, we will affirm the Hearing Officer's decision that the part-time employees in question constitute an unrepresented fringe group who may appropriately be included in the established bargaining unit.

The third issue addressed by the Hearing Officer was the proper method<sup>4a</sup> of adding the part-timers in question to the overall unit of Library Department employees. She determined that the National Labor Relations Board policy<sup>5</sup> of

<sup>3</sup>We note that under the standard of Town of Dedham, MCR-2330, 3 MLC \_\_\_\_\_ (1976), the timely filing of an appeal places the Hearing Officer's conclusions of law before the full Commission for purposes of review. However, the absence of a timely filed Supplementary Statement directing the Commission's attention to alleged incorrect findings of fact, the Commission accepts the Hearing Officer's fact findings. The City did not file a Supplementary Statement in the instant matter, and our review here is limited to the Hearing Officer's conclusions of law.

<sup>4</sup>G.L. c.150E, §3.

<sup>4a</sup>This was clearly not an appropriate case for the application of the accretion doctrine since the disputed employee classifications were in existence at the time of the unit certification, and these classifications were excluded.

<sup>5</sup>NLRB policy in this area has undergone several changes in the last few decades. In the 1940's, Board policy was to allow a self-determination election among employees previously excluded from a bargaining unit where the employees in question could be properly included in the historical unit and where there was a sufficient showing of interest. Petersen & Lytle, 60 NLRB 1070, 16 LRRM 27 (1945); Union Mfg. Co., 69 NLRB 640, 18 LRRM 1247 (1946); Ryan Aeronautical Co., 74 NLRB 5, 20 LRRM 1115 (1948); Allis-Chalmers Mfg. Co., 84 NLRB 30, 24 LRRM 1238 (1949).

In 1950 the Board reconsidered its general practice and refused to order a separate self-determination election where the petitioning union also sought an election in the historical unit to which the "fringe group" appropriately

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City of Quincy Library Department and Library Employees Assoc. H.L.P.E.,  
3 MLC 1517

directing an election among the unrepresented employees, and giving them a choice between joining the existing bargaining unit or remaining unrepresented, was proper in such matters before the Commission.

This is a case of first impression in the Commonwealth. We hereby adopt the Hearing Officer's order and reasoning. However, we wish to add a caveat. The NLRB policy of utilizing self-determination elections in this type of case evolved from the Board's long-standing rule of ascertaining the desires of employees before making a unit determination in certain cases, Globe Machine & Stamping Co., 3 MLRB 294, 1A LRRM 122 (1937). We agree that the desires of employees should be considered where they were previously excluded from the historical unit. We wish to make it clear, however, that we will carefully scrutinize future cases before allowing self-determination elections for unrepresented fringe groups. We will consider the following factors, among others. What were the reasons for the exclusion of the employees in question at the time of the original unit determination? Is there a simultaneous question of representation in the historical unit?

A representation petition which appropriately calls for a self-determination election among a fringe group of employees must also include all fringe employees. The Commission will not entertain excessive petitions of this nature. In addition, present Commission representation procedure requires that the proper showing of interest among employees in the fringe group accompany a petition and that a sufficient community of interest exists between the fringe group employees and employees in the historical unit to warrant their combination into one overall unit.

The burden must remain on the parties to carefully consider the proper parameters of a bargaining unit when initial certification is sought, and to present sufficient information to the Commission so that unit determinations can be made which are consistent with stability in labor relations and which to the greatest practical extent obviate the need to reconsider unit definitions, hold "fringe-group" elections or amend unit definitional language.

5 (cont'd.)

belonged. (A fringe group is a group of employees who have previously been excluded from a unit but who do not constitute a separate appropriate bargaining unit.) Waterous Co., 92 NLRB 76, 27 LRRM 1050 (1950). To do otherwise, the Board felt, would be an abrogation of its responsibility to determine the appropriate bargaining units when presented with a representation petition.

Waterous Co., was overruled in 1954 by The Zia Co., 108 NLRB 1134, 34 LRRM 1133 (1954). In Zia, the Board was concerned that the Waterous policy could allow the numerical superiority of members of the historical unit to thwart the wishes of small groups of excluded employees. Thus Board practice reverted to allowance of self-determination elections for fringe-groups regardless of whether the representation of the historical unit was in question. Zia was then re-examined in D.V. Displays, 134 NLRB 568, 49 LRRM 1199 (1969) and modified to require the direction of only one election in the limited situation where a question of representation exists in the historical unit and the incumbent union seeks to add a previously unrepresented fringe group whom no other union is seeking to represent on a different basis. The Board noted that the Zia policy of

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City of Quincy Library Department and Library Employees Assoc. H.L.P.E.,  
3 MLC 1517

ORDER

WHEREFORE, based upon the foregoing, it is hereby ORDERED that the Decision of the Hearing Officer in the case of City of Quincy Library Department and Library Employees Association, H.L.P.E. is AFFIRMED.

And that a question has arisen concerning the representation of certain employees of the City of Quincy Library Department within the meaning of Section 4 of Chapter 150E of the General Laws.

It is further ORDERED that:

1. The Unit appropriate for the purposes of Collective Bargaining consists of all full-time and permanent part-time employees of the City of Quincy Library Department, excluding, the Director, Assistant Director and Business Manager, and all other employees of the City of Quincy.
2. An election shall be held for the purpose of determining whether a majority of the permanent part-time employees working less than twenty hours per week wish to be included in the existing bargaining unit currently represented by the Library Employees Association, or whether they wish to be represented by No Employee Organization.
3. The list of eligible voters shall consist of all those persons included within the group described in paragraph 2 above whose names appear upon the payroll of the Employer on December 24, 1976, and who have not since quit or been discharged for cause.

If a majority of the employees in said voting group cast their ballots for the Library Employees Association, they will be taken to have indicated their desire to constitute a part of the existing unit currently represented by the Association and the Association may bargain for such employees as part of that Unit. If a majority of them vote for No Employee Organization, they will be taken to have indicated their desire to remain unrepresented, and the Executive Secretary shall issue a certification of the results of the election to that effect.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the Commission by Chapter 150E of the General Laws, IT IS HEREBY DIRECTED, as part of the investigation authorized by the Commission, that an election by secret ballot shall be conducted under the direction and supervision of representatives of the Commission among the employees in the aforesaid voting group at such time and place and under such conditions as shall be contained in the Notice of Election issued by the Commission and served on all parties and posted on the premises of the Employer together with copies of the Specimen Ballot.

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5 (cont'd.) granting a self-determination election in this situation would permit the employees in the fringe group to perpetuate the "fringe defect".



) City of Quincy Library Department and Library Employees Assoc. H.L.P.E.,  
3 MLC 1517

In order to assure that all eligible voters will have the opportunity to be informed, parties to this election should have access to a list of voters and their addresses which may be used to communicate with them.

Accordingly, it is HEREBY FURTHER DIRECTED that two (2) 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, Leverett Saltonstall Building, 100 Cambridge Street, Room 1604, 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 parties to the election. Since failure to make 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.

James S. Cooper, Chairman

Garry J. Wooters, Commissioner

