

**Union College and Office and Professional Employees International Union, AFL-CIO, Local 32, Petitioner. Case 22-RC-7830**

January 23, 1980

**DECISION AND DIRECTION OF ELECTION**

**BY CHAIRMAN FANNING AND MEMBERS  
PENELLO AND TRUESDALE**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on April 19, 1979, before Hearing Officer Celeste J. Mattina of the National Labor Relations Board. Following the close of the hearing,<sup>1</sup> the Regional Director for Region 22 transferred this case to the Board for decision.<sup>2</sup> Thereafter, the Employer filed a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organizations involved claim to represent certain employees of the Employer.

<sup>1</sup> Distributive Workers of America, District 65, was certified in Case 22-RC-6760 and since then has been recognized as the exclusive bargaining representative of employees in the requested unit and was permitted to intervene at the hearing in this proceeding.

On April 30, 1979, the Union College Employees' Association (the Association) submitted a motion to intervene and, in the event that the motion was denied, requested that it be placed on the ballot in any election to be held in the petitioned-for unit. On the same day the Association filed a petition in Case 22-RC-7854 to represent employees in the unit the Petitioner seeks in this proceeding. The Regional Director, on May 8, 1979, dismissed the cross-petition filed by the Association in Case 22-RC-7854 and denied the motion to intervene citing the Association's failure to support its cross-petition and/or the motion to intervene by a showing of interest which predated the close of the hearing held in the present case as required by Sec. 11026.2(c) of the Board's Casehandling Manual. However, on May 4, 1979, the Regional Director referred to the Board the Association's request to appear on the ballot. Then on June 4, 1979, the Association filed a timely request for review of the Regional Director's denial of its request to intervene and dismissal of its petition in Case 22-RC-7854. We agree with the Regional Director that the Association has not submitted a timely showing to support either its request for intervention or its cross-petition in Case 22-RC-7854. See Sec. 11026.2(c) cited above, and, also, *Gary Steel Products Corporation*, 127 NLRB 1170 (1960). Accordingly, we affirm the Regional Director's rulings with respect to the request for intervention and cross-petition. Further, as the request to be placed on the ballot is simply an alternative way of requesting intervention, we deny that request for the reasons stated above.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The following employees of the Employer are those employees in the established, recognized bargaining unit set forth in the Intervenor's 1978-79 bargaining agreement with the Employer and, we find, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(c) of the Act:<sup>3</sup>

All full-time and part-time clerical employees who work more than twelve (12) hours per week, including clerks I, II, III, and IV, secretaries and departmental secretaries, computer operators, keypunch operators, clerk-typists, programmers, administrative assistants I and II, general clerks, couriers, switchboard operators, accounting assistants, typists, offset operators, lab assistants, laboratory technicians, recorders, and coordinators employed by the Employer at its Cranford, Plainfield, and Elizabeth, New Jersey, campuses, but excluding all professional employees, managerial employees, technical employees, confidential employees,<sup>4</sup> laboratory coordinators, guards, and supervisors, as defined in the National Labor Relations Act, as amended, and all other employees.

[Direction of Election and *Excelsior* footnote omitted from publication.]

<sup>2</sup> The Regional Director transferred the case to the Board in order to allow the Board to consider the Employer's assertion that no election may be directed due to a potential conflict of interest between the nonteaching professional employees then represented by the Petitioner and the clerical employees sought herein. As the Petitioner no longer represents the Employer's nonteaching professional employees, the conflict-of-interest issue raised by the Employer in opposition to the election in this proceeding has been rendered moot.

<sup>3</sup> The Petitioner and Employer in effect agreed to the appropriateness of the requested unit and, aside from certain relatively minor changes, the unit is that set forth in the certification in Case 22-RC-6760. District 65 refused, however, to take a position on the unit though it did not suggest, much less contend, that its established unit was not appropriate.

<sup>4</sup> The Employer contends that the secretaries to the divisional deans at the college should be excluded as confidential employees. The record establishes that the divisional deans help determine the Employer's labor policies, serve on the college's bargaining team which involves them in collective-bargaining contract negotiations, and participate in the processing of grievances. The secretaries to the divisional deans have access to the grievance files and the Employer's notes relating to the grievances and help with the work in connection with the labor relations functions of the divisional deans. Accordingly, we find that the secretaries to the divisional deans are confidential employees and are excluded from the appropriate unit found herein. See *B. F. Goodrich Company*, 115 NLRB 722 (1956); *Siemens Corporation*, 224 NLRB 1579 (1976).