

Barber-Scotia College, Inc. and Barber-Scotia Professional Association/NEA, Petitioner. Case 11-RC-4674

September 26, 1979

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND MURPHY

Upon a petition filed on March 23, 1979, under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on April 5, 12, and 18, 1979, before Hearing Officer Thomas A. Finger. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 11 transferred this case to the Board for decision. Thereafter, the Petitioner filed a brief in support of its position.

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, the Board finds:

1. The Petitioner seeks to represent certain professional employees of Barber-Scotia College, a 4-year, liberal arts, coeducational institution located in Concord, North Carolina. The Employer, a private, non-profit school, has historically been related to the United Presbyterian Church. It contends that *Catholic Bishop of Chicago*¹ precludes the Board from asserting jurisdiction on the ground that the College is controlled by the United Presbyterian Church.

In *Catholic Bishop* the Supreme Court held that the Act was not clearly intended "to bring teachers in church-operated schools within the jurisdiction of the Board" Although the case presented "difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses,"² the Court declined to resolve those questions "in the absence of a clear expression of Congress' intent" that parochial school teachers should be covered by the Act.⁴

We do not believe that *Catholic Bishop* prevents the Board from asserting jurisdiction herein because, in our judgment, *Catholic Bishop* applies only to paro-

chial elementary and secondary schools. Furthermore, we find that Barber-Scotia College is not a church-operated school within the meaning of the *Catholic Bishop* decision.

Catholic Bishop involved private religiously oriented high schools, whereas the Employer is an institution of higher education. In *Tilton v. Richardson*⁵ the Supreme Court articulated a fundamental distinction between these two types of schools in determining whether the administration of the Higher Education Facilities Act of 1963 fostered an excessive government entanglement with religion. The Court recognized that "there are generally significant differences between the religious aspects of church-related institutions of higher learning and parochial elementary and secondary schools."⁶ This observation was based on the Court's findings that college students are less impressionable and less susceptible to religious indoctrination, that the internal discipline inherent in college courses minimizes the possibility of sectarian influence, and that a high degree of academic freedom often exists at church-related colleges and universities.⁷ The Court further stated that, "Since religious indoctrination is not a substantial purpose or activity of these church-related colleges and universities, there is less likelihood than in primary and secondary schools that religion will permeate the area of secular education."⁸

The record shows that Barber-Scotia College closely resembles the institutions on which the Supreme Court based its general distinction between church-related colleges and parochial schools. The College, a State-accredited school, is managed by a board of trustees which, according to the employees' policy handbook, "controls the corporation of the College, and is responsible for all of its functions." The Employer relies on the College's charter, constitution, and bylaws to support its contention that the College is controlled and operated by the Church. However, the record reveals numerous instances where the College is operated in a manner that does not conform to its charter and bylaws. For example, the College has not received any operating funds from the Church since June 1977, it holds title to several pieces of property in its own name, and it hires faculty and staff without seeking the Church's approval. Since the evidence shows that the Church does not become actively involved in the internal affairs of the College, we find the Employer's argument unpersuasive.

The record reflects that the major aim of Barber-Scotia College is to provide a secular education. The

¹ *N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. 490, 85 LC ¶11,163 (1979).

² 85 LC ¶11,163 at 20,583.

³ *Ibid.*

⁴ *Ibid.*

⁵ 403 U.S. 672 (1971).

⁶ *Id.* at 685.

⁷ *Id.* at 686.

⁸ *Id.* at 687.

College does not stress religion or Presbyterian principles in its curriculum. Students are required to take one of the two religiously oriented courses that are offered, but both of these courses are surveys of various religions and are not limited to the teaching of Presbyterian principles. The record does not indicate that religious doctrine affects the teaching of courses offered by the College for credit towards a degree. The College occasionally conducts religious observances, but student attendance is not mandatory. Decisions concerning the curriculum and course content are made by the College without the Church's involvement.

We therefore find that Barber-Scotia College is not a "church-operated school." Rather, it is a college of the kind found by the Supreme Court to be primarily concerned with providing a secular education, rather than with inculcating particular religious values. Consequently, we are not confronted with the serious first amendment difficulties envisioned by the Supreme Court in *Catholic Bishop* and we reject the Employer's argument that the Board's assertion of jurisdiction would constitute an impermissible entanglement between government and religion.⁹

The gross annual revenue of the College exceeds \$1 million, and at least \$50,000 of that amount was received from outside the State of North Carolina. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Employer disputes the Petitioner's status as a labor organization within the meaning of the Act. It contends that the Petitioner is an *alter ego* of the National Education Association (NEA) which, according to the Employer, is barred by a U.S. district court order from organizing private sector employees until reports required by the Labor Management Reporting and Disclosure Act are filed. Although the NEA provides the Petitioner with legal and technical assistance, the record fails to establish an *alter ego* relationship. The Petitioner was formed to represent employees, it admits employees to membership, and, if certified, asserts it intends to bargain with the Employer. We therefore find that the Petitioner is a labor organization within the meaning of the Act which claims to represent certain employees of the Employer.¹⁰

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

4. The Petitioner seeks to represent a unit consisting of all full-time teaching faculty, including center directors, and all full-time student personnel staff. The Employer contends that an overall campus unit, excluding part-time employees and supervisors, is appropriate. The Employer would exclude center directors on the ground that they are supervisors.

The College's curriculum is organized around an "academic center" concept. Each center offers courses and degrees and is headed by a center director. The Employer contends that the center directors direct the centers' instructional activities and evaluate teachers. The College's policy handbook states that the center directors "bear the major responsibility for the procurement and retention of the faculty." The record shows that center directors are appointed and generally receive a higher salary than other faculty members. However, the record is not clear whether the center directors' extra pay derives from their position or their greater experience and advanced degrees. The center directors carry substantial teaching loads and are paid according to the faculty salary scale. In addition, they work an extra month during the school year performing administrative duties. The center directors are subject to the same personnel policies as the faculty, and receive the same fringe benefits and medical and life insurance.

Contrary to the policy handbook, the center directors do not play a major role in the College's hiring procedures. After an application is filed, the center director compiles a file containing information about the applicant. The faculty recruitment committee interviews the applicant and votes on the application. The center director's recommendation to the vice president for academic affairs reflects the consensus of the committee, not the director's personal opinion. The center directors are also charged with establishing course schedules, but do so only after consulting with the center's faculty. Center directors, like other faculty members, must submit any course proposals to a curriculum committee. Center directors do not prepare budgets and are not authorized to pledge the College's credit.

The record fails to show that center directors discipline, reprimand, or discharge faculty members, nor do they effectively recommend such action. The evidence also fails to support the Employer's contention that center directors make effective recommendations concerning the retention and promotion of faculty members. The record shows that the primary responsibility of the center directors is teaching. Although they possess some formal authority in coordinating the centers' activities, they exercise that authority in conjunction with several committees and the center faculty. The testimony of one center director that he serves as "a conduit of information coming from my

⁹ See also *College of Notre Dame*, 245 NLRB No. 44, issued this date.

¹⁰ See *N.L.R.B. v. Cabot Carbon Company and Cabot Shops, Inc.*, 360 U.S. 203 (1959).

supervisor, the Academic Vice-President, to members within the centers," best describes the function performed by the center directors. We therefore find that they are not supervisors within the meaning of the Act and shall, accordingly, include them in the unit.

In addition to the full-time faculty, the Petitioner seeks to include the full-time student personnel services staff on the ground that they are professionals "engaged in supportive and interrelated activities closely associated with the educational process." The employee categories sought by the Petitioner consist of the head librarian, cataloger, librarian technician, coordinator of testing and learning skills, coordinator of international development, interim director of institutional research, assistant director of student affairs, director of college union, directors of residence halls, counselors, and medical staff.

The record shows that the head librarian has a master's degree and holds faculty rank. The record also suggests, however, that the head librarian supervises the cataloger and library technician in that she sets their work schedule, assigns their duties, and reviews their performance. The evidence does not show that the cataloger and library technician are professionals or that they perform functions closely related to teaching. It therefore appears that the head librarian supervises nonunit employees. Since the record does not reveal whether the head librarian spends more than 50 percent of her time supervising nonunit employees, we shall permit her to vote subject to challenge.¹¹

¹¹ See *New York University*, 205 NLRB 4 (1973).

We shall include the coordinator of testing and learning skills, the coordinator of the international development program, and the interim director of institutional research as the record shows that the individuals holding these positions are full-time faculty members who fulfill primarily teaching responsibilities. We shall exclude the assistant director of student affairs, the director of the college student union, the directors of the residence halls, the counselors, and the medical staff because the record fails to establish that they are professional employees within the meaning of Section 2(12) of the Act, that they perform duties closely related to the typical faculty unit, or that they share a community of interest with the faculty.

We find the following employees of the Employer constitute an appropriate unit for the purpose of collective bargaining with the meaning of Section 9(b) of the Act:

All full-time teaching faculty, including center directors, the coordinator of testing and learning skills, the coordinator of the international development program, and the interim director of institutional research employed by the Employer at Barber-Scotia College, Concord, North Carolina; excluding the nonprofessional staff, part-time teaching faculty, assistant director of student affairs, director of college union, directors of residence halls, medical personnel, counselors, office clerical employees, guards, and supervisors as defined in the Act.

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