

Yale University and Yale Non-Faculty Action Committee Unit No. 1. Cases 1-RM-756 and 1-RC-10826

August 11, 1970

DECISION AND ORDER

BY MEMBERS FANNING, McCULLOCH, BROWN, AND JENKINS

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before Hearing Officer Gerald Wolper of the National Labor Relations Board.

Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, by direction of the Regional Director for Region 1, the proceeding was transferred to the Board for decision. Briefs were filed by the Employer, Yale Non-Faculty Action Committee Unit No. 1 (hereinafter referred to as YNFAC Unit 1), and by Local No. 35, Federation of University Employees, Yale, AFL-CIO (hereinafter Local 35), an Intervenor. Local No. 217, Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO (hereinafter Local 217), was also permitted to intervene at the hearing. 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.

On the entire record in this proceeding, the Board finds:

1. As the largest employer in New Haven and fifth largest in the State of Connecticut, Yale University has some 7,500 academic and nonacademic employees. Its student population numbers 9,381; 7,466 of whom are from States other than Connecticut and 636 come from foreign countries. In addition to its facilities in New Haven, Yale operates a number of other installations throughout the State, as well as in eight other States, Puerto Rico, and Argentina.

During fiscal year 1969, the University purchased goods and services valued at approximately \$37 million. Of this \$13,348,000 was expended in direct out-of-State purchases, and another \$12,800,000 was spent within Connecticut for goods moving in interstate commerce. Additionally, other purchases included such items as food and food services at an annual cost of \$1,400,000. Expenditures for books and periodicals, almost all of which were supplied from without the State, totaled \$1,870,000.

The University's operating income for fiscal 1969 was \$111,832,660, obtained from sources such as tuition, investments, gifts, sponsored research, and sale of publications. For example, the University Press received \$1,800,000 for sales from outside the State, and another \$1 million was gained from admission charges and television and radio rights to athletic events. Yale derived \$28,860,000 income from its investments in 1969.

The University's assets are valued at approximately \$589,233,262. Its investment portfolio has a market value as of the time of the hearing in excess of \$509 million and includes holdings in the computer, transportation, oil, and automotive industries. Its real estate investments in land and buildings in Connecticut are valued at \$10 million and those outside the State at another \$4 million.

Yale was also the beneficiary of research grants totaling \$39,615,742. Of this sum \$32,978,000 was contributed by Federal Government agencies such as the Atomic Energy Commission, the Department of Defense, National Aeronautics and Space Administration, and the United States Public Health Service.

In light of the foregoing facts, it is clear that the economic operations of Yale University have a substantial impact on interstate commerce and that by any reasonable standard which might be imposed, the Board is amply justified in exercising its jurisdiction in the instant proceeding. Accordingly, we find that Yale University is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.¹

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

Local 35 argues that YNFAC Unit 1 is not a labor organization as defined by the Act on the grounds that it is not sufficiently organized to undertake the responsibilities of a bargaining representative, since it has no written constitution or bylaws, its officers are currently serving terms of unspecified duration, and it relies on voluntary contributions for funds.

In rebuttal, evidence was offered that Unit 1 has been organized for over a year, that it has duly elected officers, holds regular bimonthly meetings, and has the allegiance of a majority of the employees whom it purports to represent. Further, the following prepared statement of purpose was read into the record:

The purpose of this organization shall be to enhance the quality of life of all people under its jurisdiction; to establish fair wage scales and working conditions and protect the welfare of

¹ See *Cornell University*, 183 NLRB No. 41

all its members in any manner necessary under the law.

YNFAC Unit 1 also claims that it pressed certain grievances with the administration, particularly with regard to the issuance of paychecks prior to rather than after Christmas vacation. There is some doubt as to whether this grievance was initiated by Unit 1 alone or Unit 1 members acting in concert with a looseknit, campuswide group also styled YN-FAC.

The applicable provision of the Act, Section 2(5), states that "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

Upon the basis of the above fact, we find that YNFAC Unit 1 is a labor organization within the meaning of the Act.²

3. A question affecting commerce does not exist concerning the representation of certain employees of Yale University within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the following reasons:

YNFAC Unit 1 has filed a petition seeking an election to determine whether it shall be the collective-bargaining representative for approximately 109 nonfaculty, clerical, and technical employees in the Department of Epidemiology and Public Health (hereinafter cited as EPH) of the Yale School of Medicine. Yale, Local 35, which for the past 20 years has represented some 1,100 service and maintenance employees at the University, and Local 217 all take the position that the unit requested by YNFAC Unit 1 is inappropriate. They contend that the appropriate unit, if any, would be one which is universitywide in scope.

In terms of Yale's organizational structure, the EPH department is 1 of 17 academic departments in the Yale School of Medicine and 1 of 68 departments within the University as a whole. It is housed in its own building with its own laboratories and library. Apart from one connecting tunnel, the EPH building is separate from but in close proximity to other structures in the medical school complex.

There is some question as to the degree of independence and autonomy exercised by the department. EPH does have its own departmental chairman and administrative personnel and there was testimony that a majority of people working in EPH were hired by their immediate supervisor. It appears that day-to-day authority to supervise,

discipline, and discharge vests initially in particular faculty supervisors in the department.

On the other hand, there is considerable evidence that personnel policies and employment practices are standardized for the entire University. For example, 90 percent of the unrepresented non-faculty employees' wages are set in accordance with a University-established wage classification scale. All employees are paid once a month by Yale University paycheck. Benefits such as Blue Cross and Blue Shield, retirement plans, tuition aid for employees and their children, recreation programs, and access to the credit union are available campuswide. Further, the Yale Personnel Manual indicates that policies with regard to working hours, overtime, accident and health service, sick leave, holidays, and vacations are centrally determined and uniformly administered throughout the University.

Additionally, personnel policies and practices emanate from one central and three adjunct personnel offices at various sites on the campus. Although manpower needs are determined by respective department heads who also may hire, the personnel offices may also engage in recruitment. They direct applicants to job vacancies and are subsequently charged with assigning employees to proper job classifications and pay grades, filling out the requisite forms, maintaining files and employment records, and administering all the details of the fringe benefit programs mentioned above.

EPH is dependent upon services provided by the University to all its component parts. Thus, light and power, water, grounds maintenance, cleaning, and dining hall services are all centrally furnished. Purchasing, accounting, and payroll functions are also handled for the department by centralized offices of the University. Moreover, although the EPH budget is initially prepared within the department, it must be approved jointly by the Graduate School and the School of Medicine. It is then submitted for approval to the University provost and treasurer and for final approval to the Yale corporation.

It is further contended in support of a separate bargaining unit for the employees of EPH that the work these employees perform is unique, that particular skills are required or must be developed, and that there is little temporary employee interchange with employees in other departments. In contradiction to these assertions, however, the record establishes that the 102 employees in the requested unit encompass 26 different job classifications, none of which are unique to EPH. Rather, identically titled positions may be found throughout

² See, e.g., *Butler Manufacturing Company*, 167 NLRB 308.

the medical school and the University. There are, in fact, a total of 1,776 nonfaculty, unrepresented employees whose job titles are the same as those held by EPH personnel. By way of illustration, there are 19 assistants in research in EPH, one of the largest number of employees in any single job category in the department. At the same time, there are 250 more assistants in research employed in other Yale departments. Similarly, although 25 employees hold positions entitled "Secretary B" at EPH, 424 other "Secretary B" employees work elsewhere at Yale. Additionally, the work in which EPH employees are engaged is essentially similar to work performed by employees in the same job classifications outside the department, and for the same salary.

With respect to employee interchange, the evidence shows that in 1968 and 1969 there were 11 permanent transfers out of the EPH department and, between 1967 and 1968, 4 transfers into it.

Also noteworthy is the fact that of the 124 nonfaculty workers employed by EPH, 16 work in locations other than the EPH building. There are, moreover, 52 employees located in the EPH building who are not, in fact, EPH employees. In other words, one-third of the staff housed in EPH are actually employees of other University departments.

Yale, Local 35, and Local 217 point out that the history of collective bargaining at the University since 1943 has established a pattern of university-wide bargaining units encompassing employees holding similar job titles, and that, therefore, only a campuswide unit is appropriate.³ Indeed, both the Interveners have attempted to organize the University on this basis on past occasions.

After weighing all the factors set forth above against the criteria on which we rely in determining

³ Local 35, which currently represents maintenance and service employees in a campuswide unit, contends that all campus clerical and technical employees should be considered accretions to its existing maintenance and service employees' unit. We find no merit in this contention. Not only do the clerical and technical employees lack a community of interest with maintenance and service employees, but the former were in existence throughout the time that Local 35 has represented maintenance and service employees at Yale. Also there are approximately 2,600 clerical and

the appropriateness of a departmental unit,⁴ we conclude that the unit requested by YNFAC Unit 1 is inappropriate.

We fail to be persuaded by the testimony submitted as to the geographical and functional separateness of the EPH department. Although it is housed in its own building, it is thoroughly integrated into the Yale School of Medicine and the University by virtue of its location, educational program, and administrative operations.

Moreover, although YNFAC Unit 1 has informally attempted to represent EPH employees, it has never entered into collective-bargaining negotiations in their behalf. Apart from the desire of these employees to be represented, indicated by past attempts to organize, there is scant evidence which justifies establishing a separate unit for them. They are subject to the same working conditions as all other Yale employees. While the research conducted in the department may vary from that undertaken elsewhere, the skills and techniques employed by EPH personnel do not vary substantially from those of other Yale employees holding parallel jobs. Thus, in light of all the foregoing, we find that the EPH employees do not share a sufficiently special community of interests which would justify creating a separate unit for them. Accordingly, we shall dismiss the petitions.

ORDER

It is hereby ordered that the petitions filed herein be, and they hereby are, dismissed.

technical employees as opposed to 1,100 maintenance and service employees. In other words, Local 35 would add to its existing unit twice as many unrepresented employees as there are currently represented ones. The addition of this large number of employees to the existing unit without affording them an opportunity to select or reject such bargaining representative would be unjustified. See, e.g., *Gould National Batteries, Inc.*, 157 NLRB 678.

⁴ See *Cornell University, supra*.