D'Youville College, Employer-Petitioner and D'Youville College Chapter, American Association of University Professors. Case 3-UC-106

July 30, 1976

DECISION AND CLARIFICATION OF UNIT

By Chairman Murphy and Members Fanning and Penello

Upon a petition filed in Case 3-RC-6498, the Regional Director for Region 3 directed on December 23, 1975, that an election be held among all the fulltime faculty at the Employer's Buffalo, New York, establishment, excluding, inter alia, four of the faculty who were members of the Order of the Grey Nuns of the Sacred Heart whom the parties had agreed to include in the unit. Upon the Employer's request for review, the Board directed that the Grey Nuns be permitted to cast challenged ballots. The election was held on February 4, 1976; the four Grey Nums cast challenged ballots. As the Union won the election by a substantial margin, the challenged ballots were insufficient in number to affect the results, and, in consequence, no final resolution was made in the representation proceeding concerning the eligibility of the Grey Nuns. On February 12, 1976, the Union was certified as the bargaining representative of all the Employer's full-time faculty, excluding among others "faculty who are members of the Grey Nuns."

On March 15, 1976, the Employer filed its petition in the present proceeding seeking clarification with respect to the unit placement of the Grey Nuns. A hearing was held before Hearing Officer George McNamara. Following the close of the hearing, the Regional Director for Region 3 transferred this proceeding to the Board for decision. 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 proceeding, the Board finds:

The four professors, whose unit placement is here in issue, are, as indicated above, members of the Order of Grey Nuns. The Regional Director excluded them from the all-faculty unit despite the agreement

of the parties to include them, based on his conclusion that Seton Hill College, 201 NLRB 1026 (1973), was controlling. We find, however, that the situation dealt with in that case differs from this one in two significant regards. First, the nuns excluded from the lay unit in Seton Hill were members of the religious order that owned and administered the college and thus were, as the Board there pointed out, "in a sense part of the employer," which with ties of allegiance and obedience to the order would place them as members of a bargaining unit in a position of conflicting loyalties.² That situation does not exist here. To be sure, D'Youville College was founded by the Order of Grey Nuns. However, around 1970 the college was reorganized as a corporation under the laws of the State of New York. At that time, a board of trustees was established and vested with ownership of the Employer's buildings and other property and given responsibility to establish the policy and to administer the affairs of the college. It is specified by the corporate charter that no more than one-third of the members of the board of trustees may be members of religious orders, including the Order of Grey Nuns. Consequently, there is no basis for holding in this proceeding that the four nuns are in any manner affiliated with the Employer except in their capacity as faculty members signing a standard employment contract.

Second, in Seton Hill the petitioner sought a unit limited to the lay faculty; i.e., a unit specifically excluding the religious faculty (the employer there sought to include them). Here, of course, the parties agree to include the religious faculty in the unit with the lay faculty. To be sure, the situation of the four nuns in this proceeding is characterized by certain factors which the Board held in Seton Hill tended to show that the sisters there lacked a sufficient community of interest to warrant including them in a unit with the lay faculty. Thus, for example, here as in Seton Hill the nuns have taken a vow of poverty and, consequently, retain from their salaries only necessary living expenses, with the remainder being returned by way of a gift to their employer. Nevertheless, where as here the parties themselves are satisfied that there is a sufficient community of interest to justify including the religious in the same unit with the lay faculty and also where as here no statutory or other overriding policy consideration exists precluding such inclusion, we can perceive no reason for not accepting the agreement of the parties to such an all-faculty unit. It is, of course, they who are closest

² See 201 NLRB at 1027

¹ The individuals involved are Sisters Kathleen Connor, Virginia Carley, Joan Maureen McInerney, and Denise Roche

to the situation and, thus, it is to be expected that they would reach an informed responsible decision as to what will provide a satisfactory basis for collective bargaining. Consequently, as the Order of Grey Nuns does not own or administer the college, we find in view of the agreement of the parties that the four Grey Nuns whose unit placement is in issue can appropriately be included in the unit of lay faculty. Accordingly, we shall amend the certification to provide for their inclusion.

ORDER

It is hereby ordered that the unit set forth in the Certification of Representative issued on February 12, 1976, in Case 3–RC–6498 is hereby amended to provide as follows: All full-time faculty of D'Youville College, including professional librarians, division chairpersons, and members of the Order of Grey Nuns, but excluding part-time faculty, administrative employees, nonprofessional employees, head librarian, guards and supervisors as defined in the Act, and excluding all other employees.