

Niagara University, Employer-Petitioner and Niagara University Lay Teachers Association. Case 3-UC-104

December 16, 1976

DECISION AND CLARIFICATION OF UNIT

**BY CHAIRMAN MURPHY AND MEMBERS
FANNING AND PENELLO**

On December 17, 1975, pursuant to the Regional Director's Decision and Direction of Election in Case 3-RC-6410 an election was held in a unit of all full-time lay faculty excluding among others the religious faculty employed by the Employer at Niagara University. However, as provided by the Regional Director in his Decision, as subsequently modified by the Board pursuant to the Employer's request for review, four members of religious orders other than the Eastern Province of the Congregation of the Mission (Vincentian), which operates Niagara University, were permitted to cast challenged ballots. The Union won the election by a vote of 81 to 46. Consequently, the four challenged ballots of the religious faculty here in question had no effect on the results of the election and thus their unit placement was not resolved in that proceeding. The Union was, in due course, certified. On February 10, 1976, the Employer duly filed under Section 9(c) of the National Labor Relations Act, as amended, its petition in the present proceeding seeking a resolution of the unit placement of these challenged voters. Thereafter a hearing was held before Hearing Officer John J. Matchulat of the National Labor Relations Board. Following the close of the hearing, the Regional Director for Region 3 transferred this case to the Board for decision. Thereafter, both parties filed briefs.¹

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.

In dispute is the unit placement of Father Joseph M. Lachowski, Sister John Francis Gilman, Sister Mary Balthasar, and Sister Mary J. Minella, whom the Employer would include in the certified unit and the Union would exclude. All are regular full-time professors who sign regular employment contracts and have the same working conditions as lay faculty expressly included in the unit, but all are also

members of religious orders and thus would seem to come within the religious faculty exclusion of the unit description. Nevertheless, as indicated above, the Regional Director in his Decision and the Board on the Employer's request for review held that the above four be permitted to cast challenged ballots, a result necessarily raising a question concerning their unit placement despite the exclusionary language of the unit description.

The Union, in urging the exclusion of the priest and three nuns, relies primarily on the Board's decision in *Seton Hill College*.² There the Board excluded from a faculty unit nuns who were members of the order that owned and operated the college. It predicated its result primarily on two grounds: First, it concluded that as the nuns were members of the order operating the college they were "in a sense a part of the employer" which, especially in light of their vow of obedience, would place them as members of the bargaining unit in a position of conflicting loyalties and thus precluded their inclusion. Second, it held that their vow of poverty resulted in a divergence of economic interests between the lay faculty and themselves and thus the two groups had "different interests." In the present case the first is raised only with respect to Father Lachowski and Sister Gilman, and the second, with regard to all four religious in question.

As stated above, Niagara University is operated by the Vincentian Fathers, Eastern Province. Father Lachowski is a Vincentian of the New England Province and thus is under a Superior of that province at all times. Nevertheless, while he is living at Niagara University, a Vincentian of the Eastern Province is his acting Superior. But even at such times, the succeeding higher levels of authority over him are those of his New England Province and not those of the Eastern Province, as would be the case were he a member of the latter province. In any event, there is no evidence that Father Lachowski is a member of the province of Vincentian Fathers which is responsible for the Employers' operations.

Sister Gilman is a member of the Daughters of Charity Religious Order. Her immediate Superior is at Buffalo, New York, with the next higher Superior, an International Superior at Albany, who shares her authority with another International Superior, a priest, appointed by Rome to assure compliance of the order with canon law. That priest is also an International Superior of the Vincentians. However, this tie of the Daughters of Charity to the Vincentians is too remote to support a conclusion that Sister Gilman is subject to the authority of the Employer. Thus, from the foregoing we find that neither Father

¹ The Employer's request for oral argument is hereby denied as the record, including the parties' briefs, adequately presents the issues and the parties' positions

² 201 NLRB 1026 (1973).

Lachowski nor Sister Gilman is precluded from being included in the unit because "part of the employer" or because of necessarily divided loyalties with respect to the Union and collective bargaining.

As indicated in *Seton Hill*, the Board considered the vow of obedience of the clerical professors with respect to the order that owned and operated the college. Here we have found that the vows of Father Lachowski and Sister Gilman are in a sense too remote to the Vincentians, Eastern Province, to come within that category. As for Sister Balthasar and Sister Minella, they are members of orders³ unrelated to the Vincentians.

Despite the lack of relationship to the order owning and operating the college, the Union seems to take the position that the vow of obedience disqualifies all these members of the religious faculty from inclusion in the unit. In support of this position, it points to testimony which it claims shows that Superior in each order—the case of Sister Minella excepted—must approve employment at Niagara and must be consulted with respect to contract renewals and "can resign religious faculty members." The evidence is less than clear concerning the degree of control the Superiors have over the members of their orders. In any event, we deem such matters irrelevant here, for we fail to see why an individual's reasons for accepting, renewing, or resigning employment is a pertinent consideration with respect to their unit placement while employed. Also, we believe it is of some consequence to note that the testimony in this record is consistent to the effect that the obligations under the vow of obedience are concerned with matters of religion and not with the individual's professional conduct as a professor, or with their activities with respect to labor or other professional organizations. There is no contrary evidence. In short, we can perceive no basis for concluding that the religious vow of obedience, *ipso facto*, as the

Union seems to argue, requires exclusion of the religious faculty in the issue from the unit.⁴

As noted previously, the second basis for excluding the religious faculty in *Seton Hill College* was related to the vow of poverty taken by them. Here, Father Lachowski and the three sisters involved have also taken that vow. However, in this case, unlike in *Seton Hill*, we find that this vow does not establish a separate community of interest between the lay and religious faculty. In the *Seton Hill* case, the nuns' salary was paid directly to their order. In turn, the order paid most of it over to the college, which the order also owned and operated. The sisters themselves received only a living allowance. As a result of this arrangement, the sisters could have no real interest in the size of their salaries, for ultimately those salaries amounted to little more than accounting transactions on the college's books. However, Father Lachowski and the sisters here concerned each receive the paychecks from the University and all but Sister Minella send them to their superiors and receive in turn a living allowance.⁵ But the size of their paychecks is a matter of objective consequence to them, for the excess over their expenses goes to support the various activities of their own orders which include care for sick and retired members, and, in the case of Father Lachowski, maintenance of a preparatory school for indigent boys.

In these circumstances we fail to see any significant difference—at least with respect to unit placement—between Sister Minella and an unmarried lay professor who may choose to lead an austere life in material terms and to contribute much of his earnings to, for example, charity or scientific research. Certainly, no serious contention would be entertained that such a professor could not properly belong in a lay faculty unit. In short, we do not believe that the way a person chooses to spend his or her money⁶ is a relevant consideration with respect to questions of unit placement.⁷

³ Sisters of Saint Francis, Third Order Regular, and Our Lady of Victory, Missionary Sisters, respectively.

⁴ In support of its position to exclude all religious faculty, the Union points to certain testimony to the effect that the president of Niagara, a member of the Vincentian Order, used his personal influence in securing Sister Gilman's employment at the University when apparently no position was open. Assuming the events transpired as the testimony indicates, we fail to see their relevance, for there is no basis for also assuming that the president's concern for Sister Gilman was based on the fact that both were members of religious orders—and we doubt, even if that were so, it would really matter. Moreover, it appears the president knew of Sister Gilman through her activities in the field of teaching and through a job interview in which he learned that she needed employment, as the college where she taught was closing down. In these circumstances, the alleged favoritism on behalf of Sister Gilman hardly would seem to be something concerning religious connections. Certainly, the Union would not seriously argue that no lay professor ever received preferential employment consideration because he knew a college president and that, if he did, he should be excluded from a bargaining unit of lay professors.

⁵ Sister Minella puts hers in a checking account in her order's name but on which she can write checks. She uses what she requires and ultimately sends the remainder to her order's headquarters.

⁶ The alleged pertinence of questions on how money is spent seems in part to rest on an unstated and unproven assumption that a desire for income is somehow related to the particular manner in which it is spent, i.e., on how much it is needed. The whole concept here is at best a morass with which this Board has no special expertise to deal. Furthermore, it is beside the point. To take an example, an independently wealthy lay professor would not be excluded from a unit simply because he or she did not "need" the income or had no interest in a pay raise.

⁷ In view of this conclusion, we find that the Hearing Officer erred in overruling the objections to his own questions concerning what the religious faculty here involved did with their salary checks, except to the extent such questioning was limited to whether they returned all or part of their salary to the Employer. However, in the circumstances, the error was, as we have held above, nonprejudicial. We also wish to note here that questions concerning how the fathers and sisters arrange for the purchase of their habits, shoes,

Finally, in support of the claim that a marked difference in community of interest separates the lay faculty and the four religious faculty members here involved, attention is directed by the Union to the facts that this religious faculty is not tenured and does not participate as does all the lay faculty in the Employer's retirement plan, and that two of them are not covered by the health plan covering the lay faculty. These differences do appear to be related to the religious faculty being members of orders. Thus, it appears the orders provide security and care in retirement and thus make other retirement arrangements for their members unnecessary. However, as important as these matters may be, they are hardly the whole or even an overwhelmingly large part of the employment situation, and they indicated little more than a diversity of immediate interests that would be found in any unit, such as one combining young and old employees. Certainly, alone they are insufficient to support a conclusion that the religious faculty cannot properly be included in the same unit with the lay faculty.

However, the problem before us is not to be resolved by considering the various items raised herein but rather by considering the situation as a whole. As so viewed, we are faced—by way of summary—with the following: First, Father Lachowski and Sisters Gilman, Balthasar, and Minella are not members of the order (or province of the order) that owns and operates the Employer. Therefore, they are not disqualified from inclusion in the unit on the ground they are a part of the Employer with necessarily conflicting loyalties. Second, they receive their paychecks—and presumably are paid the same

as lay faculty—which are for the most part paid over to their own orders for purposes they deem desirable. Clearly there is no basis for holding that a pay raise or cut would be a matter of indifference to them. Third, except for retirement, tenure, and to some extent health insurance, their terms and conditions of employment are, insofar as the record indicates, identical to those of the lay faculty. In view of these considerations, we believe the situation here before us is markedly different from that considered by the Board in *Seton Hill College*, and thus we find not only that the four can properly be placed in the lay faculty but that they share a substantial professional and job community interest with the lay faculty requiring their inclusion,⁸ at least absent a stipulation to the contrary. Accordingly, we shall amend the unit description in Case 3-RC-6410 to provide for their inclusion.

ORDER

It is hereby ordered that the unit set forth in the Certification of Representation issued on December 29, 1975, in Case 3-RC-6410 is hereby amended to provide as follows:

All full-time teaching faculty including department chairmen employed by the Employer at its Niagara University, New York, location, excluding office clerical employees, religious faculty who are members of the Congregation of the Mission, Eastern Province, part-time faculty, ROTC faculty, administrators, all other professional employees, guards and supervisors as defined in the Act.

and any or all other personal items are irrelevant and involve personal matters of no proper concern of this Board.

⁸ Cf., *Saint Anthony Center*, 220 NLRB 1009 (1975); *D'Youville College*, 225 NLRB 792 (1976)