

The University of West Los Angeles and American Federation of State, County and Municipal Employees, Local 1108, AFL-CIO, Petitioner.
Case 31-RC-7364

April 30, 1996

ORDER DENYING REVIEW

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND FOX

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent portions are attached as Appendix).¹ The request for review is denied as it raises no substantial issues warranting review.

In denying review of the Regional Director's finding that student law library clerks are properly included in the bargaining unit with regular nonstudent law library clerks, we recognize that the Board has in previous cases excluded from bargaining units students employed by their own educational institution in a capacity unrelated to their course of study.² The rationale underlying these decisions is that employment in these situations is merely incidental to the students' primary interest of acquiring an education, and in most instances is designed to supplement the students' financial resources.

Contrary to the Employer's contention in its request for review, we do not view those prior decisions as establishing a per se rule mandating the exclusion of students from bargaining units in their educational institutions. Rather, where the record establishes that the students' employment by their educational institution is not directly related to their continued enrollment at the educational institution and that they share a community of interest with the bargaining unit employees, we will find that they are properly included in the unit.

In this case, we agree, for the reasons stated by the Regional Director, that the record establishes that the student clerks' status as law library employees is not directly, or even indirectly, related to their continued enrollment at the Employer and that their employment is not merely incidental to their academic objectives. We further agree with the Regional Director, for the reasons stated by him, that the student clerks share a community of interest with the nonstudent clerks.

¹ Review was requested of the Regional Director's findings that (1) regular full-time and part-time nonstudent library clerks are included in the unit found appropriate, and (2) student library clerks are properly included in the unit with nonstudent clerks.

² See *St. Clare's Hospital & Health Center*, 229 NLRB 1000 (1977); *San Francisco Art Institute*, 226 NLRB 1251 (1976); *Saga Food Services of California*, 212 NLRB 786 (1974); *Macke Co.*, 211 NLRB 90 (1974); and *Cornell University*, 202 NLRB 290 (1973).

Accordingly, we affirm the Regional Director's decision to include the student clerks in the bargaining unit.

APPENDIX

DECISION AND DIRECTION OF ELECTION

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: ⁴

⁴ The Petitioner seeks to represent a unit, as amended at the hearing, of all library clerks (clerks), including both students and nonstudents, employed at the Employer's law library. The Employer asserts that no unit is appropriate, or, in the alternative, that a unit of nonstudent clerks exclusively is appropriate. The parties agreed that the only issue to be resolved is whether the unit should include all, some, or none of the clerks. The parties stipulated to facts indicating, and I find based upon the entire record, that the individuals in the following positions exercise authority sufficient to show that they are supervisors within the meaning of Sec. 2(11) of the Act: the Director of Library Services, the Assistant Librarian, and the Reference Librarian. The parties also stipulated, and I find based upon the entire record, that Danute Debney-Shaw should be excluded as a casual employee from any unit found appropriate.

The law library moved to its current location in 1992 and underwent a significant staff expansion. Over the most recent 6 to 12 months, the number of clerks has remained steady: today the law library regularly employs 9 clerks, including 4 nonstudents and 5 students. All clerks share the same duties: to assist patrons by answering questions and locating materials, to do filing, to update loose-leaf services, and to reshelve books. Additional duties are specific to the respective shifts: to open and close the law library, to turn the computers on and off, to sort and secure the books with security strips, to stamp, tag and put away the books. The most senior clerk, a nonstudent, has the additional duty of checking in the mail.

The Employer offers fall, spring, and summer semesters, and the law library is open all year. All the clerks, whether students or nonstudents, normally work the year round and have fixed weekly schedules. The four nonstudent clerks are currently scheduled, respectively, for 40, 26 or 27, 24.5, and 4 hours per week. (The 4-hour-per-week clerk worked 25 to 30 hours per week until one or two weeks before the hearing, at which time she took a law clerk position and therefore requested the reduction in her law library employment hours.) The five student clerks are currently scheduled, respectively, for 15 to 20, 11, 10, 8, and 4.5 hours per week; however, the Assistant Librarian testified that during the most recent two years, student clerks have averaged about 20 hours per week, with most working between 15 and 20 hours per week. Of the nonstudent clerks, two earn \$6.50 per hour while the other two, because of greater length of service, earn \$7.31 and \$6.81, respectively, per hour. Four of the student clerks earn \$6.50 per hour; the fifth, hired two weeks before the hearing, earns \$6.25 per hour. All clerks, whether students or nonstudents, are supervised by the same supervisors under the same rules, and are paid on the same payday with checks drawn on the same account. Students and nonstudents work in the same area of the law library, and have worked alongside each other since the law library opened at its current location. Student and nonstudent clerks take the same breaks in the same facilities. All clerks live off campus. The Employer's policy is to accommodate equally the scheduling needs of student and nonstudent clerks. The Employer's employee handbook does not differentiate between student and nonstudent employees.

The Employer grants benefits to full-time employees only; thus, the 40-hour-per-week nonstudent clerk is the only clerk who receives benefits (health insurance). The Employer grants holiday pay to em-

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employees who work 20 or more weekly hours; thus, any clerks who are scheduled for that many hours qualify for holiday pay when the law library is closed due to holiday on a day when such clerk is regularly scheduled to work; student clerks as well as nonstudent clerks have obtained holiday pay.

All five current student clerks are enrolled in the Employer's J.D. program, though past student clerks have included paralegal students. The Employer provides the student clerks with no education-related perquisites (such as tuition credits or scholarships) in return for their work as student clerks. There is an Employer policy that clerks may not study whenever supervisors have work that can be assigned. Of the five current student clerks, all but the one hired about two weeks before the hearing were student clerks during the previous semester also. The approximate lengths of service of the five current student clerks are 2 years, 1 year, 8 months, 7 months, and 2 weeks, respectively. Though the employer did post a student clerk vacancy on an administration building bulletin board at least once during the last two years, the normal method of recruitment of new student clerks is by word of mouth between incumbent student clerks and their acquaintances. Over the last three years, the Employer has employed about 20 student clerks in addition to the 5 currently employed.

The Employer's stated policies neither favor nor disfavor the continued employment of former student clerks as nonstudent clerks. No student clerk has ever been dismissed simply because he or she graduated. There is no Employer policy that a student clerk ousted from a respective degree program for academic reasons must also be dismissed from a clerk position. A number of student clerks have become nonstudent clerks upon graduation; at least one student clerk, the current assistant librarian, eventually rose into management. Of the four current nonstudent clerks, three did work as student clerks before becoming nonstudent clerks; one of those three quit the Employer's J.D. program, while the other two earned the J.D. degree. The remaining nonstudent clerk was not earlier a student clerk but did earn a J.D. degree from the Employer. For the three nonstudent clerks who earlier served as student clerks, their length of service as student clerks appears to have been as great or greater than their *subsequent* length of service as nonstudent clerks. For example, the 40-hour-per-week nonstudent clerk began as a student clerk in 1991 or 1992, and did not graduate until January 1994; the 24.5-hour-per-week nonstudent clerk began as a student clerk in 1992 and graduated in December 1994. Over the last three years, the Employer has employed about three nonstudent clerks in addition to the four currently employed; at least one of those three was a student at another institution during his time as a nonstudent clerk.

DISCUSSION

With respect to the nonstudent clerks, the Employer argues, without citing legal authority, that they should be excluded from any unit found appropriate because of the allegedly transitory nature of their employment interest. The Employer in effect argues that the nonstudent clerks harbor life goals or professional ambitions that may, at some future date uncertain, lead those clerks to elect to leave their law library employment. The Board, however, has not found such criteria to disqualify an otherwise eligible voter. All the petitioned-for nonstudent clerks are employees of the Employer in its law library. As the evidence discussed above reflects, their lengths of service are measured in years, and there is no Employer policy to separate the nonstudent clerks from employment by some date certain due to graduation or any other reason. The nonstudent clerks are therefore regular, not temporary, employees, because any prospect of their termination is not so definite as to dispel a reasonable contemplation of continued employment. *St. Thomas-St. John Cable TV*, 309 NLRB 712 (1992).

With respect to the student clerks, as the evidence discussed above reflects, their lengths of service range between 7 months and 2 years (excluding the one recently hired student clerk), and there is no Employer policy to separate the student clerks from employment by

some date certain due to graduation or any other reason. The student clerks are therefore regular, not temporary, employees, because any prospect of their termination is not so definite as to dispel a reasonable contemplation of continued employment. *St. Thomas-St. John Cable TV*, Id.

With respect to the student clerks' terms and conditions of employment, as described earlier, I find that they are nearly indistinguishable from those of the nonstudent clerks. The student clerks work side by side with the nonstudent clerks, performing the same duties as the nonstudent clerks (excepting only checking in the mail, which is performed exclusively by only one of the four nonstudent clerks); student clerks and nonstudent clerks substitute freely for each other whenever personal or other scheduling problems prevent a clerk from working his or her scheduled shift. The student clerks normally work the year round on fixed schedules, as do the nonstudent clerks; are supervised by the same supervisors under the same rules as are the nonstudent clerks; are paid on the same payday with checks drawn on the same account as are the nonstudent clerks; and take the same breaks in the same facilities as do the nonstudent clerks. Four of the five student clerks receive the same hourly wage rate as do two of the four nonstudent clerks; wage rate differences with respect to the remaining two nonstudent clerks and the remaining student clerk are accounted for by differences in respective lengths of service with the Employer. Any differences in benefits (health insurance, holiday pay) as between student clerks and nonstudent clerks are likewise accounted for by differences in length of service or in number of weekly work hours, rather than by student or nonstudent status; e.g., all clerks become eligible for holiday pay upon being scheduled for 20 or more weekly work hours. Although the majority of student clerks currently average fewer weekly work hours than the majority of nonstudent clerks, and turnover over the last three years has been higher among student clerks than among nonstudent clerks, on balance students and nonstudents share an interest in the same terms and conditions of employment. Based on the evidence discussed above, and on the entire record, I find that the student clerks do share a community of interest with the nonstudent clerks. *U.S. Aluminum Corp.*, 305 NLRB 719 (1991).

Finally, the Board has previously addressed the placement of students in bargaining units. In its summary of its own precedents regarding student employees, the Board discerned four categories of student employees of which the second is apposite here, i.e., students employed by their own educational institution in work unrelated to their course of study have generally been excluded from bargaining units at those institutions on the assumption that the students' relationship to such bargaining units is normally transitory. *St. Clare's Hospital & Health Center*, 229 NLRB 1000 (1977). The Board's assumption of transitoriness is based on the reasoning that the students' "status as employees is in most instances *directly related to their continued enrollment at the educational institution.*" Id. at 1001 (emphasis added). However, the factual predicate for this reasoning is clearly absent from the facts herein. Rather, the clerks' status as law library employees herein is not directly, nor even indirectly, related to their continued enrollment at the Employer. No student clerk has ever been dismissed from the law library simply because he or she graduated or was dismissed from a degree program. On the contrary, 3 of the 4 current nonstudent clerks previously worked as student clerks, as did their current supervisor, the Assistant Librarian. The Employer's employee handbook does not differentiate between student and nonstudent employees. Student clerks in the instant case, in contrast to the student janitors in a case on which the Employer heavily relies (*San Francisco Art Institute*, 226 NLRB 1251 [1976]), are not treated differently from nonstudent employees, nor do the student clerks receive any perquisites (such as tuition reductions, differential accommodations to student schedule problems, Employer-provided housing) that would make law library employment appear an adjunct to the Employer's educational program. Based on the above and the record as a whole, I find that the student clerks herein are appropriately included in the petitioned-for bargaining unit.

INCLUDED: Full-time and regular part-time law library clerks employed by the Employer at its Inglewood, California facility.

EXCLUDED: Office clerical, professional and all other employees, guards and supervisors as defined by the Act.

As noted above, there are approximately nine employees in the unit I have found appropriate.