

Marymount College of Virginia, Petitioner and Marymount College of Virginia Faculty Association, affiliated with National Education Association. Case 5-UC-151

23 June 1986

DECISION ON REVIEW AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
DENNIS AND STEPHENS**

On 20 August 1982 the Acting Regional Director for Region 5 issued a Decision and Order Clarifying Unit in the above-entitled proceeding in which he ordered included in the existing recognized bargaining unit certain employee classifications.¹ Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Employer-Petitioner filed a timely request for review alleging, inter alia, that the Acting Regional Director departed from official Board precedent, that his findings are either contrary to the evidence or not reflective of the weight of the evidence, and that Board precedent supports the exclusion of the disputed classifications of program coordinators and professional librarians from the bargaining unit description. The Employer-Petitioner also filed a brief in support of its request and a statement in opposition to the Union's request for review. The Union also filed a timely request for review alleging, inter alia, that the Acting Regional Director departed from official Board and Court precedent by relying on only 5 of the 25 criteria established by the U.S. Supreme Court in *NLRB v. Yeshiva University*, 444 U.S. 672 (1980), in finding the nursing faculty to be managerial and that the Acting Regional Director also committed error in determining several substantial factual issues contrary to the record. The Union filed a brief in support of its request and a statement in opposition to the Employer-Petitioner's request for review.

By telegraphic order dated 10 February 1984 the Board granted review regarding the propriety of the Acting Regional Director's clarification of the unit by including the program coordinators and professional librarians but in all other respects denied the requests for review. Thereafter, both the Employer-Petitioner and the Union filed briefs on review, and the Employer-Petitioner filed a motion for oral argument before the Board.²

¹ The hearing extended over 39 hearing dates, encompassing more than 10,850 pages of transcript and 400 plus exhibits

² The Employer-Petitioner has requested oral argument. The request is denied as the record and briefs adequately present the issues and the positions of the parties

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings.

The Employer-Petitioner (the College) is a liberal arts college organized in 1950 as a 2-year women's college. In 1975 it expanded to a 4-year degree-granting institution, and in 1979 further expanded with graduate programs in education and business administration. The College is governed by a 20-member board of directors which has legal jurisdiction over the academic and business affairs of the College. There are five corporate officers: the president, the dean of the College, the dean of student services, the registrar, and the business manager. The deans and other officers report to the president. The president is appointed by the board of directors on a yearly basis and is delegated the authority and responsibility for supervising all activities and implementing programs in conformity with the College's objectives and bylaws as well as the articulated policy of the board. The president also serves as the primary channel of communication between the board and all other levels of the College. Further, the president nominates all other deans and officers who are approved by the board. The dean of the College is primarily responsible for appointment, retention, termination, and development of faculty and, in collaboration with other academic administrators, the division chairmen, and the graduate program director, recruits and selects the faculty members. Moreover, the dean is responsible for supervising along with the business manager the preparation of the instructional and academic budgets and approving their disbursement. The five corporate officers along with the assistant academic dean, the director of development, the division chairmen, and the graduate program director make up the College Council which is the primary governing committee in the College.

Each of the College's four academic divisions is headed by a division chairman who reports directly to the dean. A division chairman's responsibilities include: developing and maintaining divisional policies and objectives; establishing, evaluating, and improving divisional programs and curricula; enforcing academic standards; preparing course schedules; assisting the dean in the recruiting and hiring of faculty, evaluating faculty, and recommending them for reappointment, promotion, and tenure; and advising and recruiting students. Division chairmen also communicate the College's policies to the faculty; represent their division inside

and outside the College; prepare and administer its annual budget; maintain costs; allocate faculty funds; administer divisional facilities; maintain equipment; requisition supplies; and hire, supervise, and evaluate staff personnel. The division chairmen receive \$10,000 to \$14,000 in addition to their professional salaries. They may teach up to 12 hours per week and are evaluated by the dean.

On 19 August 1974 following a Board-conducted election the Union was certified as the exclusive bargaining representative of the Employer-Petitioner's faculty and professional employees.³ Pursuant to an RM petition filed by the Employer-Petitioner in 1976 another election was held and on 18 August 1976 the Union was again certified as the collective-bargaining representative for the same unit.⁴ Since 1974 the parties have entered into a series of collective-bargaining agreements and through negotiations also have agreed to certain exclusions from the original certified bargaining unit for positions that had taken on either managerial or supervisory responsibilities. The most recent collective-bargaining agreement between the parties, effective from September 1979 through August 1981, describes the bargaining unit as follows:

All full-time and regular part-time teaching faculty with rank and including full-time professionally qualified librarians and counselors and the chief librarian and excluding division chairmen, all other professional employees, administrative employees, office clerical employees, managerial employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

There are two classifications in issue—that of program coordinators and that of professional librarians. The Acting Regional Director found that neither the program coordinators nor the professional librarians were managerial or supervisory because they neither effectively determine or control through a collegial decision-making process any academic or administrative matters nor exercise or possess any of the traditional indicia of supervisory status. Therefore, the Acting Regional Director

³ The unit in which the Union was certified as the collective-bargaining representative in Case 5-RC-8944 is described as follows:

All full-time and regular part-time faculty and professional employees, including department chairmen, nursing instructors, dance professors, psychology instructors, assistant philosophy professors, science professors, director of campus ministry, librarian, assistant librarian, acquisitions librarian, vocational counselor, and director of AV/TV program employed by the Employer at its Arlington, Virginia location, excluding all other professional employees, administrative employees, office clerical employees, managerial employees, guards and supervisors as defined in the Act as amended.

⁴ Case 5-RM-800. There are 44 full-time and 56 part-time faculty members

clarified the unit to include these classifications. The Employer-Petitioner contends that the Acting Regional Director should have excluded them on the ground that they are managerial and/or supervisory employees under the guidelines set forth by the Supreme Court in *NLRB v. Yeshiva University*, 444 U.S. 672 (1980).

In *Yeshiva* the Court defined managerial employees as those employees who formulate and effectuate management policies by expressing and making operative the decisions of their employer through taking or recommending discretionary actions that effectively control or implement employer policy. The Court noted, however, that it was not suggesting an "application of the managerial exclusion that would sweep all professionals outside the Act in derogation of Congress' expressed intent to protect them." The Court further noted:⁵

[O]ther factors not present here may enter into the analysis in other contexts. It is plain, for example, that professors may not be excluded merely because they determine the course content of their own courses, evaluate their own students, and supervise their own research. There thus may be institutions of higher learning unlike *Yeshiva* where the faculty are entirely or predominantly nonmanagerial. There also may be faculty members at *Yeshiva* and like universities who properly could be included in a bargaining unit. It may be that a rational line could be drawn between tenured and untenured faculty members, depending upon how a faculty is structured and operates. But we express no opinion on these questions, for it is clear that the unit approved by the Board was far too broad.

Applying this rationale to the instant case, it is clear that the Employer has failed to meet the standard for collegial governance pursuant to which the Supreme Court found the *Yeshiva* faculty to be "managerial." Therefore, for the reasons discussed below, we do not agree with the Employer-Petitioner's contentions.

The Acting Regional Director found and the record shows that in 1976 the College abolished its discipline-based departments and developed four academic divisions: Arts and Sciences, Business Administration, Education, and Human Health Services. Each academic division is headed by a division chairman. The position of program coordinator was also created at this time with four coordinators appointed in 1976 and 1977, two in 1979, and five in the fall of 1981. A program coordinator

⁵ Id. at 690-691 fn. 31.

receives a stipend of \$2000 over and above his/her faculty salary. All program coordinators are full-time faculty who are appointed by the dean with consultation from the division chairman for 9 months at a time. The program coordinators also teach in the program they coordinate. Consequently, they have played a significant role in the development of their programs and courses and often each was the only faculty member teaching a particular subject at that time. Thus, they have proposed and/or taught most of the new courses instituted within their division. Program coordinators are normally assigned the task of ascertaining requirements for accreditation, evaluating the program, and recommending changes to obtain accreditation. They also have played a major role in the development of methods and materials for courses which are approved by the division chairman and the dean, some of which have been used by part-time faculty hired later to teach that course. The program coordinators devote approximately 2-6 hours per week to these responsibilities during their 40- to 50-hour workweek, which includes a regular full teaching load of 12 hours. Some have received overload pay when teaching beyond the 12-hour weekly limit. Program coordinators are responsible for orienting new part-time faculty and instructors (nonunit employees) to the College and their particular program or course. Coordinators generally do not receive copies of course syllabi nor are the faculty required to give copies to them. The record shows that the bulk of the coordinators' work is performed either at the beginning or at the end of each semester. Although program coordinators have written job descriptions, none is evaluated as a coordinator but rather as a faculty member. Division chairmen are responsible for evaluating the coordinators and for making independent recommendations of faculty for tenure and other promotions.

In sum, while the program coordinators have played significant roles in the initiation, development, and maintenance of courses within their divisions and have ongoing contact with nonunit part-time faculty regarding these courses (share offices, syllabi, etc.), we find that the time spent on these functions is incidental or in addition to their primary teaching functions and responsibilities. Further, these particular duties are not limited to coordinators; other faculty have proposed, developed, and implemented new courses and performed other coordinator duties. Although some coordinators have identified suitable part-time instructors for the division chairman's consideration in the course of developing certain courses, we find that such informal and casual identification is an insufficient indication of the ability to effectively recommend fac-

ulty for hire. The record is clear that effective recommendation for hiring rests with the division chairmen and that final hiring authority is exercised by the dean. Further, what narrow role the coordinators appear to play is not a formal ongoing process, and we find that it is of a substantially different character from that contemplated by the Court in *Yeshiva*. The program coordinators also do not determine the courses to be taught or course schedules. New courses are first approved by the division chairman and then by the curriculum committee composed of the dean as chairman and other division chairmen and administrative officers. Program coordinators do not participate in budgetary matters, promotions, salary determinations, or teaching loads. They do not evaluate faculty members nor are they involved in financial and economic planning. Thus, we conclude that the program coordinators do not exercise control over areas found by the Court in *Yeshiva* to be indicative of managerial status. Regarding the supervisory issue, the control the coordinators exercise is limited to the programs which they coordinate and this control is based on their professional expertise and understanding of their field and the goals and purposes of the course. Therefore, we find that the program coordinators are neither managerial nor supervisory employees. Accordingly, as the record evidence establishes the employees involved here are professional employees within the meaning of the Act, we find that they are properly included in the unit as clarified.

The parties also disagree as to the unit placement of four professional librarians (reference librarian, catalog librarian, public services librarian, and acquisitions librarian). The Employer-Petitioner, contrary to the Union, contends that they should be excluded because they are managerial and/or supervisory employees. The Acting Regional Director found and the record shows that the library is headed by the director of library services, and staffed by the four professional librarians named above, four full-time nonunit technical employees, and several nonunit part-time librarians and student workers.

The reference librarian spends two-thirds of her time staffing the reference desk, which involves providing "reference assistance to library and telephone patrons." She also performs some acquisition duties in a faculty liaison program aimed at increasing faculty participation in the book selection process, including the routing of publisher's catalogs and book reviews to the faculty for their opinions. The remainder of the reference librarian's time is spent giving bibliographic instruction through workshops and lectures to faculty and students.

The Acting Regional Director found that the reference librarian does not supervise any staff.

The catalog librarian is responsible for processing library acquisitions, preparing statistical records and reports on cataloging problems, and determining needed changes in the classification system. She also is involved in the acquisition faculty liaison program and interfaces with the nursing faculty. The catalog librarian's responsibility for the catalog technician is limited to encouraging productivity, reviewing work for typographical errors, and providing answers to the technician's questions based on the catalog librarian's professional knowledge. The record supports the Acting Regional Director's finding that the catalog librarian does not supervise the technician who reports directly to the director.⁶ The record indicates that the director is the only individual in this department with the power to hire, fire, evaluate, give time off, and perform the other functions indicative of supervisory status.

The public services librarian is responsible for providing assistance and instruction to the College's faculty and students in the use of the library's facilities and overseeing the development and organization of the reference and circulation departments. There is some overlap of duties with the reference librarian. The public services librarian also administers the "Inter-Library Loan Program." Working with the public services librarian is a part-time reference librarian and a circulation supervisor. The public services librarian is generally responsible for the two nonunit employees' flow of work, but does not give them day-to-day assignments or perform other supervisory functions regarding them because the technicians are required to perform their job duties without supervision.

The director of library sciences has involved the public services librarian in the hiring process for three positions within her department. This involvement was limited to informing the applicants of the job duties and indicating to the director, who had initially screened and interviewed the applicants, whether their personalities were compatible with the existing staff. The record also shows that on several other occasions other librarians and technical staff members have been asked their opinions of job applicants. On this record the evidence is insufficient to establish that the public services librarian's opinion was given more effect than those

of the other librarians or the technicians or that her limited role had sufficient impact on the final hiring decisions of the director. Therefore, we do not find that this evidence establishes that the public services librarian is a statutory supervisor.

The acquisitions librarian is responsible for developing and maintaining the library's collection of books and periodicals through the establishment of policies and procedures for the purchase or donation of materials. Working with the acquisitions librarian is an acquisitions technician and a serials technician. Both technicians are nonunit employees. There is limited testimony that the acquisitions librarian is responsible for answering the serials technician's questions, assigning nonroutine tasks, and evaluating the serials technician. However, the record is devoid of testimony that the acquisitions librarian has evaluated either of the technicians. Nor does the record show supervisory or oversight functions by the acquisitions librarian over the acquisitions technician, who, it appears, works independently. Rather, the Acting Regional Director found, and we agree, that the working relationships between the professional librarians and the library technicians are typical of the relationship between a professional and a technician, and that any sporadic exercise of supervisory duties performed by the librarians over the technicians or part-time nonunit employees is insufficient to establish that they are supervisory within the meaning of the Act. The record is clear that the director of library services is the only individual within the library who exercises managerial and supervisory authority. Both the professional librarians and the technical employees report to the director and she determines their overall and day-to-day job duties. The director is also the only person who establishes salaries, keeps the timecards, grants time off, establishes procedures and actions, develops the budget, approves expenditures, hires and fires personnel, and has final authority on the types of books and other materials in the library. Therefore, we conclude that the professional librarians are not managerial employees or supervisors within the meaning of the Act.

Accordingly, we shall clarify the unit to include the program coordinators⁷ and professional librarians.⁸

⁷ See *Loretto Heights College*, 264 NLRB 1107, 1102 (1982)

⁶ The Acting Regional Director found that library technicians typically work under the general direction of a professional librarian. Record testimony also indicates that the catalog librarian had never evaluated the catalog department staff until March 1982, several months before the hearing ended, when she was instructed by the director to perform a limited evaluation of the catalog technician. However, the director made the final evaluation decisions

⁸ The Acting Regional Director found that the program coordinators and professional librarians do not spend 50 percent of their time supervising nonunit employees. Applying *Adelphi University*, 195 NLRB 639 (1972), and *New York University*, 205 NLRB 4 (1973), he found that they were not therefore statutory supervisors. We find it unnecessary to rely on this discussion inasmuch as the record evidence discussed above fails to provide a sufficient independent basis for finding that the program coordinators and professional librarians are supervisors. *Bradford College*, 261 NLRB 565, 567 (1982)

ORDER

It is ordered that the certifications in Cases 5-RC-8944 and 5-RM-800, heretofore issued to the Marymount College of Virginia Faculty Associa-

tion, affiliated with National Education Association, are clarified by specifically including in the appropriate unit the classifications of program coordinator and professional librarian.