

**Livingstone College and Livingstone College Federation of Teachers and Librarians, AFT, AFL-CIO, Local 4110, Petitioner. Case 11-RC-4989**

July 29, 1988

**DECISION AND DIRECTION OF ELECTION**

BY MEMBERS JOHANSEN, BABSON, AND CRACRAFT

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held on April 29 and 30, 1981, before Hearing Officer Jasper C. Brown Jr. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, the Regional Director for Region 11 transferred the case to the Board for decision.<sup>1</sup>

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

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

1. The Employer, Livingstone College, is engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction over it.

2. The Petitioner, Livingstone College Federation of Teachers and Librarians, AFT, AFL-CIO, Local 4110, is a labor organization seeking to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. Livingstone College is a predominantly black, liberal arts institution of higher learning located in Salisbury, North Carolina. The College is made up of an undergraduate school, known as the School of Arts and Sciences, and a Graduate School of Theology, known as Hood Seminary, both of which are situated at the main campus in Salisbury. The College is divided into four divisions—Business Affairs, Student Affairs, Planning and Development, and Academic Affairs—each under a division head. Above the division heads is the presi-

dent of Livingstone College, who is responsible for the daily operation of the school.

In addition to faculty and professional employees, Livingstone College employs numerous non-professional employees in various categories throughout its main campus (see attached appendix).<sup>2</sup> The Petitioner seeks to represent all the Employer's full-time, nonprofessional employees employed at the main campus,<sup>3</sup> excluding faculty, professional, and confidential employees, guards, and supervisors as defined in the Act.

The Employer contends that the unit of all non-professional employees sought by the Petitioner is inappropriate because it is composed of three main groups of employees—clerical/secretarial employees; buildings and grounds employees; and dormitory directors—which do not share a community of interest with each other and which constitute separate and distinct appropriate bargaining units. It further argues that the clerical/secretarial employees cannot, in any event, be included in the same unit with the buildings and grounds employees, but must instead be placed in a separate unit, in view of the Board's "long-established" policy of not including office clerical workers with other groups of employees, i.e., "manual" workers. Finally, the Employer claims that the petitioned-for unit includes employees who are, in its view, "technical" employees having no community of interest with the other employees in the unit sought, and who should be placed in a separate unit if the Board should direct that an election be held.<sup>4</sup>

<sup>2</sup> The appendix is a copy of P. Exh. 2 containing the names and job classifications of employees listed on the Employer's payroll during the time period relevant here. P. Exh. 2 was produced during the hearing by the Employer's business manager, Bobby Aldrich, pursuant to a stipulation of the parties. The list excludes those classified by the Employer as faculty, professional, or supervisory.

<sup>3</sup> The unit is described in the petition as consisting of secretaries, clerical staff, technicians, maintenance (or janitorial staff), and dormitory directors. However, it is clear from the record and its brief to the Board that the Petitioner seeks to represent a unit of all nonprofessional employees. Thus, the unit sought by the Petitioner would include the following employees listed in the appendix: clerical/secretarial employees; computer and keypunch operators, BEOG, NDSL, and workstudy coordinators, records clerk, keeper of records, laboratory assistant; dormitory directors, invoice auditors; cashier/accountant; admissions officer; bookstore/canteen manager, director/Learning Center; administrative assistant/development, Living Learning Centers coordinator; and buildings and grounds employees.

<sup>4</sup> The Employer thus contends that the 13 employees listed under "OTHERS" in the attached appendix, along with the BEOG and workstudy coordinators, the records clerk, and the laboratory assistant, are "technical" employees who should be excluded from any unit found appropriate. Of the 13 employees listed under "OTHERS," the Petitioner would include all but the following in the unit: payroll accountant, federal programs accountant, recruiter, and UNCF coordinator. The Petitioner would also exclude the position of recruiter, solicitation, etc., held by employee Louise Shipman, because she is the wife of the college president and a part-time employee.

<sup>1</sup> This matter was transferred to the Board for decision because the Board at the time was considering whether it had jurisdiction over this Employer in *Livingstone College*, Case 11-RC-4957, and the issue was once again being raised by the Employer in the instant case. On November 30, 1987, the Board issued a decision in Case 11-RC-4957 (286 NLRB 1308) finding, inter alia, that its assertion of jurisdiction over this Employer was proper and not prohibited by the Supreme Court's decision in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979). In light of the holding in that case, we find no merit to the Employer's assertion here that the Board lacks jurisdiction over it.

Contrary to the Employer, we find that the unit sought by the Petitioner, consisting of all full-time, nonprofessional employees, is appropriate for collective-bargaining purposes. In determining the appropriateness of a nonprofessional unit in a college or university environment, the Board applies the rules traditionally used to determine the appropriateness of a unit in an industrial setting.<sup>5</sup> In this regard, a campus or collegewide unit, like a plantwide unit, is viewed by the Board as presumptively appropriate under the Act.<sup>6</sup> The burden of proving that the interests of a given classification of employees are so disparate from those of others that they cannot be represented in the same unit rests with the party challenging the unit's appropriateness, in this case the Employer.<sup>7</sup> The latter has not met its burden here.

The record reveals, contrary to the Employer's contention, that the clerical/secretarial employees, the buildings and grounds employees, and the dormitory directors share a strong community of interest with each other and with other nonprofessional employees. Thus, employees in all three groups, along with other nonprofessional employees, receive the same hospitalization coverage, pension coverage, medical insurance, vacation privileges, holidays, and entitlement to workmen's compensation privileges. They are all subject to the same policies and procedures found in the college faculty/staff handbook, and can attend the monthly faculty/staff meetings as well as the faculty/staff retreats.<sup>8</sup> Further, all nonprofessional employees are subject to the same hiring procedures. Thus, employees are recommended for employment by the head of the division in which employment is sought, with the college president having the final authority over the hiring.<sup>9</sup>

There are, to be sure, some distinctions to be found among these three groups of employees. The buildings and grounds employees, for example, receive an hourly wage for a 42-hour workweek, begin their workday at 7:30 a.m., and work one-

half day on weekends, although employees in the other two groups, along with other nonprofessional employees, are salaried, work a 40-hour week, and have work hours from 8 a.m. to 5 p.m. On the other hand, the dormitory directors work only 9-1/2 months of the year (to coincide with the academic school year), although all other nonprofessional employees, including the clerical/secretarial employees and the buildings and grounds employees, are employed year round.<sup>10</sup> These minor distinctions, however, are insufficient to overcome the strong community of interest that employees in these three groups, as well as all other nonprofessional employees, share with each other, or to rebut the presumptive appropriateness of the collegewide unit sought by the Petitioner.

Further, the separate supervision of employees in these three groupings and their infrequent contact with each other generally is, in our view, not enough to negate their otherwise strong community of interests.<sup>11</sup> Nor do we find any merit to the Employer's suggestion that the three employee groups cannot be included in one overall unit merely because, if petitioned for separately, they might arguably constitute appropriate units. When making unit determinations, the Board does not concern itself with whether the unit petitioned for is *the only* or *the most* appropriate unit for collective bargaining; rather, the Board has held that the Act requires only that the unit requested be *an* appropriate unit.<sup>12</sup> Thus, even assuming the smaller groups proposed by the Employer could be found appropriate, the larger overall unit sought by the Petitioner here would not be rendered inappropriate.

We also do not agree with the Employer that the clerical/secretarial employees cannot be included in the same unit with the other employee groups. Although the Board ordinarily does not include office clerical workers in a unit containing manual workers because of their different inter-

<sup>5</sup> *Cornell University*, 183 NLRB 329, 336 (1970); *Harvard College*, 269 NLRB 821 (1984).

<sup>6</sup> See *Cornell University*, supra, where a unit similar to that petitioned for here was found to be appropriate.

<sup>7</sup> *Airco, Inc.*, 273 NLRB 348, 349 (1984) (employer found not to have met its burden of showing that plant operators did not share a community of interest with the other employees in the requested plantwide unit).

<sup>8</sup> According to Business Manager Aldrich, buildings and grounds employees are invited to attend the faculty/staff meetings and are frequently represented at these meetings by their firstline supervisor. The record is silent as to whether these employees can also attend the staff/faculty retreats. However, we note in this regard that Aldrich testified that the buildings and grounds employees receive the same benefits, which presumably would include the staff/faculty retreats, as other full-time nonprofessional employees.

<sup>9</sup> However, with respect to the buildings and grounds employees, Business Manager Aldrich testified that he has final authority over the hiring in this department.

<sup>10</sup> All nonprofessional employees, except for buildings and grounds personnel, execute a "Notice of Employment Authorization" contract annually. The buildings and grounds employees receive an hourly wage rather than a salary and are not required to execute such a contract.

<sup>11</sup> In *Airco, Inc.*, supra, the Board found a plantwide unit appropriate notwithstanding that employees in different classifications had little contact with each other, and possessed different skills, training, and working conditions. Compare also *Austin Cablevision*, 279 NLRB 535 (1986), where the Board clarified an existing clerical employees unit to include the salesclerks who worked in a separate department, were separately supervised, and had no interchange or official contact with office clerical employees. Also, *Jones & Laughlin Steel Corp.*, 57 NLRB 357 (1944), where the Board found that the different modes of pay, i.e., salary vs. hourly rate, was not enough to keep employees out of the same unit.

<sup>12</sup> *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), enf'd. 190 F.2d 576 (7th Cir. 1951)

ests,<sup>13</sup> it has, nevertheless, found them to be properly included in such a unit in situations where the office clericals were shown to have strong mutual interests with other employee groups.<sup>14</sup> Here, the record clearly shows that the clerical/secretarial employees share the same interests with other employees, are subject to the same personnel policies, work the same hours as most unit employees, and receive the same fringe benefits. The record further shows that there is frequent contact between the clerical/secretarial employees and certain other unit employees, i.e., "technical" employees. Finally, we note that the Petitioner seeks to represent all nonprofessional employees, including the clerical/secretarial employees, and there is no union here that seeks to represent the clerical/secretarial employees in a separate unit.<sup>15</sup>

We also find no merit to the Employer's contention that the BEOG coordinator, workstudy coordinator, records clerk, laboratory assistant, and the 13 employees listed as "OTHERS" in the appendix, should be excluded from the unit as "technical" employees.<sup>16</sup> Initially, we note that if these employees are found to be technical employees, as urged by the Employer, that fact alone would not require their exclusion from the unit sought by the Petitioner. The Board has long held that it will not automatically exclude technical employees from units of other employees whenever their placement is in issue. Rather, the Board will determine their unit placement on the basis of an analysis of their community of interest.<sup>17</sup> Here, the record shows

that these individuals share the same community of interest with other employees in the bargaining unit. Thus, they receive the same fringe benefits,<sup>18</sup> work the same hours, and are subject to the same policies and procedures of the faculty/employee handbook applicable to all nonprofessional unit employees. Further, these employees are hired in the same manner and are apparently required to execute a yearly notice of employment authorization contract. On these facts, it is clear that these individuals properly belong in the unit sought by the Petitioner, regardless of whether they are technical employees under the Act.<sup>19</sup>

The Employer seeks to exclude from the unit as confidential employees two secretaries in the office of the president, Victoria Thomas and Joanna Phipps, and two secretaries in the dean's office, Sandra Grier and Mary Mitchell. The Petitioner seeks to include Phipps, Grier, and Mitchell in the unit but would exclude Thomas from the unit as a confidential employee. Although the record suggests that all four employees perform basically the same duties, the evidence as to the exact nature of their duties is conflicting and, in our view, insufficient to establish whether, at the relevant time period, any or all four of these individuals "assist[ed] and act[ed] in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations" which would render them "confidential employees

<sup>13</sup> This policy has been applied most frequently in the industrial setting where the office clericals differ from production workers and plant clericals by working in separate offices on administrative matters not directly related to production. See, e.g., *Beech Aircraft Corp.*, 170 NLRB 1595 (1968), *Carling Brewing Co.*, 126 NLRB 347 (1960).

<sup>14</sup> See *Standard Oil Co. of California*, 116 NLRB 1762 (1956) (office clericals included in same unit with sales employees, production and maintenance employees, truckdrivers), *Southern Minnesota Supply Co.*, 116 NLRB 968 (1956) (office clericals included in employerwide unit containing, inter alia, mechanics and machinists).

<sup>15</sup> *Georgetown University*, 200 NLRB 215 (1972), cited by the Employer in support of its position that the clerical/secretarial employees should be excluded from the unit, is factually distinguishable from the present case and, therefore, not controlling. Thus, unlike here where the Petitioner seeks to represent a collegewide unit of all nonprofessional employees, the petitioner in *Georgetown University* was seeking only a unit of service and maintenance employees. The Board rejected the employer's attempt in that case to include the clerical employees in the unit sought, noting that such a unit does not normally include office clerical employees. As stated, the Petitioner here is not seeking such a limited unit and the record clearly establishes a strong community of interest between the clerical/secretarial employees and other employee groups.

<sup>16</sup> The Board defines a "technical" employee as one who does not meet the strict requirements of the term "professional" employee as defined in the Act, but whose work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses. *Postal Service*, 210 NLRB 477, 480 (1974). The Employer, in its brief to the Board, concedes that these employees are not professional employees within the meaning of the Act.

<sup>17</sup> *Sheffield Corp.*, 134 NLRB 1101, 1103 (1961).

<sup>18</sup> The Employer's business manager, Aldrich, testified that all nonprofessional employees, which includes these individuals, receive the same fringe benefits. However, Aldrich also testified that employee Releford, who is listed under "OTHERS" as the director of the Learning Center, receives benefits available only to faculty members in addition to those benefits provided to nonprofessional employees.

<sup>19</sup> The record, in any event, fails to support the Employer's claim that these individuals are technical employees. Thus, the record is devoid of any evidence showing that these 17 individuals engage in work that can be viewed as technical in nature requiring the exercise of independent judgment, or that they possess and are required to have some form of specialized training to perform their job functions.

Although we find that employee Releford is not a technical employee, we are, nevertheless, unable to determine from the record whether she can be classified as a professional or a nonprofessional employee, as she appears to have a community of interest with both classifications of employees. Further, we note that in the earlier *Livingstone College* case (see fn. 1, supra), Releford's name was included in the *Excelsior* list containing the names of faculty members, although her ballot was challenged. In light of its holding in that case, the Board found it unnecessary to resolve her challenged ballot. In view of the above, we shall allow Releford to vote subject to challenge.

We shall also allow employee Shipman to vote under challenge. Although the Petitioner claims that Shipman is the wife of the college president and a part-time employee and, therefore, excludable on these grounds, no evidence whatsoever was produced at the hearing concerning Shipman's duties or work schedule. Lacking such evidence, we find it proper to allow her to vote subject to challenge.

The Petitioner would also exclude employees Harris, Colson, Everhart, and Chambers, listed under "OTHERS" in the appendix, from the unit but gives no reason for seeking their exclusion. There is nothing in the record to suggest that these employees fall within any of the categories that are to be excluded from the unit. We shall, accordingly, include them in the unit with other nonprofessional employees.

under the Act." See *B. F. Goodrich Co.*, 115 NLRB 722, 724 (1956); *Associate Day Care Services*, 269 NLRB 178, 180-181 (1984); *NLRB v. Hendricks County Rural Electric Corp.*, 454 U.S. 170 (1981). In view of the conflicting nature of the evidence presented with respect to these individuals, we shall permit them to vote under challenge.<sup>20</sup>

In summary, we find that the following unit of employees is appropriate for collective bargaining:

All full-time nonprofessional employees employed by Livingstone College at its main campus in Salisbury, North Carolina, in the following classifications: clerical/secretarial employees; buildings and grounds employees; computer and keypunch operators; BEOG, NDSL, UNCF, and workstudy coordinators; records clerk; keeper of records; laboratory assistant; dormitory directors; invoice auditors; cashier/accountant; federal programs accountant; payroll accountant; recruiter; admissions officer; bookstore/canteen manager; administrative assistant/development; Living Learning Centers coordinator; but *excluding* all faculty, professional and confidential employees, guards and supervisors as defined in the Act.

We shall direct that an election be held among employees in the unit.

[Direction of Election omitted from publication.]

MEMBER CRACRAFT, concurring.

I concur in my colleagues' finding that a unit of all full-time, nonprofessional employees is appropriate herein. The interests of these employees are admittedly diverse. There exists among them separate supervision, different skills, wages, benefits, and hours and little interchange or interaction. However, the unit sought consists of all nonprofessional employees of the Employer.<sup>1</sup> Further, we need not

<sup>20</sup> The Petitioner would exclude from the bargaining unit employee Phyllis Wells, who is employed as a secretary at Hood Seminary, on "First Amendment grounds of separation of Church and State." Contrary to the concerns expressed by the Petitioner, we see no reason to exclude Wells from the bargaining unit. Initially, we note that Wells is a nonprofessional employee employed by the College and not the AME Zion Church which founded and sponsors the College. As a nonprofessional employee, she clearly shares a strong community of interest with other unit employees. Further, in its earlier *Livingstone College* decision (fn. 1, supra), the Board found that the AME Zion Church was "not involved with the College in a manner which creates a significant risk of constitutional infringement," noting in particular that the College was not financially dependent on the Church.

<sup>1</sup> A unit of such scope is the first one deemed appropriate in Sec. 9(b) of the Act, the section on which the Board's authority to establish collective-bargaining units rests. Such a unit has invariably been found appropriate by the Board since its earliest days. See, e.g., *Western Electric Co.*, 98 NLRB 1018, 1032 (1952); *Montefiore Hospital & Medical Center*, 261 NLRB 569, 573 (1982); see also *NLRB v. Carson Cable TV*, 795 F.2d 879 (9th Cir. 1986), in which the court endorsed the Board's long held practice of determining that when a labor organization seeks a broad, all-encompassing unit, an employer's argument that smaller units are "presumptively appropriate" or even more appropriate are unavailing. *Id.* at 887.

determine "the *only* appropriate unit, or the *ultimate* appropriate unit, or the *most* appropriate unit; the Act requires only that the unit be 'appropriate.'"<sup>2</sup> On these bases and in light of the limited evidence before the Board, I would find that the unit sought constitutes an appropriate unit.

<sup>2</sup> *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951).

## APPENDIX

Livingstone College  
Salisbury, North Carolina

Full-Time Employers  
LISTED ON THE PAYROLL ENDING  
March 31, 1981-April 3, 1981

### *Clerical/Secretaries/Technical Assistants/Staff*

1. Rosalind Baker, Secretary—Public Relations
2. Brenda Brown, Secretary—Housing
3. Deborah Colbert, Records Clerk—Financial Aid
4. Joann Diggs, Coordinator of BEOG—Financial Aid
5. Grace Duncombe, Secretary—Alumni Office
6. Mary Edwards, Clerical Asst.—Reproduction Center
7. Karen Ellis, Secretary—Word Processing
8. Blanche Ford, Secretary—Maintenance Dept.
9. Sandra Grier, Secretary—Office of the Dean
10. Elsie C. Griffin, Secretary—Business Office
11. Connie Hawkes, Secretary—Co-op Program
12. Jacqueline Logan, Secretary—Education Dept.
13. Marva McCain, Workstudy Coordinator—Financial Aid
14. Cora McCombs, Keeper of Records—Office of the Registrar
15. Yvette McGill, Secretary—Placement Center
16. Jerrell McKenzie, Secretary—Social Welfare Dept.
17. Dorothy Moore, Computer Operator—Data Processing
18. Shelly Martin, Secretary—Institutional Research
19. Patricia Minter, Secretary—Library
20. Mary Mitchell, Secretary—Office of the Dean
21. Lucille Phifer, Secretary—Upward Bound
22. Joanna Phipps, Secretary—Office of the President
23. James Rainbow, Lab. Asst.—Biology & Physics
24. Gertrude Robinson, Secretary—Athletics

25. Norma Ross, Secretary—Office of the Registrar
26. Valiere Stifford, Secretary—Hood Seminary
27. Donna Sharpe, Secretary—Library
28. Angela Stackhouse, Secretary—Student Affairs
29. Phyllis Stevenson, Secretary—Title III Office
30. Vanessa Tillman, Key punch Operator—Data Processing
31. Victoria Thomas, Secretary/Adm. Asst.—Office of the President
32. Phyllis Wells, Secretary—Hood Seminary
33. Inah White, Secretary—Office of Development
34. Linda Williams, Secretary—Student Affairs

#### *Counselors*

1. Arnetia Alexander
2. Peggy Bowden
3. Walter Hawk

#### *Others*

1. Rochelle Baker, Invoice Auditor/Purchasing
2. Henry Davis, Cashier/Accountant
3. Richard Everhart, Federal Programs Accountant
4. Louis Chambers, Payroll Accountant
5. Andrew Harris, Recruiter
6. Lula Holloway, Admissions Officer
7. Ruth Camp, Bookstore/Canteen
8. Queen Lee, NDSL Coordinator
9. Michelle Releford, Director/Learning Center
10. Dorothy Colson, UNCF Coordinator
11. Debra Bell, Administrative Assistant/Development
12. Louise Shipman, Recruiter, Solicitations, etc.
13. Viola Smith, Living-Learning Centers Coordinator

#### *Dormitory Directors*

1. Ruby A. Fleming
2. Loretta Oliver
3. Eula Robinson
4. Timothy Dixon
5. Joseph Henderson
6. Anthony Stewart
7. Carolyn Beatty
8. Gary Curlee
9. Floyd Pittman

10. Samuel Moore
11. Micheal Sheilds
12. Morris Wiggins
13. Lydia Colbert
14. Mary Gibson
15. Erline Johnson
16. Tangy Hubbard
17. Annie Thompson
18. Mildred McCary, Student Union Mail Supervisor

#### *Buildings & Grounds Personnel*

1. Clarence Fleming, Electrician—(P-T) (Student)
2. Melvin Reid, Plumber
3. Isaac Wilkins, Carpenter

#### *Others*

1. Helen Bennett, Custodian
2. Clarence Brown, Janitorial/Buildings
3. Will Bush, Custodian
4. Kenneth Carroll, Preventive Maintenance Officer
5. Walter Clayborn, Custodian
6. Lelia Cuthbertson, Custodian
7. Benjamin Daniels, Grounds
8. Adam Eberhart, Painter
9. Everette Fleming, Painter
10. Brenda Hawthorne, Custodian
11. Sandra Hawthorne, Custodian
12. Julia Jones, Custodian
13. Julia Morrow, Custodian
14. George Miller, Custodian
15. Sylvester Pruitt, Custodian
16. Calvin Shaw, Janitorial/Buildings
17. Frances Simpson, Custodian/President's Home
18. Beulah Tate, Custodian
19. Donnie Torrence, Janitorial/Grounds
20. Asalee White, Custodian
21. Ruth White, Custodian
22. Henry Wilds, Central Receiving
23. Sarah Williams, Custodian

#### *Security*

1. Earl Hardaway, Officer
2. Nathan King, Officer
3. Joseph Robinson, Officer
4. Jerry Stockton, Officer