

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

EAST WEST UNIVERSITY, INC.

Employer

and

13-RC-22017

**UNITED ADJUNCT FACULTY ASSOCIATION
AT EAST-WEST UNIVERSITY, IEA-NEA**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on April 6, 2011, before a hearing officer of the National Labor Relations Board to determine the appropriate unit for collective bargaining in which to conduct an election.¹

I. Issue

The Petitioner seeks to represent a unit of all part-time faculty employees with four or more contact hours per quarter. The Employer contends that an appropriate unit must include all part-time faculty employees without the specification of four contact hours per quarter.²

II. Decision

For the reasons discussed in detail below, I find that the unit of all regular part-time faculty members to be appropriate. Accordingly, **IT IS HEREBY ORDERED** that an election

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

² During the hearing, the Petitioner argued that the nature of Petitioner's business requires that a mail ballot election be conducted. The time, place, and manner of conducting an election is an administrative matter left to the discretion of the undersigned to determine after having directed an election. *Odebrecht Contractors of Florida, Inc.*, 326 NLRB 33 (1998).

be conducted under the direction of the Regional Director for Region 13 in the following appropriate bargaining unit:

All regular part-time faculty employees employed by the Employer at its faculty presently located at 816 S. Michigan Avenue, Chicago, Illinois; excluding all full-time faculty, non teaching staff, office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

III. Analysis

The Employer is a nonprofit four-year university located in Chicago, Illinois. The University offers associate and bachelor degrees. The Provost for the University, Dr. Madhu Jain, is directly responsible for supervising the full-time program directors and faculty members.³ The part-time instructors report directly to the program directors of the individual departments. The Employer employs approximately 60 part-time instructors.

The parties are in agreement with respect to the classification of employees to be included in the appropriate unit. However, there is a collateral issue raised by the parties that pertains to the appropriate unit: what formula to use to determine the eligibility of part-time employees to vote in the election.

In devising eligibility formulas to fit the unique conditions of any particular industry, the Board seeks “to permit optimum employee enfranchisement and free choice, without enfranchising individuals with no real continuing interest in terms and conditions of employment offered by the employer.” *DIC Entertainment, L.P.*, 328 NLRB 660 (1999) citing *Trump Taj Mahal Casino Resort*, 306 NLRB 294, 296 (1992). The Board has found that in determining the unit inclusion and voting eligibility of regular part-time faculty members they would apply the criteria set forth in *University of Detroit*, 193 NLRB 566 (1971) and *C.W. Post Center of Long Island University*, 198 NLRB 453 (1972).

The combined formula states that “any part-time ... faculty member whose teaching load is at least one-fourth that of the average teaching load for the full-time ... faculty, and who is actually teaching during the semester in which the election is held, shall be eligible to vote. Also eligible to vote is any part-time ... faculty member who is not teaching and thus not on active payroll status during the eligibility period designated herein, but who has nevertheless taught pursuant to a written appointment in at least one semester during any 2 of the last 3 consecutive years, inclusive of that in which the election is directed, during which period his teaching load in each such semester has been at least one-fourth the average teaching load of the full-time ... faculty.” *The Catholic University of America*, 202 NLRB 727 (1973). Because the issue in this case is the eligibility of part-time faculty to vote in an election, I find the formula used by the Board

³ The Provost was the only witness called at to testify at the hearing. He did not testify as to the average hours worked or courses taught by the full-time instructors. He did testify that all but one of the part-time instructors teach courses that offer four credit/contact hours.

to determine voter eligibility in *Catholic University* to be the applicable to the instant case. The *Catholic University* formula, which takes into consideration the fluctuations in manpower inherent in a faculty setting, would meet the Board's direction to permit optimum employee enfranchisement and free choice, without giving those with no real prospect of future employment the right to vote. *DIC Entertainment*, supra. On this record, I am unable to calculate a precise average teaching load for full-time faculty and therefore unable to compute the 4-to-1 ratio. If the parties, acting in accordance with the guidelines described above, are unable to reach agreement as to the voting eligibility of any individual regular part-time faculty members, such individuals may vote subject to challenge.

IV. Conclusion

Based on the foregoing and the entire record herein, I have found that the appropriate unit in which to conduct an election is all regular part-time faculty employees according to the Board's eligibility formula as set forth in *University of Detroit*, 193 NLRB 566 (1971) and *C.W. Post Center of Long Island University*, 198 NLRB 453 (1972).

V. Direction of Election

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those part-time faculty in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are those part-time faculty members who were not teaching and thus not on active payroll status during the above mentioned payroll period, but who have taught pursuant to a written appointment in at least one semester during any 2 of the last 3 consecutive academic years, inclusive of that in which the election is directed, during which time the teaching load in each semester (measured in terms of credit hours taught per semester) has been at least no less than one fourth the average teaching load of the full-time faculty. *The Catholic University of America*, 202 NLRB 727 (1973). Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strikes who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the United Adjunct Faculty Association at East-West University, IEA-NEA.

VI. List of Voters

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Employer*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, 209 South, LaSalle Street, Suite 900, Chicago, Illinois 60604 on or before **April 28, 2011**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VII. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **May 5, 2011**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 21st day of April, 2011.



Joseph A. Barker, Regional Director
National Labor Relations Board
Region 13
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Chicago, Illinois 60604