Neighborhood Legal Services, Inc., Employer-Petitioner, *and* Neighborhood Legal Services Staff Association. Case 1-RM-1019

June 30, 1978

DECISION AND DIRECTION OF ELECTIONS

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officers Robert C. Rosemere and Robert A. Pulcini. Subsequently, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Acting Regional Director for Region 1 transferred this case to the Board for decision. Thereafter, the Employer and Union filed briefs in support of their respective positions.

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 rulings of the Hearing Officers made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. Neighborhood Legal Services, Inc., a nonprofit corporation organized under the laws of the State of Connecticut, is engaged in the provision of legal services to indigent clients. Neighborhood Legal Services' gross annual revenue from all sources, as estimated by its executive director based on prior funding, is approximately $585,000 on a calendar year basis. This amount includes approximately $283,000 from the National Legal Services Corporation, with the balance coming from Title 20 of the Social Security Act, from Title 3 of the Older Americans Act, and from Community Development Act funds. Specifically, the Emloyer's funding as of November 15, 1977, was $551,793, with the executive director estimating the receipt of an additional $15,000 to $20,000 within weeks.

The parties stipulated, and we find, that Neighborhood Legal Services, Inc., is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.[1]

2. The Neighborhood Legal Services Staff Association was formed for the purpose of bargaining collectively with regard to wages, hours, and terms and conditions of employment affecting employees of Neighborhood Legal Services, Inc. Therefore, we find that it is a labor organization within the meaning of Section 2(5) of the Act.[2]

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. *The appropriate unit:* The Employer filed its petition for an election in the instant case on August 12, 1977,[3] after receiving a letter on or about June 27 from the Neighborhood Legal Services Staff Association, referred to herein as the Association, in which that organization requested recognition as the collective-bargaining representative for the employees of Neighborhood Legal Services. While the Association's letter requested recognition on behalf of "a majority of your employees," the unit as described in the Employer's petition included the following:

> All regular professional, paraprofessional, office and clerical employees, including staff attorneys, paralegals, legal assistants, secretaries, Administrative Assistant, Youth Worker, Bookkeeper, and Business Manager,

and excluded:

> All other employees, including supervisory attorneys, unit heads, Executive Director, Special Assistant to the Executive Director, Director of Litigation and Training, Assistant Trainer,

[1] *Camden Regional Legal Services, Inc.*, 231 NLRB 224 (1977).

[2] On August 30, 1977, the Employer filed a motion to dismiss the representation petition which it had filed with the Regional Director on August 12, 1977. It contends, in support of its motion, (1) that the Neighborhood Legal Services Staff Association is not a "labor organization" because it was formed with the unlawful assistance of supervisory personnel, and (2) that the Association continues to be controlled by supervisors. The Hearing Officer deferred ruling on this motion to the Regional Director, and the Regional Director thereafter transferred the case, without having ruled on the motion, to this Board for decision. It is clear from the record that the Association is an organization "in which employees participate" and which exists for the purpose of bargaining collectively with the Employer. The Association thus meets the definition of "labor organization" set forth in Sec. 2(5) of the Act. See *International Organization of Masters, Mates and Pilots of America, Inc., AFL CIO (Chicago Calumet Stevedoring Co.)*, 144 NLRB 1172 (1963), affd. 351 F.2d 771 (C.A.D.C., 1965). As to the assertion that the Association is controlled by supervisors, certain cited officers of the Association alleged by the Employer to be supervisors are, as we find *infra*, not supervisors within the meaning of the Act. Thus, there is no basis for concluding that the Association is, as the Employer argues, thereby disqualified from serving as the collective-bargaining representative of the employees involved herein. Further, to the extent that the Employer's motion may be construed as alleging supervisory domination or assistance of the Association by the Employer, it in effect raises an unfair labor practice charge not properly litigable in the instant proceeding. *Bi-States Company*, 117 NLRB 86 (1957). Finally, the Employer raises in its motion certain infirmities concerning an alleged showing of interest by the Association. However, as we are concerned here with an employer petition, matters concerning the validity of a union showing of interest are patently irrelevant and, in any event, could not properly be litigated in a representation proceeding. *Yeshiva University*, 221 NLRB 1053 (1975); *Tappan Division of Tappan Incorporated*, 193 NLRB 989 (1971). In view of all the foregoing, we find no merit in the Employer's motion, and it is hereby denied.

[3] Unless otherwise indicated, all dates are 1977.

VISTA Volunteers, temporary employees, confidential employees, managerial employees and supervisors as defined in the Act.

At the hearing in this proceeding, the parties entered into a number of stipulations regarding the basic unit.[4] They disagreed, however, as to several issues regarding its composition, such as the inclusion or exclusion of certain job categories, whether several named individuals should be excluded from the unit as temporary employees, and whether individuals classified as unit heads should properly be included in the unit as employees or excluded as supervisory or managerial personnel.

The Employer provides legal services to clients in two separate offices, designated as the north and south offices, which are physically located 2 to 3 miles apart. The parties agree that the appropriate unit should include employees of both offices, and have so stipulated. The parties also agree that the appropriate unit may include both the professional and nonprofessional employees of Neighborhood Legal Services. Thus, the office and clerical support personnel, as well as other staff members directly engaged in the delivery of legal services to the community at both offices of the Employer, would be combined in a single unit for the purpose of collective bargaining. As no labor organization seeks to represent any of the Employer's employees in less than an overall unit, and as the Association itself has indicated its willingness to represent the employees in an overall unit, we therefore conclude that a single unit of all the employees may be an appropriate unit in which to conduct an election. *Mental Health Center of Boulder County, Inc.*, 222 NLRB 901, 902 (1976). The Employer's professional employees must, of course, be accorded a separate vote as to whether they wish to be included in the overall unit, as mandated by Section 9(b)(1) of the National Labor Relations Act, as amended.

The parties further agree, and stipulated, that the professional complement within the overall unit consists of bar-admitted attorneys, designated as staff attorneys, and law school graduates who are employed by the Employer but are not yet admitted to the bar, designated as legal assistants.[5] Employees within both of these job categories engage in such activities as interviewing clients, researching the facts and law of their particular cases and preparing briefs based thereon, preparing court pleadings, negotiating settlements, and contacting administrative agencies. The bar-admitted staff attorneys additionally review and sign pleadings prepared by others, represent themselves as attorneys at law in out-of-court settlements, negotiations, and administrative proceedings, and act as trial attorneys in court. Although legal assistants prepare cases and may assist in their trial, they do not go into court except under the supervision of bar-admitted attorneys.

Paralegals, conversely, were described in testimony as employees lacking both full legal knowledge and the capacity to render responsible independent judgment without more extensive attorney supervision. Paralegals were described by the executive director as law students and others, some of whom have no formal legal education, who perform routine, ministerial, supportive, or ancillary functions for the attorneys.

Both the staff attorneys and legal assistants perform work which is predominantly intellectual and varied in character, and consistently exercise discretion and independent judgment in dealing with clients and handling their individual legal caseloads. Further, both have completed courses of specialized study at institutions of higher learning which they apply in their daily work for Neighborhood Legal Services. Therefore, we agree with the parties' stipulation that the bar-admitted staff attorneys and legal assistants who are law school graduates but not yet admitted to the bar are professional employees.[6]

Remaining, then, for consideration is the unit placement of the following categories of employees: unit heads, the assistant trainer, the managing attorney of the south office, the community legal education assistant/administrative assistant, the bookkeeper, the business manager, and five employees contended by the Employer to be temporary or nonregular employees.

Unit heads: The Employer, contrary to the position taken by the Association, seeks to exclude unit heads on the ground that they are supervisors and/or managerial employees.

The record shows that primary authority over the

[4] The parties agree that the administrative assistant to the executive director and to the special assistant to the executive director and the secretary to the executive director are confidential employees, and that the director of litigation and training is a managerial employee, and agree to exclude all three from any unit found appropriate. The parties further agree to exclude 12 student employees who are paid a maximum of 4 hours' compensation weekly, receive no fringe benefits, and get a tuition waiver for their services with the Employer; 2 urban semester students who receive no compensation or fringe benefits; 12 volunteers who receive no compensation or fringe benefits; and 4 VISTA volunteers who receive no compensation or benefits from Neighborhood Legal Services, Inc. We accept these stipulations of the parties.

[5] In including legal assistants as professionals, we are limiting that term to refer to law school graduates, noting that elsewhere in the record it is sometimes used more loosely.

[6] With respect to all other employees, the parties did not stipulate whether or not they qualify as professional employees. We construe their silence with respect to other classifications as indicating tacit agreement that employees such as office and clerical employees, secretaries, and social and youth workers are nonprofessional employees. In any event, the record contains no evidence which would indicate otherwise. Accordingly, we find all other employees included in the unit to be nonprofessional.

operation of Neighborhood Legal Services is vested in a 15-member board of directors. The board has delegated the principal responsibility for managing the day-to-day affairs of the corporation to the executive director, whose immediate subordinates include a director of litigation and training and a special assistant to the executive director.

Prior to the inception of the Employer's existing unit head system, which was instituted in July 1976, the Employer's operation was composed of a general legal services program, plus two separately funded affiliated projects designated as the Senior Citizens Unit and the Migrant Farmworkers Unit. These latter two units are funded apart from the general Legal Services Corporation grant. The heads of these two units have indisputably exercised supervisory powers. Thus, testimony indicates that they have recruited and hired employees for their units, assigned work within their units, undertaken responsibility for obtaining their own projects' funding, and have otherwise responsibly directed employees, doing so in the exercise of their own independent judgment. The parties in fact stipulated at the hearing, following testimony of the head of the Senior Citizens Unit as to the powers which she possesses and has exercised, that the unit head of the Senior Citizens Unit is a supervisor who should be excluded from any unit found appropriate. In so stipulating, however, the Employer made clear its position that there is nothing distinct or unique about the Senior Citizens Unit head *vis-a-vis* other unit heads of the Employer. The Association likewise made clear its position that the preexistence of the Senior Citizens Unit, with its history of separate funding and administration long before the present unit system came into existence, makes both it and the similarly situated Migrant Farmworkers Unit distinct from other units within the Employer's unit system. Therefore, in stipulating that the head of the Senior Citizens Unit is a supervisor, and in also offering to stipulate that the head of the Migrant Farmworkers Unit is a supervisor, the Association did so on the basis that the stipulation not prejudice its position that other unit heads within the present unit system do not possess the supervisory powers enjoyed by these two unit heads. We find, based on the record as described above, that the unit heads of the Senior Citizens Unit and the Migrant Farmworkers Unit are supervisors within the meaning of Section 2(11) of the Act and shall, accordingly, exclude them from any unit found appropriate. Such conclusion does not, of course, necessarily preclude our reaching a different result with regard to other unit heads of the Employer.

The Employer's overall unit system was instituted in July 1976, along lines suggested by the director of litigation and training, to create substantive law specialization within the organization by dividing cases into categories for distribution and handling. The original five categories, or units, included the Domestic, Entitlements, Consumer, Housing, and General units. A sixth unit, the Civil Rights Unit, has more recently been added.[7] Under the unit system employees in the Entitlements Unit, for example, would receive all cases concerning such matters as welfare, workmen's compensation, unemployment compensation, and social security. A foreclosure or mortage case would, on the other hand, be referred to a member of the Housing Unit. On July 10, 1976, the executive director called a staff meeting at which pending cases, estimated at some 900, were redistributed according to this specialization scheme. There was no mention of unit heads at that time.

Once the units were created, they had weekly meetings at which problems encountered by individuals within the unit in handling particular cases were discussed, feedback or support from other unit members was obtained, and a consensus on how best to handle problems was arrived at. The unit head concept then evolved from these weekly unit meetings. One member of each unit was assigned administrative responsibility for recordkeeping functions such as collecting monthly staff reports from the unit members and preparing a breakdown of the unit's work for submission to the director of litigation and training. The unit heads were named within approximately a month of the unit system's implementation. The record does not make clear who chose the individuals for these positions. Each unit, however, had been assigned a full-time bar-admitted attorney qualified to represent that unit's clients in court, and these bar-admitted attorneys became the unit heads. Of the Employer's full-time attorneys admitted to practice law in the State of Connecticut, only one is not a unit head.[8] The attorneys received no additional compensation for acting as unit heads, and the one attorney who is not a unit head receives the same salary and benefits as two of the unit head attorneys.

Following their designation as such, the unit heads began meeting weekly with the director of litigation and training and the executive director, acting as conduits of information between management and the staff members in their units. These meetings are not, however, limited to individuals designated as

[7] Excluded from the following discussion is any further consideration of the two projects preexisting the implementation of the unit system, whose unit heads we have found to be supervisors.

[8] We have noted some disparities in the numbers of employees in various job classifications cited by the parties. Assuming that such may be at least partially attributable to the intervening availability of bar examination results, we cite record statistics herein with the *caveat* that they are apparently changing over the full course of the proceeding.

unit heads, but may be attended by other staff members. Also, if a unit head is unable to attend a particular meeting, another unit member generally attends. The basic purpose of the meetings is to disseminate information for the benefit of all staff members, and to provide for regular contact and information exchange among the units. A further basic purpose is to discuss whatever problems may arise affecting the legal services program. The executive director has final authority for decisions with respect to matters brought up at these meetings.

Following the implementation of the unit system, staff members continued to be overseen and supervised directly by the director of litigation and training, or by his assistant trainer. One of these two individuals meets monthly with each unit, and with the individual members of the unit, to ascertain the status of cases, to select cases at random for discussion and review, and generally to assist and direct in the handling of cases. The director of litigation and training and his assistant trainer have divided up the units, each performing such supervisory function for half of the units each month. Training of new unit members, as well as some substantive law cross-training among units, is also accomplished by staff members who have acquired expertise through their own work experience. Such training functions are not restricted to unit heads, or to the director of litigation and training and his assistant. A law student paralegal in the Entitlements Unit, for instance, has trained staff attorneys and other paralegals, and assisted in entitlements area problems encountered by staff members, due to his knowledge and expertise in that particular area. All bar-admitted attorneys are, in addition, ultimately responsible for the work of nonbar-admitted legal assistants and paralegals, whose pleadings they sign and for whose work they are thereby responsible as members of the bar. These bar-admitted attorneys are, of course, ethically required to assume professional responsibility for work products and work performed by the nonattorneys. The one bar-admitted attorney who is not a unit head shares the same responsibility in this regard as do the unit heads.

New cases are received by staff members through the Employer's "intake" procedure. Under this system, each qualified unit member has an intake day, which is chosen and scheduled by the individuals within the unit, and on that day he or she interviews the clients and proceeds on the cases received in the office that day. The clerical employees schedule appointments or channel callers to the individual handling intake for the unit appropriate for the client's specific legal problem. Thus, no assignment of cases, other than that implicit in the Employer's unit classification system, exists. Unit members may impose limits on their caseloads when they, in the exercise of their independent judgment, deem it ethically necessary to do so in order to competently handle all clients acquired through intake.

Unit heads are required to approve timecards for all professionals and nonprofessionals within their units, with unit head timecards being approved by the executive director. The record indicates, however, that, although the unit heads have been instructed that they must approve timecards in order for unit members to receive their pay, they have also been instructed that the timecards of all staff members should reflect a maximum of 8 hours per day and 40 hours per week, irrespective of the actual times or total hours worked by these employees. The Employer itself states in its brief that the timecard approval requirement was introduced because of criticism by the Legal Services Corporation over a prior informal method of maintaining time records, and that it is no substitute for other employee records of actual hours present at work. Thus, the unit heads merely validate the timecards under the specific directions of the Employer, a routine clerical function. Unit members' vacation requests are submitted directly to the business manager or executive director and are not channeled through the unit heads.

Finally, unit heads are without the power to hire, transfer, suspend, lay off, recall, promote, discharge, reward, or discipline employees within their units. The executive director retains sole authority to take such personnel actions. Moreover, five of the six unit heads considered herein testified that they lack the power to effectively recommend any of the above actions as well. Thus, although they are sometimes consulted by the executive director and their views regarding personnel matters considered, their recommendations are only sporadically accepted following independent consideration or investigation by the executive director.

The Employer, nevertheless, contends that the unit heads have developed into the first layer of supervision over the operation of the units, and that the director of litigation and training now serves as the second layer. The record does not substantiate this position. As can be seen from the facts above, the unit heads do not exercise supervisory authority in the interest of the Employer. They do not, as noted, hire, transfer, suspend, lay off, recall, promote, discharge, reward, discipline, or adjust grievances of other employees, since only the executive director has the power to take these actions, nor do they effectively recommend such personnel actions. Although they do perform certain administrative functions for the units, such as validating timecards and

preparing unit reports, these tasks are of a routine clerical nature, requiring little application of independent judgment. Further, to the extent that the unit heads train, assign, or direct work of legal assistants and paralegals for whom they are professionally responsible, we do not find the exercise of such authority to confer supervisory status within the meaning of Section 2(11) of the Act, but rather to be an incident of their professional responsibilities as attorneys and thereby as officers of the court.[9] Accordingly, we find that the unit heads are not supervisors as defined in the Act.

Nor are we persuaded, as the Employer asserts, that the unit heads are managerial employees who should be excluded because they determine, establish, and carry out management direction and policy. As we stated in *General Dynamics Corporation, Convair Aerospace Division, San Diego Operations*, 213 NLRB 851, 857–858 (1974):

> It is clear from the legislative history of the Taft-Hartley Act of 1947 and prior and subsequent Board and court decisions that managerial status is not conferred upon rank-and file workers, or upon those who perform routinely, but rather is reserved for those in executive-type positions, those who are closely aligned with management as true representatives of management. Work which is based on professional competence necessarily involves a consistent exercise of discretion and judgment, else professionalism would not be involved. Nevertheless, professional employees plainly are not the same as management employees either by definition or in authority, and managerial authority is not vested in professional employees merely by virtue of their professional status, or because work performed in that status may have a bearing on company direction.

In the instant case only the executive director or perhaps, ultimately, the board of directors, has the authority to formulate, determine, and effectuate management policies. While the views of the unit heads are sometimes solicited, and policy areas such as law reform activities are discussed at unit head meetings with the executive director, the unit heads play at best an informational or professional advisory role in this regard. Only the executive director makes final decisions regarding such matters, following his own independent investigation or review. Moreover, whatever weight he may choose to accord the views of unit heads in his own decisional processes would appear, again, to be attributable primarily to their professional expertise. On these facts, we conclude that the unit heads are not managerial employees. Cf. *New York University*, 221 NLRB 1148 (1975); *Wentworth Institute and Wentworth College of Technology, Inc.*, 210 NLRB 345 (1974), enfd. 515 F.2d 550 (C.A. 1, 1975); *Yeshiva University*, 221 NLRB 1053 (1975). Accordingly, we find that the unit heads, other than the two unit heads whose separate projects preexisted the Employer's present unit system, are neither supervisors nor managerial employees, and we shall include them in the unit.

Assistant trainer and managing attorney of the south office: The Employer contends that both the assistant trainer and managing attorney functions constitute supervisory or managerial positions which should be excluded, whereas the Association maintains that both positions should be included in the bargaining unit. At the time of the hearing, Paula Cosgrove, the unit head of the General Unit, was also both the assistant trainer and the managing attorney of the south office. She received a $2,000 salary increase upon assuming the assistant trainer position, and an additional $1,000 for acting as managing attorney for the south office. One-half of her $15,000 total salary is paid from Social Security Title 20 funds in her capacity as assistant trainer, rather than from the general Legal Services Corporation grant. Approximately 5 to 10 percent of her time is spent in the performance of her responsibilities as managing attorney of the south office.

As assistant trainer, Cosgrove, along with the director of litigation and training, oversees the work of the units as a whole and of the individual unit members. She is concerned with individual caseloads, case progress, and also with case quality, and is responsible for assisting, directing, and training employees in the handling of cases, working directly and independently with the units. Each month she reviews the case status of one-half of the units, coordinating with the director of litigation and training the status of the Employer's overall program and the implementation of its overall goals. The director of litigation and training was stipulated by the parties [10] to be a managerial employee who must be excluded from the unit. The assistant trainer performs essentially the same duties and functions as does the director of litigation and training. We find, in view of the foregoing, that the assistant trainer is a managerial employee as well, and shall therefore exclude that position from the unit.

[9] We have been, and are, most hesitant to deny employees rights which the Act is designed to protect. Accordingly, we are careful to avoid applying the definition of "supervisor" to professionals who direct other employees in the exercise of their professional judgment, which direction is incidental to the practice of their profession, and thus is not the exercise of supervisory authority in the interest of the Employer. Cf. *Wing Memorial Hospital Association*, 217 NLRB 1015 (1975); *Trustees of Noble Hospital*, 218 NLRB 1441 (1975).

[10] See fn. 4, *supra*.

As managing attorney of the south office, Cosgrove is responsible for overseeing the workflow and distribution of work among the office and clerical employees in that office. Her testimony indicates that at the time of the hearing there were approximately 16 employees located in the south office and that she, as managing attorney, was responsible for the administrative management of that site. Thus, she allocates work among the secretaries if enough are not present to handle all work as it is submitted, requests additional clerical assistance from the north office when needed, receives employee complaints over personnel or operating problems encountered in that office and assists in resolving such complaints or grievances, and represents the Employer by contacting the south office landlord, or the telephone company, relative to south office problems in these areas. Further, whereas the record indicates that the executive director has only sporadically followed personnel recommendations made by Cosgrove in her capacity as unit head, he has apparently consistently followed her personnel recommendations, and confirmed grievance resolutions made by her, in her capacity as managing attorney. Based on the above, we conclude that the managing attorney of the south office performs supervisory and managerial functions, and that these functions are performed as a representative of management rather than in a professional capacity as an attorney. We shall, therefore, exclude that position from the appropriate unit.[11]

Community legal education assistant/administrative assistant, bookkeeper, business manager: The Association contends that the employees in these classifications are not involved in the tendering of legal services to the community, that they do not share a similar community of interest with employees in the proposed unit, and therefore that they should be excluded from the bargaining unit. The Employer maintains that these individuals have a substantial mutual interest in wages, hours, and other conditions of employment with those in the proposed unit, and should be included.

Community legal education assistant/administrative assistant: This position, described by the Employer at various times under these dual titles, is filled by a law student, Charles Gooley. Gooley works half time for the Employer under a contract with the University of Hartford to provide training for social service agency personnel having a need for legal training. He spends almost all of his time in the community, contacting agencies and setting up legal education programs. Gooley does not, however, provide the actual training. That is done by members of the Employer's regular legal staff. Further, he handles no caseload, and does not have his own office at eitber of the Employer's two jobsites, although he works out of the general staff library when at the Employer's facility. Unlike other staff members who are overseen by the director of litigation and training or the assistant trainer, Gooley is supervised by the special assistant to the executive director, half of whose salary is also paid by funds from the University of Hartford contract.

Thus, it appears that Gooley is only infrequently at the Employer's offices, has little contact with other employees in the proposed unit, is separately supervised, and performs a job function completely separate from that of other employees involved directly in the provision of legal services to the client community. We therefore conclude that he lacks a community of interest sufficient to justify his inclusion in the unit, and we shall, accordingly, exclude the community legal education assistant/administrative assistant from the unit.

Bookkeeper: Edward Wasaleuski, a certified public accountant, has worked part time for the Employer since 1972. He spends about one-third of his time, or 13 to 15 hours per week, on Neighborhood Legal Services work, receiving approximately $6,000 annually plus proportional fringe benefits. He has never had an office on the Employer's premises, nor is he normally present during the regular working hours of the bargaining unit employees. He works for other organizations as well, and frequently takes the Employer's financial records with him to perform most of his work away from the office. When at the Employer's offices, Wasaleuski is generally there for the purpose of meeting with the executive director, the special assistant to the executive director, or the financial assistant to the executive director, none of whom are included in the bargaining unit. The Employer has only recently hired a full-time financial assistant, whom the parties agree should be excluded from the unit, and the executive director testified that Wasaleuski is currently in a transitional period of reviewing past years' records maintained by him with the new financial assistant. Many of his previous bookkeeping functions are being phased over to this financial assistant; there is, however, no present plan to eliminate the bookkeeping position.

We conclude that Wasaleuski does not share a community of interest with other bargaining unit members sufficient to warrant his inclusion in the unit, for, as the record shows, he is generally not present on the Employer's premises, has little or no contact with other unit employees, and performs job

[11] Thus, while we do not exclude Paula Cosgrove from the unit in her capacity as unit head of the General Unit, we do exclude her on the basis of the above-described positions which she also holds.

functions wholly unlike and only very peripherally related to those of other bargaining unit employees. Accordingly, we shall exclude the bookkeeper from the unit.

Business manager: The position of business manager was held at the time of the hearing by Charlotte McBride, a long-term employee who was originally hired as a clerk-typist in approximately 1966. She progressed from that position to senior secretary, and then was promoted by the previous executive director to the position of business manager. As business manager, she keeps property inventories, handles the purchasing of supplies, and maintains the client fund account records. The executive director testified that she also helps in soothing any frictions which might arise among the secretarial staff.

McBride keeps past and present personnel records, which are physically located in her office, and has frequently been consulted by the executive director about personnel policies and procedures followed by his predecessor. Thus, she has provided the executive director with information as to what the standard office procedure on personnel issues has been in the past. The executive director has also relied upon her to inform new employees of fringe benefits such as the Employer's vacation and sick leave policies. Further, pursuant to the procedure set up by the former executive director, vacation requests are usually channeled through her. After the executive director approves such requests, she communicates this information to the employees. McBride works under the direction of the financial assistant, the special assistant to the executive director, and the executive director himself. She handles no caseload, nor does she normally participate either directly or in a clerical supporting function in the delivery of legal services to the community.

Based on these facts, we conclude that McBride shares responsibility in functions involving office finances and administration, and does not share a sufficient community of interest with members of the proposed unit to warrant her inclusion therein. Accordingly, we shall exclude the business manager from the bargaining unit.

Temporary employees: The parties stipulated, as stated, to the exclusion of 12 specific temporary student employees. There are, however, five other individuals whom the Employer urges are temporary employees who should not be included in the unit.[12] The Association, conversely, claims that these five are regular employees performing the same work as other unit employees, sharing mutual interests with them, and that they should be included in the unit.

The Employer bases its contention primarily on the absence of specific budget allocations for the salaries of these individuals.[13] They are paid, it argues, from nonrecurring "lag" or other phase-down funds, which may expire and thereby require the elimination of these positions. The record indicates, however, that there is a good deal of employee transfer among the Employer's various units and separately funded sections, and that when funds for one project have been depleted in the past individuals have sometimes been transferred to another of the Employer's units for which funds remain available. It is not possible to predict with absolute certainty exactly when various funds will run out and not subsequently be renewed.

We note that the contingency of funding is a factor affecting all employees at Neighborhood Legal Services, inasmuch as the Employer depends totally upon revenues from Federal, state, and municipal sources which are generally reviewed annually. Thus, the record does not support the proposition that these employees are temporary merely because their jobs are dependent upon the exigencies of funding, particularly considering the unpredictability and imprecise nature of the Employer's expectations in this regard. Accordingly, we find that they are not temporary employees and shall therefore include in the unit all of the five employees whom the Employer contends are temporary. They shall, of course, be eligible to vote only if they are employed by the Employer on the voting eligibility date and remain so employed on the date of the election.

In sum, we find that the following employees may constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All regular professional, paraprofessional, office, and clerical employees, including unit heads of the Consumer, Family, Housing, General, Entitlements, and Civil Rights Units, staff attorneys, legal assistants, paralegals, secretaries, and social and youth workers, employed by the Employer; excluding the executive director, special assistant to the executive director, director of litigation and training, assistant trainer, man-

[12] Donna Fatsi, Sally Kirtley, Sara DeLeon, John Daly, and Thadd Gnocchi.

[13] Other considerations raised by the Employer include, *inter alia*, the following: (1) only one of the five officially receives the Employer's full fringe benefit package; (2) one of the employees was hired for a definite 1-year period expiring July 7, 1978; and (3) some of these employees were informed that they would not be permanent employees when initially hired. We do not find any of these additional factors, when viewed in light of the total employment history and circumstances of the respective individuals involved, sufficient to affect our conclusion herein. We particularly note in this regard that two of these employees working on a month-to-month basis were first hired by the Employer in December 1976, and that a third had been working for the Employer for 2 years at the date of the hearing.

aging attorney of the south office, unit heads of the Senior Citizens and Migrant Farmworkers Units, financial assistant to the executive director, community legal education assistant/administrative assistant, bookkeeper, business manager, VISTA volunteers, and all temporary employees, confidential employees, managerial employees, and supervisors as defined in the Act.

The unit set out above includes professional and nonprofessional employees. However, as previously noted, the Board is prohibited by Section 9(b)(1) of the Act from including professional employees in a unit with employees who are not professionals unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, we must ascertain the desires of the professional employees as to inclusion in a unit with nonprofessional employees.

We shall therefore direct separate elections in the following voting groups:

Voting Group (a): All regular paraprofessional, office, and clerical employees, including paralegals, secretaries, and social and youth workers, employed by the Employer; excluding unit heads, staff attorneys, legal assistants, the executive director, special assistant to the executive director, director of litigation and training, assistant trainer, managing attorney of the south office, financial assistant to the executive director, community legal education assistant/administrative assistant, bookkeeper, business manager, VISTA volunteers, and all temporary employees, confidential employees, managerial employees, and supervisors as defined in the Act.

Voting Group (b): All regular professional employees, including unit heads of the Consumer, Family, Housing, General, Entitlements, and Civil Rights Units, staff attorneys, and legal assistants employed by the Employer; excluding paraprofessional, office, and clerical employees, paralegals, secretaries, social and youth workers, the executive director, special assistant to the executive director, director of litigation and training, assistant trainer, managing attorney of the south office, unit heads of the Senior Citizens and Migrant Farmworkers Units, financial assistant to the executive director, community legal education assistant/administrative assistant, bookkeeper, business manager, VISTA volunteers, and all temporary employees, confidential employees, managerial employees, and supervisors as defined in the Act.

The employees in the nonprofessional voting group (a) will be polled to determine whether or not they wish to be represented by the Association.

The employees in voting group (b) will be asked two questions on their ballot:

(1) Do you desire the professional employees to be included in a unit composed of all professional employees and nonprofessional employees of the Employer for the purposes of collective bargaining?

(2) Do you desire to be represented for the purpose of collective bargaining by the Neighborhood Legal Services Staff Association?

If a majority of the professional employees in voting group (b) vote "yes" to the first question, indicating their wish to be included in a unit with nonprofessional employees, they will be so included. Their vote on the second question will then be counted together with the votes of the nonprofessional voting group (a) to determine whether or not the employees in the whole unit wish to be represented by the Association. If, on the other hand, a majority of professional employees in voting group (b) vote against inclusion, they will not be included with the nonprofessional employees. Their votes on the second question will then be separately counted to determine whether or not they wish to be represented by the Association. There is no indication in this record that the Association would be unwilling to represent the professional employees separately if those employees vote for separate representation. However, if the Association does not desire to represent the professional employees in a separate unit even if those employees vote for such representation, the Association may notify the Regional Director to that effect within 10 days of the date of this Decision and Direction of Elections.

Our unit determination is based, in part, then, upon the results of the election among the professional employees. However, we now make the following findings in regard to the appropriate unit:

1. If a majority of the professional employees vote for inclusion in the unit with nonprofessional employees, we find that the following will constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regular professional, paraprofessional, office, and clerical employees, including unit heads of the Consumer, Family, Housing, General, Entitlements, and Civil Rights Units, staff attorneys, legal assistants, paralegals, secretaries, and social and youth workers, employed by the Employer; excluding the executive director, special assistant to the executive director, director of litigation and training, assistant trainer, managing attorney of the south office, unit heads of

the Senior Citizens and Migrant Farmworkers Units, financial assistant to the executive director, community legal education assistant/administrative assistant, bookkeeper, business manager, VISTA volunteers, and all temporary employees, confidential employees, managerial employees, and supervisors as defined in the Act.

2. If a majority of employees in each voting group vote for the Association, but a majority of professional employees do not vote for inclusion in the unit with nonprofessional employees, we find that the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Unit A: All regular paraprofessional, office, and clerical employees, including paralegals, secretaries, and social and youth workers, employed by the Employer; excluding unit heads, staff attorneys, legal assistants, the executive director, special assistant to the executive director, director of litigation and training, assistant trainer, managing attorney of the south office, financial assistant to the executive director, community legal education assistant/administrative assistant, bookkeeper, business manager, VISTA volunteers, and all temporary employees, confidential employees, managerial employees, and supervisors as defined in the Act.

Unit B: All regular professional employees, including unit heads of the Consumer, Family, Housing, General, Entitlements, and Civil Rights Units, staff attorneys, and legal assistants employed by the Employer; excluding paraprofessional, office, and clerical employees, paralegals, secretaries, social and youth workers, the executive director, special assistant to the executive director, director of litigation and training, assistant trainer, managing attorney of the south office, unit heads of the Senior Citizens and Migrant Farmworkers Units, financial assistant to the executive director, community legal education assistant/administrative assistant, bookkeeper, business manager, VISTA volunteers, and all temporary employees, confidential employees, managerial employees, and supervisors as defined in the Act.

[Direction of Elections and *Excelsior* foonote omitted from publication.]