

Fordham University and American Association of University Professors, Fordham University Chapter, Petitioner

Fordham University and Law School Bargaining Committee, Petitioner. Cases 2-RC-15500 and 2-RC-15507

September 14, 1971

DECISION AND DIRECTION OF ELECTIONS

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND KENNEDY

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Mary W. Taylor. Thereafter, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 2, these cases were transferred to the National Labor Relations Board for decision. The Employer¹ and the Petitioners filed briefs,² and the Association of American Law Schools filed a brief as *amicus curiae*. The Employer and the Petitioners also filed reply briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in these cases,³ the Board finds:

1. Fordham University is a New York corporation engaged in conducting a university for the education of young men and women. Its annual revenues from tuition fees and donations exceed \$1 million, of which more than \$50,000 are received from outside the State of New York. The parties stipulated that Fordham meets the jurisdictional standard for colleges and

universities set forth in Section 103.1 of the Board's Rules and Regulations. Accordingly, we find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction herein.

2. The labor organizations involved claim to represent certain employees of the Employer.⁴

3. Questions affecting commerce exist⁵ 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.⁶

4. AAUP, the Petitioner in Case 2-RC-15500, seeks a unit of all full-time and regular part-time teaching faculty, including department chairmen, professional librarians, and ancillary support professionals. It would exclude the law school faculty, but is willing to represent any unit found appropriate by the Board. The Intervenor is in substantial agreement with AAUP's contentions as to the appropriate bargaining unit. The Law School Bargaining Committee, Petitioner in Case 2-RC-15507, seeks a separate unit of full-time and regular part-time faculty of the law school.

The Employer contends that no bargaining unit can be appropriate, since all faculty members are supervisors, with the exception of the instructors, who constitute only a small part of the bargaining unit sought herein. In any event, it contends, all department or division chairmen and assistant chairmen and all faculty members who serve on policymaking committees are supervisors. If any unit is found appropriate, the Employer would exclude all professional librarians, ancillary support professionals, and part-time faculty. It contends that the law school faculty does not constitute a separate appropriate unit and should be included in a unit with the remainder of the faculty if any such unit is found appropriate.

Fordham University has two campuses, one at Rose Hill in the Bronx and the other at Lincoln Center in Manhattan. In addition, it has an interdisciplinary research center, the Calder Center for Ecological Studies, located in Westchester County. The Rose Hill campus includes the graduate school of arts and

¹ The requests for oral argument made by the Employer and Florida Southern College are hereby denied, as the record, including the briefs, adequately presents the issues and the positions of the parties.

² United Federation of College Teachers, Local 1460, American Federation of Teachers, AFL-CIO, was permitted to intervene on the basis of a showing of interest, but has not filed a brief.

³ The Employer's motion to reopen the record for the introduction of two documents is hereby denied, as the matter therein cannot affect the outcome of these cases.

⁴ The Employer contends that the American Association of University Professors is not a labor organization. However, it is abundantly clear that AAUP meets the definition of "labor organization" set forth in Section 2(5) of the Act.

⁵ We reject the Employer's contention that the selection of any bargaining representative for the faculty members would result in having the faculty sit on both sides of the bargaining table because some faculty

members serve on committees with policymaking functions. As we find below, such faculty members are not supervisors and serve on committees only as representatives of the faculty. Further, there is no reason to believe that the Employer would be represented in collective-bargaining negotiations by anyone other than members of the administration who are clearly supervisors and would be excluded from the bargaining unit for all purposes. We thus find no indication in this record of an actual or potential conflict of interest.

⁶ The Employer contends that the showing of interest of the Petitioner in Case 2-RC-15500 is fatally tainted by the participation of department chairmen and the law school librarian. Since we find *infra* that the department chairmen are not supervisors, and since the law school librarian is not a supervisor of any employees in the proposed bargaining unit, this contention is clearly without merit. The Employer's motion to dismiss the petition is therefore denied.

sciences, the undergraduate college of business, the school of graduate studies, the graduate institute of religious education, two undergraduate liberal arts colleges—Fordham College for men and Thomas More College for women—and an experimental undergraduate college, Bensalem College, as well as the school of pharmacy which is scheduled to be discontinued after 1 more year of operation. The Lincoln Center campus includes the schools of law, education, and social service; the Martino graduate school of business; and the liberal arts college, an undergraduate college.

The ultimate authority in the University is possessed by an independent and self-perpetuating board of trustees, which appoints the president, the chief executive officer. Faculty and student representatives sit on all committees of the board of trustees except the executive committee. The board of trustees appoints the executive vice president, the vice president for business and finance, and the vice president for academic affairs on the recommendation of the president. Each school has a dean, appointed by the president but responsible to the vice president for academic affairs, and a council consisting of students, faculty, and administration, with faculty members constituting a majority. In addition, there is a Faculty Senate, whose members are elected by the faculties of their respective schools; a Rose Hill Council, consisting of 16 students, 10 administrators, and 21 faculty representatives elected by the full-time faculty members of each department in the schools at the Rose Hill campus; and various universitywide committees composed of administrators, faculty members nominated by the Faculty Senate, and students. The chairmen of the departments offering graduate degrees at the Rose Hill campus constitute a graduate council. There is conflicting testimony as to whether these bodies play a significant role in policy formulation or merely have advisory authority.

There are approximately 501 full-time and 245 part-time faculty members employed by the University, of whom 21 full-time and 10 part-time faculty members teach at the school of law. Of the 480 full-time faculty members outside the school of law, approximately 244 are tenured and can be discharged only for gross incompetence or moral turpitude. The full-time faculty has a significant voice in determining curriculum, admissions standards, standards for granting degrees, and decisions on appointment, promotion, and tenure of other faculty members. Two grievance committees—the Ombudsman Committee for the Rose Hill campus and the Intown Committee for the Lincoln Center campus—handle grievances of faculty

members. Both committees consist of faculty members appointed by the Faculty Senate.

There are more than 150 graduate assistants and teaching fellows whom all parties agreed to exclude from any bargaining unit. They assist the faculty members in instruction by grading papers, passing out syllabi of the courses, and preparing bibliographies for courses. Some of them work for several faculty members or for a department as a whole; almost every faculty member utilizes the services of a graduate assistant or teaching fellow at least part of the time. All graduate assistants and teaching fellows are full-time students seeking graduate degrees; an assistantship or fellowship is automatically terminated if a student fails in his academic work or receives his degree. Normally each department selects its most promising students as graduate assistants or teaching fellows; the assistant or fellowship is awarded for 1 year and may be renewed.

A number of faculty members administer research grants, mostly funded by the Federal Government, and employ persons to work on the grants. They may hire and fire such persons without the approval of the University, and salary questions are worked out in negotiations with the funding agency, although the school of education requires that appointments and salaries be approved by the dean.

Upon the foregoing facts, we reject the Employer's contention that the faculty members are supervisors.⁷ It is clear that the faculty exercises its role in policy determination only as a group. Under our decision in *C. W. Post Center of Long Island University*, 189 NLRB No. 109, this is insufficient to make the faculty members supervisors. In our view, the presence of faculty members in the Faculty Senate and on a number of universitywide committees does not require a different result, even assuming that such bodies have power effectively to recommend major policy decisions. The faculty members serving on these committees are elected by other faculty members to represent the faculty as a whole, and no one faculty representative can make the policy decisions in question. The role played by these representatives in governing the University is thus one of participation in a group determination and does not make them individually supervisors. Similarly, the selection of graduate assistants and teaching fellows and the renewal of their assistantships or fellowships are determined collectively by each department. While many assistants work under particular faculty members, the faculty member in such cases is often the same person who is supervising the assistant's studies, and the assistant's work for him may consist of a research project which is part of the assistant's

exclude them from the units hereinafter found appropriate

⁷ All parties agree that the president, the vice presidents, and the deans, associate deans, and assistant deans are supervisors. Accordingly, we

dissertation for his degree. In such cases, the faculty member is simply exercising the same kind of supervision over the assistant that he would exercise over any graduate student working toward his degree. Furthermore, an individual may remain a graduate assistant or teaching fellow only as long as he remains a student. It seems clear, therefore, that the relationship between a faculty member and his graduate assistant is basically a teacher-student relationship which does not make the faculty member a supervisor.

Finally, individuals hired by faculty members directing research grants are not employees of the Employer. Therefore, even if such faculty members are supervisors with respect to these individuals, they are not supervisors in their relationship to the Employer.⁸ For these reasons, we find that the faculty members are not supervisors, but are professional employees within the meaning of Section 2(12) of the Act, and are entitled to all the benefits of collective bargaining if they so desire.⁹

We have previously held a universitywide unit of professional employees to be appropriate,¹⁰ and it is clear that such a unit may be appropriate here. The scope and composition of that unit must be considered, however, as the labor organizations involved agree that the law school faculty should be represented separately, while the Employer contends that it must be included in a universitywide unit if such unit is found appropriate. In addition, questions as to the supervisory status of certain categories of professionals must be resolved.

The law school is located in a separate building on the Lincoln Center campus. Activities of the law school are normally carried out only in this building; other schools never use the law school's classrooms and rarely use its other facilities. While some members of the law school faculty have participated in interdisciplinary programs such as environmental studies, they have not independently taught courses in any other schools, nor have faculty members from other schools independently taught courses at the school of law. All full-time faculty members at the law school are either full professors or associate professors; approximately 57 percent of them are full professors, while less than 20 percent of the full-time faculty members in the University as a whole hold this rank. Law school faculty members are eligible for tenure after 3 years, while faculty members in the remainder of the University must have at least 7 years of service, of which at least 4 must be at Fordham, before acquiring tenure. However, the law school, like other schools, must meet the requirements of the

American Association of University Professors (AAUP) with respect to rank and tenure.

On the average, the salary of law school faculty members is higher than that of faculty members in the University as a whole, although at least one other professional school has salary levels comparable to those at the law school. In determining initial salaries for newly hired faculty members, the dean of the law school takes into account the prevailing rates paid by private law firms, as well as prevailing rates at Fordham and other law schools. All members of the law school faculty have law degrees.

The New York Court of Appeals regulates admission to the practice of law in New York and has issued rules and regulations concerning legal education in this connection. Law schools must be approved by the American Bar Association (ABA), and all major law schools, including Fordham, are members of the Association of American Law Schools (AALS), an organization dedicated to raising standards of law schools. Each of these bodies has detailed regulations, some of which affect the terms and conditions of employment of law school faculty members. Thus, the court of appeals regulates the hours during which classes are to be held and the length of class periods; the ABA requires that law schools have certain financial independence and a certain faculty-student ratio, and that each faculty member have his own office; and the AALS has fixed 8 hours per week as the maximum proper teaching load. Most faculty members in the remainder of the University teach 6 to 9 hours per week, but a few may teach as many as 12 hours.

Law school faculty members serve on the Faculty Senate and other University committees. The law school has its own faculty committees, which determine curriculum, course schedules, tenure, and other matters in the same manner as faculty committees in the remainder of the University. There are no departments; the dean of the law school prepares its budget and exercises all the functions of a department chairman as well as those exercised by deans in other schools. The law school, like every other school in the University, has its own calendar, and its opening and closing dates and vacation periods do not wholly coincide with those of other schools. There is no formal bargaining history for any of the faculty of the University, but in March 1970, the president and two vice presidents met with the law school faculty and student and alumni representatives and discussed a number of matters, including faculty salaries and promotions. Several members of the law school

⁸ *Eureka Newspapers, Inc.*, 154 NLRB 1181, 1185, and cases cited therein

⁹ *C. W. Post Center of Long Island University*, *supra*, third par. under

Background and cases cited in fn. 5 therein

¹⁰ *C. W. Post Center of Long Island University*, *supra*

faculty are members of the Fordham chapter of the AAUP, which is the Petitioner in Case 2-RC-15500.

In *C. W. Post, supra*, we stated that we would apply the same principles in making unit determinations with respect to faculty members that we have applied in cases involving other types of employees. On consideration of these principles, we find that the law school faculty constitutes an identifiable group of employees whose separate community of interests is not irrevocably submerged in the broader community of interest which they share with other faculty members. Members of the law school faculty have specialized training, work in a separate building under their own supervisor (the dean of the law school), and, acting as a group, have a voice, separate from that of the faculty of the remainder of the University, in determining their working conditions. There is little or no interchange between them and other faculty members. As a result of its separate calendar, the law school is open for brief periods while other parts of the University are shut down, and vice versa. There is nothing in this record to indicate that these situations could not continue for longer periods in the event of a work stoppage. On this record, we cannot conclude that the operation of the law school is so highly integrated with that of the remainder of the University as to compel a finding that an overall unit alone is appropriate. Finally, we note that there is no bargaining history on a broader basis and that no labor organization seeks to include the law school faculty in a broader bargaining unit.

For all these reasons, we find that the law school faculty constitutes a separate appropriate unit.¹¹ Accordingly, we further find that the faculty members in the remainder of the University constitute a unit appropriate for collective bargaining.

There remain questions as to the inclusion or exclusion of the following categories:¹²

Department chairmen are appointed by their respective deans for 3-year terms and may be reappointed once. In making these appointments, the deans have traditionally consulted with faculty members in the department. When the faculty members in a department agree that a particular person should be chairman, they recommend his selection to the dean.

¹¹ Many of the factors set forth herein are equally applicable to the University's other professional schools. As an overall unit including the faculty of professional schools is appropriate, and as no party contends that the faculty of any professional school other than the law school should constitute a separate unit, we need not pass upon the appropriateness of any such separate unit.

¹² The disputed categories relate only to the universitywide unit, except that the question as to part-time faculty applies to both units herein found appropriate.

¹³ The University handbook provides that department chairmen are to carry out their duties "in accordance with policies of the School and the University and the procedures, policies and rules of the Department" (Emphasis supplied). The general policies and rules are set forth in the recommendation of the Committee on Chairmen of Departments, which

Recommendations based on a faculty consensus are usually followed.

The chairman, with the "advice and consent" of other members of his department,¹³ makes recommendations to the dean concerning hiring of applicants.¹⁴ The approval of the University administration is required before a new faculty member may be hired. When a faculty member seeks to be promoted to associate professor or full professor, a promotion committee is selected to consider his application. The department chairman is an *ex officio* member of the promotion committee; two of the other four members are nominated by the applicant for promotion, and two are nominated by the dean. Each member of the committee submits a recommendation to the dean; the committee does not act as a group in making a recommendation. If the committee is divided on whether to recommend promotion, the chairman's recommendation may be given greater weight because it is more detailed, but is not always followed by the administration. Decisions with respect to the granting of tenure are recommended by a committee consisting of tenured faculty of the department in which the individual seeking tenure teaches. Again, the chairman's views may be given greater weight than those of other faculty members because of his greater knowledge of the applicant's qualifications, but they are not conclusive.

Each department chairman prepares his department's budget with the advice and consent of the other faculty members in the department. He presents the department's views to the dean, and indicates which items should receive highest priority. The budget, after being reviewed by the dean, is further reviewed by the academic vice president, and then goes to the board of trustees for final approval. Most of the budget is allocated to salaries. The department chairman is asked to evaluate the faculty members in his department to determine what merit increases should be given, but in larger departments a committee recommends the increases. This year the University gave an across-the-board increase to all faculty members; the merit increases recommended were in addition to this increase. Last year the administration failed to tell the department chairmen what salary

the University administration has adopted, that "the most important duties of the chairmen be carried out with the advice and consent of members of the department."

The duties there enumerated include most of those listed by Member Kennedy in his partial dissent. For reasons more fully discussed in the text of this opinion, *infra*, this structure of collegiality, while recognizing the respect due to a department chairman, falls short of creating in him that kind of fully vested authority which we require for a finding of true supervisory status. The status of department chairmen varies in different university structures, and the fact that we found department chairmen to be supervisors in one case does not compel us to find that all department chairmen in all universities are supervisors.

¹⁴ In some departments, the recommendation is based on the decision of a recruitment committee headed by the department chairman.

increases the members of their departments were receiving; when the department chairmen protested, they were told that the failure to notify them was inadvertent. Grievances of individual faculty members concerning salaries can be discussed with the department chairman, but are ultimately resolved by the dean or academic vice president.

The department chairman, with the advice and consent of the faculty of the department, determines what courses will be offered by the department, when they will meet, and whether large classes should be split. If a large class is split into two or more sections, the faculty member in charge of the course may assign graduate assistants to some of the sections. A number of departments have curriculum committees which determine these matters. The administration interferes with the department's action only if it requires authorization for additional personnel.

The faculty member in charge of each course determines the content of the course, the manner of teaching it, and the content, number, and grading of examinations. The department chairman exercises no control over the day-to-day work of a faculty member, but will call the faculty member's attention to serious derelictions, such as a failure to meet his classes for a week. The chairman has no authority to dismiss a faculty member; if charges are filed against a faculty member, the president refers them to a faculty hearing committee. On one occasion, the administration attempted to terminate two language informants in the Russian department¹⁵ without consulting the new chairman of the department or his predecessor, both of whom had recommended retention of the language informants. These individuals were retained only after the new chairman threatened not to assume the duties of the chairmanship.

The chairman's teaching load is reduced, and he receives a stipend of \$500 to \$1,250 in addition to his regular salary. This stipend amounts to less than 10 percent of his salary. Some department chairmen are associate professors; even with the stipend, they earn less money than full professors who are not department chairmen. The chairman may spend up to half of his time on administrative duties; the remainder is spent teaching.

Each department has a secretary. When a new secretary is to be hired, the department chairman interviews applicants referred by the personnel office and selects one. The secretary does routine secretarial work for the chairman and other members of the department. If the chairman finds a secretary unsatis-

factory for the needs of his department, he can ask the personnel office to have her transferred. Once a secretary's probationary period has expired, she can be discharged only in accordance with the terms of the contract between the University and the labor organization representing the clerical employees; this contract is not part of the record herein. On at least one occasion, a pay raise was not given to a secretary whose department chairman recommended that she receive one.

A number of department chairmen serve on the Faculty Senate and the two faculty grievance committees. The University Budget Committee and a commission created to draft a constitution for a University Senate contain representatives of students, faculty, and administration; department chairmen were elected to these bodies as faculty representatives. One chairman testified that he frequently found himself having to defend the department against the dean. The catalogues published by the various schools in the University list department chairmen among members of the faculty rather than members of the administration.

In summary, it is apparent that decisions as to appointment, promotion, and tenure are in fact made not by the chairman alone, but by the faculty of the department, acting as a group. To the extent that the chairman's recommendations concerning these matters are given more weight than those of other faculty members, this fact appears to reflect the chairman's superior knowledge and experience, and does not indicate possession of the type of authority contemplated in the statutory definition of a supervisor.¹⁶ The chairman does not direct the work of faculty members. While the chairman prepares the budget for his department, he does so only with the advice and consent of the faculty members. His recommendations as to salaries are subject to review at three levels of administrative authority, and his views are not always followed. We cannot, therefore, find that the chairman has power effectively to recommend salary increases. While the chairman exercises some direction over his secretary, and plays some part in the selection, it does not appear that he has statutory authority over that employee. The mere fact that professional employees may have secretaries does not necessarily constitute them supervisors.¹⁷ Thus, the record does not indicate that a chairman makes the final selection for hiring, or has authority to discharge a secretary or effectively to recommend discharge, or that he can effectively recommend a pay raise. We

¹⁵ The AAUP would include these individuals in the unit, while the Employer would exclude them. The record discloses that the language informants teach languages on a full-time basis and have the same duties and obligations as other faculty members. They differ from other faculty members only in teaching only language, whereas other faculty members may also teach courses in literature and other subjects. Accordingly, we

shall include them in the unit.

¹⁶ Cf. *United States Gypsum Company*, 119 NLRB 1415, 1421, *Central Mutual Telephone Company*, 116 NLRB 1663, 1665; *NLRB v. Magnesium Casting Company*, 427 F.2d 114, 118 (C.A. 1), *aff'd*, 401 U.S. 137.

¹⁷ E.g., *Air Line Pilots Association, International*, 97 NLRB 929.

therefore conclude that department chairmen do not exercise statutory supervisory authority over secretaries.¹⁸

In addition, it is significant that the department chairmen consider themselves, and are considered by faculty members, to be representatives of the faculty rather than of the administration. There is some indication that the University views them similarly. Thus, the catalogues of the various schools refer to chairmen as members of the faculty rather than as part of the administration. The letter of appointment used by the University indicates that a faculty member is responsible to the president or dean, rather than to his department chairman. A full-time faculty member who wishes to accept outside employment must obtain the approval of the academic vice president, rather than the department chairman.

Accordingly, we find that the department chairmen are not supervisors¹⁹ and shall include them in the unit.²⁰

A number of departments have *assistant chairmen*, who counsel students in selecting courses or research projects, in addition to assisting the chairmen in preparing the budget. As there is no evidence that assistant chairmen possess any supervisory authority, we shall include them in the unit.

Part-time faculty members are appointed for one or two semesters to teach one or two specific courses, and may be reappointed for 1 year at a time. They are paid on the basis of the number of credit hours taught. Most of them have full-time jobs outside the University; many are full-time faculty members at other institutions. Part-time faculty members are not eligible for tenure or for fringe benefits enjoyed by the full-time faculty, and, unlike the full-time faculty members, do not participate in faculty policy decisions on department or school levels. We held in *University of New Haven, Inc.*, 190 NLRB No. 102, that regular part-time faculty members must be included in the same unit as the full-time faculty, absent agreement of the parties to exclude them. As the facts here are essentially the same as in the *New Haven* case, we shall include regular part-time faculty members in both units found appropriate herein. If

the parties cannot reach agreement as to the regularity of employment of any individual part-time faculty members, such individuals may vote subject to challenge.²¹

Approximately 70 of the 500 full-time faculty members are *members of the Society of Jesus*. The AAUP would include them in the unit, while the Employer takes no position as to their placement. Most Jesuits live in a separate building, and their salaries are paid to the Jesuit community, an incorporated body, which houses and feeds them. The Jesuits may, with the permission of their religious superior, live away from this building and receive their own salaries; such permission has never been refused, but only 2 of the 70 Jesuits on the full-time faculty presently live away from the community. The Jesuits are hired in the same manner as other faculty members, and their salaries and other terms and conditions of employment are determined in the same manner. A Jesuit who leaves the Order may remain a faculty member and receive the same salary formerly paid to the community on his behalf. He may remain at Fordham and accept tenure despite the objection of the Order. There is no evidence that membership in the Order is in any way inconsistent with collective bargaining with respect to a Jesuit's salary or other terms and conditions of employment. Accordingly, we shall include the Jesuits in the unit.

The AAUP would include, and the Employer would exclude, all *professional librarians*. While the librarians do not have faculty status, it is clear that some of them are professional employees and should be included in the unit.²² The record does not contain sufficient evidence to determine whether any of them are supervisors. Accordingly, any librarians whose status either as a professional employee or as a supervisor is in dispute may vote subject to challenge.

The AAUP would also include, while the Employer would exclude, *ancillary support professionals*. While the precise meaning of this term is unclear, it appears to encompass such employees as counselors, employees in the admissions office and placement office, and laboratory technicians. As we are unable to determine from the record which, if any, of these employees are

¹⁸ Even if the department chairmen were supervisors of secretaries, their alleged activities on behalf of the AAUP would not invalidate its showing of interest, since the secretaries are not in the bargaining unit sought herein.

¹⁹ Unlike our dissenting colleague, we do not view our conclusion that the department chairmen herein are not supervisors as contrary to our recent decision in *C W Post Center of Long Island University*, *supra*, that the department chairmen there were supervisory. There is expert testimony in the instant case that department chairmen are part of the administration at some universities and representatives of the faculty at others. In *C W Post*, the statutes of Long Island University listed the department chairmen under the heading "Officers of the Centers", before a faculty member could be granted tenure, the recommendation of his department chairman was specifically required, the Faculty Tenure Committee having advisory authority only, the dean was to "act on the recommendation of the

chairman of the appropriate department" in appointing new faculty members, and a faculty member who wished to accept outside teaching employment had to have the recommendation of his department chairman as well as the approval of the dean. It is thus clear that department chairmen at Fordham do not possess authority comparable to that of department chairmen at Long Island University.

²⁰ As the *division chairmen* in the school of education appear to have substantially the same duties as the department chairmen, we shall also include them in the unit.

²¹ The AAUP has moved to reopen the hearing to determine the issue of regularity if the parties do not reach a stipulation on this issue. This motion is hereby denied, as any disagreements concerning the unit placement of particular part-time faculty members are, in our view, best resolved through the challenged ballot procedure.

²² *C W Post Center of Long Island University*, *supra*.

professional employees, we shall permit them to vote subject to challenge.

For the reasons stated above, we find that the following units constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

1. All professional employees of Fordham University, including full-time and regular part-time members of the teaching and research faculty, department chairmen and assistant chairmen, division chairmen, members of the Faculty Senate, faculty members serving on University committees as faculty representatives, faculty members directing research grants, members of the Society of Jesus, nonsupervisory professional librarians, and language informants; but excluding the president, vice presidents, deans, associate deans, assistant deans, members of the faculty of the school of law, graduate assistants, teaching fellows, guards and supervisors as defined in the Act, and all other employees.

2. All full-time and regular part-time members of the faculty of the school of law, including members of the Faculty Senate and University committees; but excluding the dean of the school of law, the law librarian,²³ guards and supervisors as defined in the Act, and all other employees.

5. At Fordham, as at most universities, the various schools are in session from September until June. While the University has a summer session, it is clear that many faculty members do not teach during the summer. Accordingly, we shall not direct that elections be held at this time, but shall direct that they be held after the commencement of classes for the fall term at all schools of the University, on a date to be determined by the Regional Director, among the employees in the appropriate units who are employed during the payroll period immediately preceding the date of issuance of the Notice of Election.²⁴

[Direction of Elections²⁵ omitted from publication.]
MEMBER KENNEDY, dissenting in part:

I cannot agree with my colleagues' conclusion that the University department chairmen are not supervisors within the meaning of Section 2(11) of the Act.

Under circumstances substantially similar to those revealed by the record in the instant case, the Board found department chairmen to be supervisors in *C.*

W. Post Center of Long Island University, 189 NLRB No. 109. There the department chairmen interviewed prospective candidates for faculty positions, discussed the selected candidate's appointment with the dean, hired department clerical employees, recommended faculty members' change of status to the dean and board of trustees, and were assigned a reduced teaching load in order to carry out these duties.

According to the Fordham University Handbook, the department chairmen's duties include, *inter alia*, promulgating department policies and procedures; calling and presiding at department meetings; appointing department committees; preparing the department budget and supervising expenditures; recommending faculty appointments, reappointments, tenure, and promotions; and establishing course offerings and schedules and assigning schedules to each department member after consultation. A special stipend of between \$500 and \$1,250 is awarded the department chairmen as well as a reduced teaching load.

Chairmen at Fordham handle initial negotiations for appointments to the faculty and submit recommendations to the dean. The faculty and students are involved in this procedure too. The tenured faculty votes by secret ballot to grant a colleague tenure but the chairmen make a separate report to the dean explaining in full the reasons for the decision. Each faculty member also informs the dean of the reason for his vote. The dean is annually told by the chairmen which faculty members should be considered for promotion. A faculty committee chaired by the chairman votes on promotions, and this decision is transmitted to the dean by the respective chairman. Before recommending individual faculty member's salaries, the dean consults the chairman; the vice president for academic affairs makes the ultimate decision. Finally, chairmen select the department clerical employees from among the candidates referred to them by the University personnel office.

I find that the department chairmen's situation at Fordham is substantially akin to that at *C. W. Post*. Accordingly, as the Board did in *C. W. Post*, I would find the department chairmen at Fordham to be supervisors within the meaning of the Act.²⁶

²³ The parties agreed that the law librarian is a supervisor. As the record does not indicate whether other librarians at the law school are professional employees, we shall permit them to vote subject to challenge.

²⁴ This postponement of the elections is in accordance with our customary practice in seasonal industries. E.g., *Garin Company*, 148 NLRB 1499, 1502.

²⁵ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the elections should have access to a list of voters in their respective units, and their addresses, which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236, *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that election

eligibility lists, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 2 within 7 days after the date of issuance of each Notice of Election by the Regional Director. The Regional Director shall make the lists available to all parties to the elections. No extension of time to file these lists shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the elections whenever proper objections are filed.

²⁶ In view of my conclusion that department chairmen are supervisors, I would reach the issue raised in Case 2-RC-15500 whether the showing of interest was tainted by supervisory participation in the solicitation of signatures for authorization cards.