

Tusculum College and Tusculum College Federation of Teachers, Local 2264, American Federation of Teachers, AFL-CIO, Petitioner. Case 10-RC-9079

September 14, 1972

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer E. Walter Bowman. 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 10, this case was transferred to the National Labor Relations Board for decision. The Petitioner filed a brief.

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 Officer 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. The parties stipulated that Tusculum College is a private nonprofit college located at Greenville, Tennessee. During the past year, it derived gross revenues in excess of \$1 million, exclusive of contributions, which, because of limitations by the grantor, are not available for use for operating expenses. During the same period, the Employer purchased materials in excess of \$50,000 directly from sources located outside the State of Tennessee. Based on the foregoing stipulated facts, we find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.¹

3. A question affecting commerce exists² concern-

ing the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.³

4. The Petitioner seeks a unit of all full-time and regular part-time teaching faculty. While the parties are in agreement as to the appropriateness of such a unit, they disagree as to the placement of the following categories:

a. *Division directors* are appointed for 1-year terms and may be reappointed indefinitely. They are appointed by the president upon the recommendation of the dean of the college,⁴ made after consultation with the individual in question and certain of his colleagues. In general, they report to and work with the dean of the college; occasionally they meet with him as a group. They carry the same teaching load as other full-time faculty members, but receive a stipend of \$400 in addition to their regular salary, which is determined on the same basis as that of other faculty members.

The division director, after discussion with his colleagues, makes recommendations on what characteristics should be sought in individuals recruited for the faculty. He also prepares a statement of duties for prospective new faculty members which, after being reviewed by the dean of the college, is circulated through university placement services to potential applicants. Each applicant is interviewed by about half the faculty, including the division director and all other faculty members in the division in which he is to teach. Every faculty member who interviews the applicant makes a written recommendation to the dean of the college. Recommendations by faculty members in the division involved receive the greatest weight; this is especially true of the division director's recommendation, because of his greater experience and expertise. The dean of the college, after reviewing all the recommendations, adds his own which, along with the others, is submitted to the president, who makes the final decision. In similar manner, the division director makes written recommendations to the dean of the college concerning tenure and retention of faculty members not yet on tenure. The ultimate decision on tenure is made by the Board of Trustees, which has recommendations from the president, the dean of the college, and each member of the executive committee, as well as from the division director. On one occasion, a senior faculty member was also asked to make a recommendation concerning tenure.

Pattern Co., 80 NLRB 29 Accordingly, the motion to dismiss is hereby denied

³ In view of our finding *infra* that division directors and members of the executive committee are not supervisors, we reject the Employer's contention that the Petitioner's showing of interest is fatally tainted by their participation.

⁴ In accordance with the stipulation of the parties, we find that the president and the dean of the college are supervisors. Accordingly, we shall exclude them from the unit

¹ The Employer has moved to dismiss the petition on the ground that the Petitioner is not a labor organization. The national constitution of the AFT provides that it "shall consist of federations of public and private school teachers." The record indicates that employees participate in the Petitioner and that it exists for the purpose of dealing with an employer concerning grievances, labor disputes, rates of pay, hours, and working conditions. As the Petitioner has expressed a willingness to represent the employees involved herein, we find that it is a labor organization within the meaning of Sections 2(5) and 9(c)(1) of the Act and accordingly deny the motion to dismiss the petition. Cf. *Florida Southern College*, 196 NLRB No. 133.

² The Employer has moved to dismiss the petition on the ground that the Petitioner failed to request recognition prior to the hearing. It is well settled that the filing of a petition constitutes a sufficient demand for recognition. *The Great Atlantic & Pacific Tea Co.*, 96 NLRB 660, 661, fn. 1; *Advance*

The division director oversees the curriculum of all departments within his division and submits any proposed changes to the curriculum committee (consisting of the dean of the college, the dean of administrative services, three faculty members elected for 3-year terms, and three students), which reviews the curriculum and makes recommendations to the faculty. The curriculum is ultimately determined by the faculty as a whole. The division director, after ascertaining the times at which the faculty members in his division wish to hold classes, submits a proposed schedule of classes to the dean of administrative services. To the extent possible, the faculty members' preferences are honored in setting up the schedule. The division director does not direct the day-to-day work of faculty members.

The business manager asks each division director to submit a proposed budget for his division each year. If the budget is not within certain limitations set forth by the business manager, it is returned to the division director for revision. The division director, after consulting with the faculty members in the division, projects the division's need for supplies and materials and the cost thereof and submits a budget to the dean of the college, who sends it on to the business manager. He must give specific reasons why a particular piece of equipment is needed. Final approval of the overall budget for the Employer is by the Board of Trustees; budgets for individual divisions do not receive final approval until the overall budget is approved. Salaries are not included in the budgets, which may be quite small; one department had a budget of \$45 for the academic year 1971-72. Individual faculty members purchase supplies authorized in the budget; purchase orders must be approved both by the division director and by the business manager.

Three division directors are also members of the executive committee of the faculty, whose functions are described *infra*. The college catalogue lists the two admitted supervisors—the president and the dean of the college—as both faculty members and administrative officers, but lists division directors only among the faculty. The college's policy manual describes the duties of the division directors under the heading of "Faculty," rather than "Administration." A faculty member who desires to take a leave of absence or accept outside employment must obtain the approval of the president; the division director's approval is not required.

On the basis of the foregoing facts, we conclude that the authority possessed by division directors is insufficient to constitute them supervisors within the meaning of the Act. They do not make the final decisions on appointment, retention, and tenure. The division director's recommendation is merely one factor considered in making these decisions; to the extent

that it is given greater weight than recommendations by other faculty members, this fact appears to reflect the director's superior knowledge and experience rather than possession of the type of authority contemplated in the statutory definition of a supervisor.⁵ Indeed, the college policy manual states that the division director "will work closely with his divisional colleagues" in carrying out his duties. This further indicates the existence of a structure of collegiality similar to that which we found in *Fordham University, supra*, to be insufficient to render department chairman supervisors. In addition, the division directors here, like the department chairmen at Fordham, do not direct the work of faculty members. Similarly, while the division director prepares the budget for his division (which, unlike the departmental budgets in *Fordham*, does not include salaries), his recommendations are not always followed. It also appears that the college does not view the division directors as differing significantly from other faculty members; the catalogue and policy manual list them as faculty members, and they receive no reduction in teaching load and only a minimal stipend.

Accordingly, we find that the division directors are not supervisors and shall include them in the unit.⁶

b. The *executive committee* of the faculty consists of the dean of the college as *ex officio* chairman and six faculty members elected by the faculty for 3-year terms. Three of the present members of the executive committee are division directors.⁷ According to the college's policy manual, the executive committee "acts for the faculty between regular faculty meetings and whenever problems require immediate faculty attention," prepares agenda for faculty meetings, and nominates members of other faculty committees.

The principal function of the executive committee is the evaluation of classroom teachers. Members of the executive committee attend each faculty member's classes and discuss aspects thereof. Thereafter, each member of the executive committee submits a written recommendation to the president concerning whether to retain the faculty member or grant him tenure. The president considers these recommendations, as well as those of the dean of the college and the division directors, in making his recommendation to the Board of Trustees, which makes the final decision. Recommendations concerning promotion are made by members of the executive com-

⁵ See *Fordham University*, 193 NLRB No. 23, and cases cited in fn. 16 thereof.

⁶ *Fordham University, supra*.

⁷ Five of the six members of the executive committee, including two of the division directors, submitted their resignations shortly before the hearing. As of the date of the hearing, the faculty had not acted on these resignations.

mittee in similar manner. The president testified that a faculty member would have little or no chance of being promoted if the executive committee recommended against promotion. Similarly, members of the executive committee can recommend that faculty members be granted sabbaticals or other leaves of absence, with or without pay. The dean of the college and the president also make recommendations concerning leaves of absence, but approval by the Board of Trustees is required.

The issue before us in the instant case with respect to members of the executive committee is similar to that presented in *Adelphi University*, 195 NLRB No. 107, with respect to the personnel and grievance committees. We concluded there that the members of those committees were not supervisors because, while each committee, acting as a group, had some supervisory authority, no individual member thereof had such authority. The rationale in *Adelphi* is equally applicable to the instant case. Here, as in *Adelphi*, ultimate authority rests with the Board of Trustees rather than with the executive committee. The members of the executive committee are elected by the faculty as a whole and are not requested to advocate the interests of management or act as management's representatives in making their recommendations. Thus, like the members of the two committees in *Adelphi*, the members of the executive committee appear to be acting as representatives of the faculty in giving advice to the president and the trustees. The fact that each member of the executive committee makes his own recommendation concerning tenure or the retention or promotion of a faculty member does not require a different result, as there is no reason to believe that any one member of the committee can *effectively* recommend action in these areas.

We therefore conclude that the members of the executive committee, other than the dean of the college, are not supervisors, and we shall include them in the bargaining unit.

c. The placement of the following *administrative personnel* is also in dispute:

The *dean of administrative services* is in charge of the college's financial aid program, coordinates placement interviews for students, administers standardized tests given to entering students, and evaluates applications of students seeking to transfer to the college. He is also the registrar and, in this capacity, keeps all records relating to the academic progress of students; helps students straighten out any problems with their transcripts, registration, or prerequisites; and sees to it that every student has an official identification card. He arranges the schedule of classes and organizes registration. About 45 percent of his time is spent working with students, approximately 45 percent arranging the college calendar and class

schedule, and 10 percent on general administrative duties. He is an *ex officio* member of the faculty's admissions and academic standards committee and curriculum committee and is *ex officio* secretary of the faculty.⁸ The present incumbent is a tenured professor but no longer teaches.

The *dean of students* serves as coordinator of extracurricular activities at the college. He is advisor to the student government association, the student activities committee, the interdormitory council, and the student publications. During the past year, he has worked with students in informal courses called "exploration and awareness," whereby educational experience is obtained outside the classroom. As *ex officio* chairman of the campus life committee of the faculty, he is responsible for dormitory assignments and disciplinary action; he is on a committee which has worked with the president to revise disciplinary regulations. Essentially all of his time is spent on student affairs. He has degrees in divinity and human relations, but does not teach any formal courses.

The *director of college relations and development* helps to inform the general public of the college's activities in order to attract students and obtain funds. In performing this function, he spends 30 to 40 percent of his time off campus. Students assist him in preparing brochures. He advises students with regard to their publications and radio station and helps evaluate students applying for positions with these media. He does not interview prospective students for the college. About 20 percent of his time is devoted to student affairs. He has a master's degree in music, but does not teach any courses.

As previously indicated, the *business manager* informs the division directors of limitations which they must meet in preparing their budgets and reviews proposed budgets to make sure that they are within such limitations. His signature is required on all purchase orders. In addition, he bills students for tuition and other expenses, assists the dean of administrative services in assigning students to part-time jobs on campus, assesses and collects payment for damage to dormitories, and works with a student committee to improve food services in the cafeteria. He has a bachelor's degree and formerly taught courses in accounting at Pennsylvania State University, but does not teach any courses at Tusculum.

The *director of admissions* was employed pursuant to a contract between the Employer and Johnson Associates, Inc. Under the contract, Johnson Associates furnishes the Employer with the director of admissions and support personnel, such as admissions counselors and secretaries, and is solely responsible for payment of their salaries, expenses, and fringe

⁸ The dean of the college is *ex officio* chairman of the faculty

benefits. Before the present director of admissions was hired, he was interviewed by the president and members of the faculty and administration of the college. The president has the right to ask Johnson Associates to replace the director of admissions for cause. The director of admissions is an *ex officio* member of the admissions and academic standards committee, which recommends for faculty approval policies, standards, and procedures governing admission of students. He is required to follow the admissions policies finally approved by the faculty and administration, but the contract requires the college to obtain the consent of Johnson Associates before changing its admissions policies. The director of admissions is responsible to the president of the college, and makes weekly reports to him on applications, acceptances, denials, deposits, and cancellations. He spends about 50 percent of his time away from campus, recruiting prospective students; on at least one occasion, the president of the college has directed him to go to a particular area for an interview. When on campus, the director of admissions directs the activities of the admissions office staff, arranges for publication of brochures, updates the admissions program, and replies to all letters and inquiries received by his office. He does not teach any courses.

The position of *director of information services* was vacant at the time of the hearing, but the Employer's president stated that it would be filled after the former incumbent's contract expired on June 30, 1972. The director of information services serves as advisor to the student yearbook and newspaper and the campus radio station, helping them secure favorable contracts and advising them on problems with regard to layout, presentation, point of view, and possible libel suits. He serves on the publications committee along with other faculty members and students; this committee selects officers for the student publications. The former incumbent had a degree in journalism, but did not teach any courses in journalism.

The *associate for alumni affairs* maintains contact with alumni and former students and reports their activities after graduation. He also seeks to encourage graduating students to maintain their interest in the affairs of the college after graduation. The present incumbent has taught physical education and served the college in many other capacities, but does not now teach any courses.

The administrative personnel described above, with one exception,⁹ are paid on the basis of 12

months of employment per year, including 1 month's paid vacation, whereas classroom teachers are paid for an academic year (approximately 9 months) with no paid vacation. Otherwise, administrative personnel receive essentially the same fringe benefits as classroom teachers.¹⁰ They are supervised directly by the president of the college, whereas classroom teachers are under the immediate supervision of the dean of the college. Unlike classroom teachers, they do not teach courses in the fields in which they have degrees. Administrative personnel attend and vote at faculty meetings, and, as noted above, one of them is *ex officio* secretary of the faculty. However, the college catalogue lists all of them among members of the administration, while only the dean of administrative services (whose appointment contract also refers to him as a professor of education) is listed among the faculty. In addition, the college policy manual, while including administrative personnel as members of the faculty, describes their duties under the heading "Administration." Furthermore, the dean of administrative services, the dean of students, the director of college relations and development, and the business manager are members of the administrative council, described in the policy manual as the basic policy-making council of the college. The dean of the college is also on this council, which is responsible to the president, but it does not include any classroom teachers.

On the basis of the foregoing facts, we conclude the administrative personnel do not share a sufficient community of interest with the classroom teachers to warrant their inclusion in the unit. They are on a different work schedule and under separate supervision, and the college catalogue and policy manual indicate that the college views them as primarily members of the administration rather than of the faculty. In addition, while the classroom teachers teach in the particular fields in which they have college degrees, so that their work clearly requires education in a specialized area as contemplated in the definition of "professional employee" within the meaning of Section 2(12) of the Act, it does not appear that any particular course of study is required to perform the work of the administrative personnel. Thus, the fact that the director of college relations and development has a degree in music, rather than in some other field, appears to be of no significance in his performance of his duties. Accordingly, we shall exclude the administrative personnel from the unit.¹¹

d. The *library staff* consists of the librarian, the

of college relations and development was not appointed to this position until August 1971

⁹ The contract of the director of college relations and development in 1971-72 was for a 10-month period (September 1, 1971, through June 30, 1972), including 3 weeks' paid vacation, whereas the contracts of other administrative personnel were for the period July 1, 1971, through June 30, 1972. The difference appears to be due to the fact that the present director

¹⁰ In addition to other fringe benefits received by all faculty members, the dean of students and the dean of administrative services are provided with free housing

¹¹ *Florida Southern College*, 196 NLRB No. 133

assistant librarian, and an assistant to the librarian. They assist students and faculty members in using the library and help students learn how to do research. The librarian has a degree in library science, and the assistant librarian has had academic training in this field. These individuals are paid for 12 months of work per year, including 1 month's paid vacation, but otherwise receive the same fringe benefits as other faculty members. They attend and vote in faculty meetings. They are under the immediate supervision of the dean of the college. The librarian advises the curriculum committee as to the available resources of the library.

As the librarian and assistant librarian utilize advanced training in a specialized field—library science—in their work, we find that they are professional employees within the meaning of the Act. In accordance with prior decisions including professional librarians in faculty units,¹² we shall include the librarian and the assistant librarian in the unit found appropriate herein.¹³

e. The full-time faculty members at Tusculum teach 40 quarter hours¹⁴ in the classroom during the academic year. In addition, there are a number of *part-time faculty members* whose teaching loads during the 1971–72 academic year ranged from 4 to 23 quarter hours. Those who teach courses in every quarter receive contracts similar to those of full-time faculty members, while others receive letters of intent appointing them to teach in a particular quarter and setting forth their salary for that quarter. They do not receive fringe benefits other than Social Security, and are not affected by the college's rank, termination, and tenure policies, but are bound by its rules for academic programs.

We have held in prior cases¹⁵ that part-time faculty members who teach at least one-quarter the normal load for full-time faculty members are regular part-time professional employees who must be included in the same unit with the full-time faculty, unless the parties agree to exclude them. We see no reason to depart from the formula heretofore applied in determining the voting eligibility of part-time faculty members. Accordingly, those part-time faculty members teaching 10 or more quarter hours during the 1972–73 academic year will be included in the unit.

¹² *Fordham University*, 193 NLRB No. 23, *C. W. Post Center of Long Island University*, 189 NLRB No. 109.

¹³ As the parties stipulated that the assistant to the librarian is a clerical employee, we shall exclude her from the units.

¹⁴ The number of quarter hours in a course is determined by multiplying the number of quarters during which the course is taught by the number of hours of classes per week in that course. Thus, a course which had 4 hours of classes per week for 3 quarters would require 12 quarter hours of classroom instruction.

¹⁵ *Manhattan College*, 195 NLRB No. 23; *University of Detroit*, 193 NLRB No. 95, *University of New Haven*, 190 NLRB No. 102.

f. The college has a number of *professors emeriti* who served the college for many years in teaching or other capacities. Some of them no longer teach courses; others occasionally teach under letter of intent similar to those received by part-time faculty members. They also informally advise other faculty members and students. They are paid for any course they teach, but otherwise receive only retirement pay and do not receive the fringe benefits available to full-time faculty members. The college furnishes them with offices free of charge, but has no contract with them except for the letters of intent used when they teach courses. They may use all facilities of the college for research and writing. They participate and vote in faculty meetings; one of them is currently marshal of the faculty.

Except to the extent that they teach courses, the status of the professors emeriti is essentially that of retirees, whom the Supreme Court has held not to be "employees" within the meaning of the Act.¹⁶ Any of them who carry a sufficient teaching load to qualify as regular part-time employees under the formula set forth *supra* shall be included. All others shall be excluded from the unit.

g. Certain *adjunct personnel* employed by the nearby Greene Valley Hospital and School teach courses at Tusculum; in return, the college releases some of its faculty members from part of their teaching load so that they can teach courses at Greene Valley. The adjunct personnel work with students in training educable mentally retarded persons and must be certified teachers of such persons. Tusculum does not pay Greene Valley for the services of these personnel, nor does Greene Valley pay Tusculum for the services rendered by members of the Tusculum faculty; each institution pays its own personnel. It thus appears that Tusculum does not control the wages of the adjunct personnel employed by Greene Valley and has such limited control over their working conditions that these adjunct personnel cannot appropriately be included in the unit.

h. Certain faculty members were informed that they would be on *terminal contracts* for the 1971–72 academic year;¹⁷ i.e., that they would not be given new contracts or employed further in subsequent years. As the hearing was held before the end of the 1971–72 academic year, we cannot determine from the record whether the employment of these individuals has, in fact, been terminated. However, in accordance with the Board's customary practice, any such faculty member who is still employed at the time of the elec-

¹⁶ *Allied Chemical & Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Company*, 404 U.S. 157.

¹⁷ The record does not indicate whether any faculty members will be on terminal contracts for the 1972–73 academic year.

tion will be eligible to vote, irrespective of his expectancy of continued employment thereafter.¹⁸

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

All full-time and regular part-time faculty members at Tusculum College, including division directors and professional librarians, but excluding administrative personnel, adjunct personnel paid by Greene Valley Hospital and School, Professors Emeriti, guards and supervisors as defined in the Act, and all other employees.

¹⁸ *Manhattan College*, 195 NLRB No 23, *Whiting Corporation, Spencer and Morris Division*, 99 NLRB 117, 122.

5. The parties stipulated that many faculty members would complete their work for the 1971-72 academic year on or about May 28, 1972, and would not thereafter be present on campus until the fall of 1972. Accordingly, we shall not direct that an election be held at this time, but shall direct that it be held after the commencement of classes for the fall quarter of the 1972-73 academic year, on a date to be determined by the Regional Director, among the employees in the appropriate unit who are employed during the payroll period immediately preceding the date of issuance of the Notice of Election.¹⁹

[Direction of Election and *Excelsior* footnote omitted from publication.]

¹⁹ *Fordham University, supra, Garin Company*, 148 NLRB 1499, 1502