

The Leland Stanford Junior University and The Stanford Union of Research Physicists, Petitioner. Case 20-RC-11813

November 4, 1974

DECISION AND ORDER

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on various dates before Hearing Officer John Meakin of the National Labor Relations Board. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, by direction of the Regional Director for Region 20, this case was transferred to the Board for decision. Thereafter, the Employer, Petitioner, and Intervenor¹ filed briefs,² which have been duly considered.

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 Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

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

1. The Leland Stanford Junior University, herein called Stanford or the Employer, is a private, nonprofit institution of higher learning, and during the relevant period its annual gross revenue exceeded \$1 million. The parties have stipulated, and we find, that the Employer is engaged in commerce. Accordingly, we find that it will effectuate the policies of the Act to assert jurisdiction herein.

2. The Employer contends that the Petitioner is not a labor organization within the meaning of Section 2(5) of the Act. The Petitioner's constitution states its principal objective as being to "improve the wages and working conditions of Research Associates and Research Assistants in the Department of Physics." As we find hereinafter that the physics department research assistants sought herein are not "employees" within the meaning of the Act, and as there is no evidence adduced as to the participation in the Petitioner of any other category which may be

"employees," we find, for purposes of this proceeding, that the Petitioner is not a labor organization within the meaning of the Act.

The parties stipulated, and we find, that the Intervenor is a labor organization within the meaning of Section 2(5) of the Act.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act for the following reasons:

As noted above, Stanford is a private nonprofit educational institution. It is located at Stanford, California, and has an enrollment of approximately 12,000 students. The Petitioner seeks to represent a unit of research assistants in the physics department, hereinafter called RA's. The Petitioner and the Intervenor take the position that the RA's are student-employees who are paid through Stanford's normal payroll machinery for work they are required to perform in order to obtain their salaries, and that as such they are within the protection of the Act. The Employer contends that such a unit is inappropriate because, *inter alia*, these assistants are students, not employees. We find merit in the Employer's position, as we find that the payments to the RA's are in the nature of stipends or grants to permit them to pursue their advanced degrees and are not based on the skill or function of the particular individual or the nature of the research performed. Accordingly, we conclude that the payments are not wages and the RA's are not "employees" as defined in Section 2(3) of the Act.

At issue are 83 RA's of the physics department who undertake research at 5 separate locations: the physics department (Varian), the McCulloch building, the high-energy physics lab, the microwave lab, and the Stanford synchrotron radiation project. All of the RA's are graduate students enrolled in the Stanford physics department as candidates for Ph. D. degrees in physics, and as such are required to engage in research. This research is part of the course of instruction,³ a part of the learning process, with the nature of the research depending on the point to which each candidate for the doctorate has

³ According to Stanford's supplement to the university bulletins titled "How to Get an Advanced Degree in Physics," a candidate must complete "about eight to twelve quarters of work on the research and dissertation" It further states (at pp 2-3)

a The first year (starting in September) is normally devoted to formal courses, with the first summer following course work spent either in directed reading (for an intended theorist) or with an experimental research group. A student planning a theoretical thesis should spend much of his second year in formal courses, with some directed reading, a student planning an experimental thesis should spend approximately half-time his second academic year continuing to learn experimental physics with some research group. He should be attached to a specific group by June 1 of his second year, and should spend that summer becoming fully acquainted with the group's research effort

¹ At the hearing, United Stanford Employees Local 680, Service Employees International Union, AFL-CIO, intervened in the proceedings without objection by any party

² With the Board's consent, Massachusetts Institute of Technology, Cornell University, and Columbia University submitted *amicus curiae* briefs, which have also been carefully considered

Continued

advanced. Thus, the doctorate is a research degree, and independent investigation is required in order to earn it.⁴ Furthermore, it is clear from the publication quoted in footnote 4, *supra*, that a candidate for a doctorate in physics is expected to spend 3 full years, including summers as well as the usual winter semesters, completing the required academic and research work.

Each student's graduate career usually involves progression from fairly carefully supervised research problems designed to acquaint him or her with research techniques, through graduate-student classroom work where a definite answer exists to the research project undertaken, and then to Ph. D.—thesis research into problems where the answer is unknown or uncertain or there may be no answer at all. The exercises prepare the student for selection of a topic for a dissertation and serve as a trial period for both the student and the faculty adviser to determine the student's interest and ability. The preliminary training and research may or may not be related to or be included within the topic ultimately selected for the dissertation, and it appears that a candidate may work on various projects before finding one suitable for a thesis. Thus, the student may work on a practice problem to acquaint him with research, may start to research in one direction and learn there is not enough material for a thesis, or may find something different that interests him or her more. Or, the subject of the research may exceed the capabilities of the student or of his adviser to assist him; the early research may not fit into the thesis; the subject may have been treated by someone else; or there may be no space or equipment available to accommodate the project selected by the student. It is clear, however, that all steps lead to the thesis and are toward the goal of obtaining the Ph. D. degree.

It is clear that the policy of Stanford is to provide financial aid for its graduate students by means of a stipend for doing what is required of them to earn their degrees. The student aid takes many forms; some have fellowships, some loans, some research assistantships, and others teaching assistantships. A student may have different combinations of these financial aids, dependent on the available funds and support for the particular field of the student's interest. The funds out of which RA's receive money are obtained through contracts or grants by a Govern-

ment agency or a third party;⁵ a limited amount is received from endowment income or other moneys used to fund certain research appointments. A student may have financial support from several sources, but Stanford's policy is to equalize, at a certain level, such individual support. Therefore, a student who is receiving support from one of these sources will have a reduction of that amount if he receives additional funds from a second such source.

The amount received by an RA is not determined by the "services" rendered or their intrinsic value but by the National Science Foundation Fellowship level to encourage students to apply for nonuniversity aid. Thus, there is no correlation between what is being done and the amount received by the student, nor is there a correlation between the hours spent in research and the amount received.⁶ Furthermore, although RA's are paid through Stanford's payroll machinery, they do not share the fringe benefits of employees but do have the privileges enjoyed by other students. Thus they have the student health care and insurance, share in various campus activities, and may use student housing; they get no vacation, sick leave, or retirement benefits and have no schooling benefits for their children. Significantly, the payments to the RA's are tax exempt income.

All of the 83 RA's involved herein are Ph. D. candidates. Two-thirds of them (58) received some financial aid in the form of research assistantship funds during winter quarter 1974. Each of these received course credit toward his degree for research he was performing in physics course number 390, in which students do not enroll until they have been assigned a thesis adviser. Physics 390 is the means for keeping track of the students' progress toward degrees. All the research they are doing as RA's is accepted in partial satisfaction of their degree requirements, and the same research is required whether they receive financial aid as RA's or no financial assistance at all. The rest of the RA's (24) during the winter quarter 1974 had completed the required course work and academic residency and were on "terminal graduate registration," which requires registration as a student but not for particular courses. In addition, there were five RA's who were neither taking physics 390 nor on terminal graduate registra-

⁵ The use of the terms "employees" and "salary" in Stanford's classification and payroll system is not conclusive on the Board. Nor are we prepared to pass on Stanford's obligations under Government contracts for research concerning the allocation of funds paid thereunder which prohibit the use of such money for scholarship or fellowships.

⁶ It is understood that RA's on part-time appointments are to work 20 hours a week, but whether they do so is left to them, the number of hours spent is regulated by the project being worked on, which may require more or less than the 20 hours per week. There are instances where students have taken vacations and other periods of time off while receiving funds. During the summer vacation periods the RA's usually receive full-time assignments (i.e., requiring 40 hours per week) for which they receive larger amounts.

b In collaboration with his advisor, each student should prepare a tentative proposal for thesis research. This proposal should be completed by January 1 of year 3, and a copy placed in the student's folder.

⁴ Stanford also requires an oral examination and 3 years of academic residence, 1 of which must be at Stanford, specific academic departments have their own requirements, courses, and examinations.

tion during the winter quarter 1974; three of these were doing thesis research,⁷ one of them was a first-year student just starting on research, and the other was still completing the course work generally undertaken in the first 2 years.

Based on all the facts, we are persuaded that the relationship of the RA's and Stanford is not grounded on the performance of a given task where both the task and the time of its performance is designated and controlled by an employer. Rather it is a situation of students within certain academic guidelines having chosen particular projects on which to spend the time necessary, as determined by the project's needs. The situation is in sharp contrast with that of research associates, who are full-time professional employees who have already secured their Ph. D. degrees and work at research under direction, typically of a faculty member. Research associates are not simultaneously students, and the objective of a research associate's research is to advance a project undertaken by and on behalf of Stanford as directed by someone else. A research associate may not initiate projects and is not responsible for them. In contrast, the RA's are seeking to advance their own aca-

⁷ One of those doing research had decided to drop physics and go to medical school, and one had not yet decided on a well-defined topic

demically standing and are engaging in research as a means of achieving that advancement; at least in the final stage of study, each is likely to be working independently on a novel research project for which he or she is responsible. While research associates are subject to discharge, a graduate student whose work is rated unsatisfactory merely receives a nonpassing grade.

In sum, we believe these research assistants are like the graduate teaching and research assistants who we found were primarily students in *Adelphi University*, 195 NLRB 639, 640 (1972). We find, therefore, that the research assistants in the physics department are primarily students, and we conclude they are not employees within the meaning of Section 2(2) of the Act. Accordingly, no question affecting commerce exists concerning the representation of "employees" of the Employer within the meaning of Section 9(c)(1) of the Act, and we shall dismiss the petition herein.⁸

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

⁸ In view of our conclusion, we need not consider the Employer's contention that, if the RA's are found to be employees, the unit was inappropriate because it was too limited in scope