

7-1979

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Ronald B. Head

David W. Leslie

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Ronald B. Head & David W. Leslie, Bargaining Unit Status of Part-Time Faculty, 8 J.L. & EDUC. 361 (1979).

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Bargaining Unit Status of Part-Time Faculty

RONALD B. HEAD* AND DAVID W. LESLIE**

Whether part-time faculty should be included or excluded from full-time collective bargaining units is an issue which labor boards have had difficulty resolving, and one which has been resolved inconsistently. Because the major difference between part-time and full-time faculty is often a quantitative, and not a qualitative one, and because the teaching function is central to the faculty role, a strong argument can be made that part-timers share a "mutuality of interests" with full-timers and so should be included within the full-time bargaining unit. On the other hand, it can be argued that most part-time instructors hold other full-time jobs, are paid differently from full-time instructors, lack the credentials of full-time instructors, are not eligible for tenure, cannot participate in departmental or campus organizations, and do not perform such duties as advising, community service, or research. Because of such differences, part-timers might not share a "community of interest" with full-timers.

Furthermore, the differences among groups of part-time instructors themselves might be much greater than any difference between part-time and full-time faculty. On any single campus, one can find a wide variety of part-time faculty.¹ There are the "experts" from professional fields such as business or law or science who come to the campus one or two nights per week to dispense their expertise. There are faculty wives who find part-time teaching a welcome diversion from housework. And there are the recent Ph.D.'s who cannot obtain full-time positions. Committed to the teaching profession, many young scholars become the victims of a glutted academic marketplace, and the only academic positions they can secure are part-time ones. Labor boards, then, must determine not whether *all* part-time teachers should be included within a bargaining unit, but *which* part-time teachers should be included.

Unit Determination for Part-Time Employees in Industry

In deciding the first cases involving unit determination of part-time faculty, the National Labor Relations Board and most state labor boards relied upon

The authors gratefully acknowledge support for this research from the Exxon Education Foundation.

* B.A., M.A., Ph.D., Assistant Dean for Career Services, Mary Washington College.

** B.A., M.Ed., Ed.D., Associate Professor of Education, University of Virginia.

¹ H. Tuckman. *Who is part-time in academe?* 64 AAUP BULLETIN 305 (1978).

earlier decisions relating to part-time employment in industry. Essentially, part-time industrial employees are classified as "regular part-time employees" and included within a full-time bargaining unit, or they are regarded as "casual" or "irregular" employees and excluded. As the NLRB has noted, "It has been Board policy to permit regular part-time employees who work a substantial amount of time to cast ballots in representative elections."² The principle of "community of interest" is employed to determine "regular part-time" status. Salary, fringe benefits, type of work, duties, and number of hours regularly worked per week are some of the factors considered. As the NLRB commented in one case:

As it appears that all part-time employees, regardless of the number of hours they work, do the same type of work as full-time employees, are on the regular payroll of the Employer, and work at regularly assigned hours a substantial amount of time each week, we shall include them in the bargaining unit and permit them to vote in the representative election.³

The Sixth Circuit Court of Appeals has eloquently summed up the NLRB's position regarding part-time unit determination in the industrial sector:

The Board has established a policy of including regular part-time production employees in a bargaining unit with full-time production employees. . . . The tests used by the Board are whether the part-time employees work at regularly assigned hours a substantial number of hours each week, perform duties similar to those of full-time employees, and share the same supervision, working conditions, wages, and fringe benefits. . . . Where these factors exist, the Board has held that part-time employees have a community of interest with the full-time employees and sufficient interest to entitle them to be included in the unit.⁴

Regular part-time status, then, has been granted frequently in the industrial sector. Indeed, it has been extended to seasonal part-timers hired only during "peak" working seasons, part-timers working for more than one employer, and pensioners who intentionally work part-time in order not to jeopardize their Social Security benefits.⁵

² C. & H. Foods, Inc., 100 NLRB No. 171, at 1485 (1955).

³ *Id.* at 1485.

⁴ Indianapolis Glove Co. v. NLRB, 400 F.2d 363, 367 (1968). This policy of the National Labor Relations Board evolved from earlier cases. See, for example, Matter of Perfection Garment Co., 72 NLRB No. 39 (1947); Matter of Sussex Hats, Inc., 73 NLRB No. 141 (1947); Matter of Mussel Shoals Broadcasting Co., 74 NLRB No. 36 (1947); Matter of National Cash Register Co., 74 NLRB No. 226 (1947); Matter of Inter-Mountain Tel. Co., 79 NLRB No. 96 (1948); Matter of Florsheim Retail Boot Shop, 80 NLRB No. 200 (1948); Matter of John Janowski, 81 NLRB No. 35 (1949); Burrows and Sanborn, Inc., 84 NLRB No. 35 (1949). Other NLRB cases frequently cited in this context include: Dependable Parts, Inc., 112 NLRB No. 77 (1955); Lancaster Welded Products, Inc., 130 NLRB No. 145 (1961); Economy Food Center, Inc., 142 NLRB No. 103 (1963), *enfd.*, NLRB v. Economy Food Center, Inc., 333 F.2d 468, 471 (1964); H.W. Elson Bottling Co., 155 NLRB No. 63 (1965).

⁵ Display Sign Serv., Inc., 180 NLRB No. 6 (1969); Int'l Van Lines, 177 NLRB No. 33 (1969); Holiday Inns of America, Inc., 176 NLRB No. 124 (1969); Faulks Bros. Constr. Co., 176 NLRB No. 324 (1969); Allied Stores of Ohio, 175 NLRB No. 162 (1969); Sears, Roebuck & Co., 172 NLRB No. 132 (1968); Motor Transp. Labor Relations, Inc., 139 NLRB No. 20 (1962). These cases and those listed in note 6, *infra.*, are cited in this context in K. Kahn, *The NLRB and higher education: The Failure of Policymaking Through Adjudication*, 21 UCLA L. R. 63 (1973), note 188.

There are instances, however, when part-time workers have been excluded from full-time bargaining units. In cases where part-time and full-time employees are not paid the same salaries or do not share the same fringe benefits, the NLRB has usually excluded the part-timers.⁶ In *Mon Clair Grain & Supply Company*, for example, the NLRB ruled that a part-time worker did not share sufficient "community of interest" with his full-time counterparts solely because he was denied certain fringe benefits enjoyed by full-time workers.⁷ Another reason for excluding a part-time worker from a bargaining unit concerns "expectancy of employment." Regardless of how long an employee has worked for an organization, he can lack a reasonable expectation of continuing employment with that organization. In such a case, he might not share a "mutuality of interests" with other workers and therefore be excluded from a bargaining unit. This occurred in *Central Mutual Telephone Company*, despite the fact that the part-time worker had been continuously employed for three years with the company.⁸

Finally, *all* part-time employees can be excluded from a bargaining unit if each party involved agrees to such exclusion. This policy was set forth by the NLRB in *Bachman Uxbridge Worsted Corporation*:

The parties agree that part-time employees are those who are customarily employed on a regular part-time basis for no more than twenty hours a week. In accordance with the Board's recently adopted policy, regular part-time employees will be excluded from a unit where the parties have stipulated for their exclusion.⁹

Early NLRB Decisions Concerning Part-Time Faculty

In the first faculty collective bargaining cases to be decided by the National Labor Relations Board in 1971 the issue of part-time faculty unit determination was a problem. In two cases involving Long Island University, the two candidates for bargaining agent, the American Federation of Teachers (AFT) and the American Association of University Professors (AAUP), wanted a unit consisting of all personnel engaged directly or indirectly in instruction, including part-time faculty. The governing board of the University, however, opposed such a unit and wished to exclude part-time teachers. In these two cases, *C. W. Post Center of Long Island University* and *Brooklyn Center of Long Island University*, the Board ruled for inclusion of part-timers.¹⁰ At C. W. Post Center, the proposed unit consisted of 335 full-time faculty, 206 part-timers, 27 librarians, two guidance counselors, and one research associate, while at Brooklyn

⁶ See *NLRB v. WGOK, Inc.*, 384 F.2d 500 (1967); *Bowman Transp., Inc.*, 166 NLRB No. 111 (1967); *Cent. Mut. Tel. Co.*, 116 NLRB No. 134 (1956).

⁷ 131 NLRB No. 134 (1961).

⁸ 116 NLRB No. 244 (1956).

⁹ 109 NLRB No. 135, at 870, note 9 (1954). The previous policy had been set forth as follows: "The parties stipulated that only those employees in the unit who are employed for more than twenty hours per week should be included and be eligible to vote. However, all regular part-time employees, regardless of the number of hours worked, are necessarily included in the unit. . . . We find that all regular part-time employees are eligible to vote, subject to challenge on the ground that their interests and duties are not sufficient to warrant their inclusion." *Essex-Graham Co.*, 107 NLRB No. 292, at 1492 (1954).

¹⁰ *C. W. Post Center*, 189 NLRB No. 79 (1971); *Brooklyn Center*, 189 NLRB No. 80 (1971).

Center, the unit was composed of 361 full-timers, 96 part-timers, and one guidance counselor.

The NLRB did admit that there were important differences between part-time and full-time faculty at Long Island University. Part-timers were not eligible for tenure, they were not paid on a pro-rata basis, they did not receive most fringe benefits, and they were unqualified to vote at faculty meetings. Additionally, the Board noted that many part-timers had other, regular employment. Despite such differences, the Board found that "the full-time and adjunct faculty were professional employees with common interests who together constitute a unit appropriate for collective bargaining."¹¹

The Board arrived at this finding by relying upon part-time unit determination cases in the industrial sector. Speaking of "well-settled" principles in these earlier rulings, the NLRB stated that it could find no "clear-cut pattern or practice of collective bargaining in the academic field" which would cause it to modify existing industrial unit determination guidelines. Furthermore, the Board denied that faculties are different from other employees, so that principles applying to these other employees would not "prove to be less reliable guides to stable collective bargaining" in education than in any other field.¹²

Essentially, the Board determined that part-timers at these two branch campuses were "regular part-time professional employees"—as opposed to "casual" or "irregular" employees—and thus proper members of the bargaining unit. The reasoning behind this determination was that the "qualifications and chief function, teaching," of part-time teachers were "identical with those of the full-time faculty."¹³

In another early case, *Fordham University*, the NLRB adhered to its rulings at Long Island University and included "regular" part-time faculty in a full-time faculty unit.¹⁴ There were 235 part-time teachers at Fordham and 480 full-timers. The part-timers were ineligible for tenure, did not participate in academic policymaking, and most of them held full-time jobs off campus. Similarly, in *University of New Haven*, "regular" part-timers were included within the full-time unit.¹⁵ With the *New Haven* decision, the precedent of including part-time faculty in bargaining units was fairly well established, and subsequent NLRB rulings cited the case. The Board did note, however, that if all parties stipulated to exclude part-time faculty from a unit, then the NLRB policy would be to exclude them.¹⁶

One question not resolved in these early cases was that of what exactly constituted "regular part-time" status for a faculty member. In *Fordham University*, the NLRB directed the principal parties to devise a method for distinguishing between "regular" and "casual" or "irregular" part-time faculty. In *University of Detroit*, the Board took this task upon itself.¹⁷ Inclusion within the unit was extended to Law School faculty and a formula was devised to

¹¹ C. W. Post Center, 189 NLRB No. 79, at 109 (1971).

¹² R. CARR AND D. VANEYCK, *COLLECTIVE BARGAINING COMES TO THE CAMPUS* (1973), at 86.

¹³ *Id.* at 86.

¹⁴ 193 NLRB No. 23 (1971).

¹⁵ 190 NLRB No. 102 (1971).

¹⁶ *Bachman Uxbridge Worsted Corp.*, 109 NLRB No. 135, at 870, was cited as precedent for this policy.

¹⁷ 193 NLRB No. 95 (1971).

determine eligibility. In effect, all part-time instructors carrying one-quarter or more of a full-time load (in credit hours per semester) were defined as "regular part-time" faculty members. This formula was again applied in subsequent NLRB rulings, such as *Manhattan College*, *Tusculum College*, and *Catholic University*.¹⁸

The New York University Decision

The issue of part-time faculty unit determination did not end with the NLRB's including them in full-time units. Some of the institutions in which part-timers had gained bargaining rights expressed great dissatisfaction, pointing out that the initial NLRB decisions ignored the needs of full-time faculty. Indeed, the large percentage of part-timers at these institutions posed a threat to full-timers. At Brooklyn Center only nineteen percent of the bargaining unit was part-time; at C. W. Post Center and Fordham, however, the percentages were, respectively, thirty-eight percent and thirty-three percent; and at the University of New Haven the percentage was sixty-seven percent.¹⁹ With such large percentages of part-timers within bargaining units, many full-timers felt that bargaining would be dominated by demands and issues pertaining only to part-time employment. In fact, certain issues, such as those of pro-rata pay or tenure provisions for part-timers, might have been in direct conflict with the interests of full-time faculty.

It is not surprising, then, that the NLRB was petitioned to review its position with respect to part-time faculty. After two years and strict reliance upon earlier industrial rulings, the Board finally agreed to conduct a consolidated oral argument.²⁰ This, the Board admitted, was "the result of arguments and contentions advanced by the parties in this and other pending cases as to the function, nature, and character of part-time faculty members," as well as by "the Board's inability to formulate . . . a satisfactory standard for determining the eligibility of adjuncts in Board elections."²¹

After hearing oral arguments, the NLRB totally reversed its position with respect to part-time faculty unit determination in the landmark case, *New York University*.²² Noting that "This issue has been raised before and . . . has consistently been resolved in favor of inclusion," the Board admitted that it had committed an error in allowing such inclusion. "After careful reflection," the Board stated, "we have reached the conclusion that part-time faculty do not share a community of interest with full-time faculty and, therefore, should not be included in the same bargaining unit."²³ The NLRB went on to add: "We are not convinced that the differences between full-time and part-time

¹⁸ *Manhattan College*, 195 NLRB No. 23 (1972); *Tusculum College*, 199 NLRB No. 6 (1972); *Catholic University*, 201 NLRB No. 145 (1973).

¹⁹ Kahn, *supra*. note 5, at 111.

²⁰ Oral argument, as Kahn points out, "... is a departure from the normal adjudicative approach of the NLRB. In this case there was oral argument by the parties to three pending cases. The issue for argument was a broad one, *i.e.*, the inclusion of part-time faculty in a full-time faculty bargaining unit. Thus, many different arguments were raised and the Board members were given an opportunity to ask questions on the material presented." Kahn, *supra*., note 5, at 110.

²¹ *New York University*, 205 NLRB No. 16, at 9, note 9 (1973).

²² 205 NLRB No. 16.

²³ *Id.* at 6.

faculty are so substantial in most colleges and universities that we should not adhere to the principle announced in the *New Haven* case."²⁴

The prime determinant for an appropriate bargaining unit, the Board stated, is "mutuality of interest in wages, hours, and working conditions."²⁵ Part-time and full-time faculty at New York University, however, did not share this "mutuality of interest" because of differences in four major areas: (1) compensation, (2) participation in University governance, (3) eligibility for tenure, and (4) working conditions. Part-timers were paid much less than full-timers, they received no fringe benefits and were not eligible for tenure, they did not participate in departmental affairs and were excluded from both the University Senate and the Faculty Council, they had no responsibilities besides teaching, and, finally, their primary interest (and income) lay outside the University. Because of these differences, the NLRB concluded that part-time faculty did not belong in the full-time bargaining unit:

We should not endanger the potential contribution which collective bargaining may provide in coping with the serious problems confronting our colleges and universities by improper unit determinations. In our judgment, the grouping of the part-time and full-time faculty into a single bargaining structure will impede effective collective bargaining.²⁶

Recent NLRB Decisions

Most cases brought before the NLRB since the *New York University* decision have cited that decision as precedent for excluding part-time faculty from full-time faculty bargaining units. For example, part-timers were excluded in *Fairleigh Dickinson University*, and this was extended to adjunct law professors in *University of San Francisco*.²⁷ Other pertinent cases in which part-timers were excluded occurred at Point Park College, the University of Miami, Yeshiva University, and the University of Vermont.²⁸

The significance of the teaching function in determining "community of interest" between part-time and full-time teachers has been deemphasized by the NLRB. In a case from Puerto Rico, for instance, the Board was asked to decide whether fourteen part-time lecturers carrying nearly full-time teaching loads should be included within the full-time unit. Citing *New York University*, the NLRB decided to exclude these part-time lecturers.²⁹ Although they had a heavy teaching load, the NLRB noted that the lecturers were hired on a semester basis, were ineligible for tenure, were not required to attend faculty meetings or conferences, and not participate in university governance, and did

²⁴ *Id.* at 6.

²⁵ *Id.* at 7.

²⁶ *Id.* at 7-8.

²⁷ *Fairleigh Dickinson University*, 205 NLRB No. 101 (1973); *University of San Francisco*, 207 NLRB No. 15 (1973).

²⁸ *Point Park College*, 209 NLRB No. 152 (1974); *University of Miami*, 213 NLRB No. 64 (1974); *Yeshiva University*, 221 NLRB No. 169 (1975); *University of Vermont*, 223 NLRB No. 46 (1976).

²⁹ *Fundacion Educativa Ana G. Mendez, Inc.*, 24-RC-5690 (unpublished, 1975). See also P. Walther, *The NLRB in Higher Education*, Paper presented to the ACBIS-CUPA Collective Bargaining Conference, Washington, D.C. (December 11, 1977).

not engage in student consultation. For these reasons, it was found that they did not share "community of interest" with regular full-time teachers.

Although most cases brought before the NLRB since the *New York University* decision have been decided in favor of exclusion, there have been some instances in which the Board felt that certain part-time instructors should be included within a full-time unit. In a case involving Kendall College, for example, it was established that two types of part-time teachers were employed. One type was employed strictly on a temporary basis. These teachers were paid a flat, hourly rate, were ineligible for pay increases, fringe benefits, or tenure, and did not participate in university governance. The other type of part-timer was employed on the basis of a pro-rata, continuing contract. These teachers participated in university governance, were given pro-rata pay, and enjoyed most of the College's fringe benefits. The first type of part-time instructor was excluded from the full-time bargaining unit, but the second type was included, it being determined that it shared a "community of interest" with full-time faculty.³⁰

In *Cottey Junior College*, the NLRB was faced with a situation in which full-time administrators also served as part-time instructors.³¹ Generally, the Board has excluded administrators from faculty bargaining units on the grounds that they are neither "professional employees," as defined by the National Labor Relations Act, nor teachers.³² In this case, however, the administrators were also part-time teachers, and the NLRB included them within the full-time faculty unit, stating that they served as "full-time dual function employees." In this regard, the Board reasoned that they shared a "mutuality of interests" with regularly employed full-time faculty.

As should be evident, the NLRB determines unit composition on a case-by-case basis. The Board has developed guidelines to exclude most part-time faculty from full-time units, but these are not automatically applied. As Peter Walther, a member of the NLRB, has commented:

The lesson to be learned . . . is that *NYU* will not necessarily be applied automatically to exclude part-time faculty members from faculty bargaining units. The greater the role you give part-timers in the daily functioning of the institution, and the greater their participation in university-provided fringe benefits, the more likely it is that they will be found to share a community of interest with their full-time colleagues sufficient to justify their inclusion in a single bargaining unit.³³

State Labor Board Decisions Concerning Part-Time Faculty

If unit determination decisions by the National Labor Relations Board concerning part-time faculty have caused confusion and controversy, state labor boards have done no better. Indeed, there has been considerable inconsistency from one jurisdiction to another. Partly this is the result of different conditions of employment from one location to another, and partly it can be

³⁰ Kendall College, 13-RC-13911 (unpublished, 1976). With regard to this and the case cited in note 31, *infra.*, see Walther, note 29, *supra.*

³¹ 17-RC-7979 (unpublished, 1976).

³² See, e.g., Tusculum College, 199 NLRB at 30-31; Point Park College, 209 NLRB at 1065.

³³ Walther, note 29, *supra.*

attributed to the uncertainty with which NLRB has dealt with the part-time issue.³⁴

The inconsistency with which state labor boards have ruled on the part-time issue is exemplified in several decisions handed down during the late nineteen-sixties by the New York State Public Employment Relations Board (PERB) with respect to the City University of New York (CUNY) and the State University of New York (SUNY).³⁵ At SUNY, a single unit for the entire professional staff of the University was approved by PERB. Some 16,000 professional employees were involved and, even though none of the parties had requested it, 2000 part-time faculty members were included.

At CUNY, however, part-timers were excluded from the bargaining unit. The two representatives for bargaining agent had petitioned for two units, one composed of full-time, tenure-track personnel, the other consisting of part-time, temporary personnel. The University's governing board, however, supported a single unit composed of all instructional staff members. The first ruling was made by PERB's Director of Representation, who supported the idea of separate units for full-time and part-time employees. His reasons for separating the two groups were as follows:

At the formal hearing it was made clear that, whereas the permanent staff had tenure, temporary staff do not and thus may be "dropped" for any reason. Much of the temporary staff has full-time employment elsewhere and, generally, considers employment at universities as a secondary source of income. Thus, only the permanent staff is expected to participate in committee work, conferences, research and writing, and in the development and administration of teaching policies. Further, the wages of a temporary staff, and fringe benefits for the two groups are quite different with much of the temporary staff not being entitled to most of them. The desire of many of the temporary staff to initiate fringe benefits seems to me to create a clear conflict with the desire of the permanent staff to improve them, in terms of competition for available funds. While these two groups, as teachers, have some interests in common, I felt that the major differences in important terms and conditions of employment create a sharp conflict of interest which mandate separate representation.³⁶

The University governing board appealed this ruling to the full three member Public Employment Relations Board, which sustained the ruling by a two-to-one vote. PERB noted that at CUNY temporary, part-time instructors were nearly as numerous as permanent, full-timers, and that their major loyalties

³⁴ State labor relations boards often look to the NLRB for guidance on difficult or controversial issues. NLRB precedents are generally accorded great weight as a result. In part, this may be due to the more reliable publication of NLRB opinions; state board opinions are less reliably accessible in published reports. For this reason, state labor board opinions cited hereafter are to some extent derived from secondary sources.

³⁵ City Univ. of New York, Case No. C-0008 (PERB, 1968); State Univ. of New York, Cases No. 0253, 0260, 0262, 0263, 0264, 0351 (PERB, 1969). See also Carr and VanEyck, *supra.*, note 12, Kahn, *supra.*, note 5. Supporting information is contained in correspondence from Susan B. Prager, Vice President, Parttime Personnel, Professional Staff Congress, City University of New York (Jan. 11, 1978).

³⁶ As cited by Kahn, *supra.*, note 5.

and interest lay off campus.³⁷ PERB also noted the differences between the two groups, reasoning that any "community of interest" could not exist with such differences present:

We believe that differences between faculty-rank-status employees and non-annual lecturers—whether they teach more or less than six hours a week—are of sufficient magnitude to preclude their being placed in the same negotiating unit. Faculty-rank-status personnel are all permanent staff in that they are tenured or hold positions leading to tenure. Non-annual lecturers, on the other hand, are appointed and reappointed for only one semester at a time. Faculty-rank-status employees receive many and various fringe benefits, the cost and value of which are considerable. Non-annual lecturers, on the other hand, do not receive these fringe benefits. Faculty-rank-status personnel exercise important responsibilities regarding the operation of the University by their service on departmental committees. Non-annual lecturers, on the other hand, rarely serve on departmental committees. Faculty-rank-status personnel have their primary personal commitment to the City University; non-annual lecturers, on the other hand, are likely to be full-time high school teachers working at the University at night, or businessmen, accountants, lawyers, or graduate students whose primary professional commitments are elsewhere.³⁸

Three years later, when the collective bargaining contracts were expiring, the parties reversed their earlier positions. Union officials demanded one unit for all instructional personnel, while the University's governing board wanted separate units for full-time faculty, part-time faculty, and non-teaching personnel. This reversal was resolved by PERB by allowing employees to vote on whether they desired a single unit. The vote in favor of the single unit was 8258 to 942, so that by the summer of 1972 instructional staff at CUNY were organized into a single unit.³⁹

This inconsistency in public unit determination cases concerning part-time faculty can also be seen in two cases involving the Michigan Employment Relations Commission (MERC) in 1972. At Wayne State University all parties stipulated that "adjunct faculty" (those teaching one course in the evening) should be excluded from the bargaining unit, but that "fractional-time teaching faculty" (those teaching more than half-time) should be included. Both the MERC trial examiner and the full board accepted this stipulation.⁴⁰

At Eastern Michigan University, the institutional governing board wanted all part-time faculty excluded from the bargaining unit, while the unions wanted to include all part-timers teaching six hours or more for two or more consecutive semesters. The trial examiner ruled that part-timers should be excluded, because they did not share employment interests with full-timers. He noted that these part-time teachers did not advise students, help formulate

³⁷ At the time, there were 4747 tenure-track, full-time instructional staff members and 4258 temporary, non-tenured employees.

³⁸ As cited by Kahn, *supra.*, note 5.

³⁹ See Carr and VanEyck, *supra.*, note 12.

⁴⁰ Wayne State University, Cases No. R71B-58, R7B-75, R71B-79, R71C-137 (MERC, 1972). For a discussion of this and the case cited in note 41, *infra.*, see Carr and VanEyck, *supra.*, note 12.

educational policy, or participate in departmental meetings. Furthermore, they were ineligible for tenure and were paid differently from their full-time counterparts.

MERC reversed the ruling of the trial examiner, asserting that "community of interest" between part-time and full-time faculty members was present.⁴¹ The Commission stated:

Lecturers have common intellectual interests with faculty members whose teaching work they supplement. Certainly they share a community of interests toward the student's development. Since the functions of the lecturers are not dissimilar in terms of the educational process, from those of the faculty members and staff counselors, we conclude that the similarities of functions require inclusion of the lecturers in the bargaining unit.⁴²

Although rulings have been inconsistent among the various states, public labor boards are more prone to include part-time faculty within a full-time bargaining unit than is the National Labor Relations Board. In at least nine states, for instance, board rulings have included part-timers within units.⁴³ In Wisconsin, the Employment Relations Commission has stated that any teacher employed, regardless of the number of hours worked, has an interest in working conditions, so that all regular part-time instructors should be included in a full-time bargaining unit.⁴⁴ Indiana and Montana have ruled that part-timers may be included, provided there is "community of interest" between them and their full-time colleagues.⁴⁵ In this respect, "irregular" part-timers, "casual" employees, or evening teachers may well be excluded from a unit, while other part-timers are included.⁴⁶ Connecticut's statute draws the line on part-time employees to exclude those who work half-time (20 hours per week) or less. In a decision concerning the state's technical schools, the labor board ruled that teachers carrying a half-time load (seven and one-half contact hours per week) or less should be excluded from the unit; those with a heavier load were to be included. Connecticut, unlike California, does not measure continuity of employment in deciding to include or exclude part-time workers.⁴⁷

Two recent cases are significant in this respect. One, involving the University of Massachusetts, is significant because of the lengthy and persuasive argu-

⁴¹ Eastern Michigan University, Cases No. R70K-407, R71A-2 (MERC, 1972).

⁴² As cited in Carr and VanEyck, *supra.*, note 12. Part-time teachers had also been included in an earlier case. Southwestern Michigan College, Case No. R68E-174 (MERC, 1969). They have also been included in more recent cases. Kirtland Community College, Case No. R74D-137 (MERC, 1974).

⁴³ These states are California, Indiana, Massachusetts, Michigan, Montana, Oregon, Pennsylvania, Vermont, and Wisconsin.

⁴⁴ Hurley Educ. Assoc., Case V, No. 13309, ME-503 (WERC, 1970). See also Madison Teachers, Inc., Case No. 19827, MP-1263 (WERC, 1977).

⁴⁵ See, e.g., Kokomo-Center Township Consol. School Corp., Case No. R-73-67-4315 (IEERB, 1974); Fayette Co. School Corp., Case No. R-73-4-2395 (IEERB, 1974); *In re Montana Federation of Teachers* (Dawson College), File No. E#605 (BPA, 1975).

⁴⁶ See, e.g., Pittsfield School Comm., Case No. MRC-2159 (MLRC, 1976); Bd. of School Directors of City of Milwaukee v. WERC, 1 PBC §10, 109 (WERC, 1970); PLRB v. Richland School Dist., Case No. C-9038-C (PLRB, 1977).

⁴⁷ Federation of Technical College Teachers, Cases No. SEPP-3846, SPP-3887, SPP-3929, Decision No. 1567, Connecticut State Board of Labor Relations, 1977.

ments advanced for inclusion of part-timers within a full-time bargaining unit. The other, involving a California community college, could greatly improve part-time faculty employment rights throughout a state noted for its progressive attitude toward part-time faculty members.

The *University of Massachusetts* Decision

At the University of Massachusetts, union officials supported a faculty collective bargaining unit including part-time faculty, while the governing board of the institution opposed inclusion of part-timers. The Massachusetts Labor Relations Commission (MLRC) deliberated for two years to determine the appropriate unit composition at the University of Massachusetts—the longest hearing in MLRC history—and in 1976 ruled that all part-timers who had taught at least one course for three consecutive semesters would be eligible for inclusion within the full-time bargaining unit.⁴⁸ In this respect, part-timers from all branch campuses of the University shared “community of interest” with full-timers.

The MLRC found that part-time faculty generally performed the same qualitative duties that full-time faculty performed, the major difference between the two groups being in quantitative duties. Part-timers, the Commission noted, were recruited less formally than full-timers, but they did “teach, advise, participate on departmental committees and carry on their own scholarly or quasi-scholarly research activities.”⁴⁹

The Commission also noted that most fringe benefits available to full-time faculty were also available to part-time faculty. Part-timers enjoyed sick leave, bereavement leave, tuition assistance, and were eligible for merit increases in pay. They were also eligible for sabbatical leave. To receive State Retirement System benefits, however, a part-time teacher had to be regularly employed at least one-quarter time, and to be covered under the University’s medical insurance program, that teacher would have to be employed one-half time.

Although not authorized to sit on the University Assembly or Faculty Senate, part-time instructors did participate in university governance at both the departmental and institutional levels. Furthermore, accountability procedures were substantially the same for both part-time and full-time faculty. All faculty members were subject to both departmental committee and student evaluations, and identical administrative forms were utilized to evaluate both part-time and full-time teachers.

One problem noted by the MLRC was the difficulty of classifying part-time faculty. Indeed, it claimed that “a complete description of the terms and conditions of all part-time faculty members employed by the University would require a treatise.”⁵⁰

“The more difficult question,” the Commission stated, was not whether to include or exclude part-timers, but that “of drawing the line for exclusions of that portion of the part-time faculty who do not share a community of interest

⁴⁸ University of Massachusetts, Cases No. SCR-2079, SCR-2082 (MLRC, 1976).

⁴⁹ *Id.* at 24.

⁵⁰ *Id.* at 20.

with the remainder of the faculty."⁵¹ As noted, the MLRC answered this question by excluding those part-timers who had not taught at least one course for three consecutive semesters or were not, at the time of the ruling, teaching their third consecutive semester course. This decision was based upon "the reasonable expectation that persons who have taught with the above-described regularity maintain a sufficient and continuing interest in their working conditions to warrant their inclusion within the unit."⁵²

The Commission specifically noted that its decision was contrary to the NLRB ruling in *New York University*. Point by point, it was shown that part-time faculty at the University of Massachusetts shared "community of interest" with full-time faculty with regard to (1) compensation, (2) participation in university governance, and (3) working conditions. Compensation for part-time teachers, the MLRC stated, "is related to the number of classes taught per semester or per year" and "The University's policy . . . has been to divide full-time positions into fractions and to hire part-time personnel for each of the fractions."⁵³ With respect to university governance, part-timers at Massachusetts participated in departmental committees, evaluated other faculty members, and helped develop curriculum. Finally, working conditions were virtually identical for part-time and full-time faculty.

The fourth criterion used by the NLRB in *New York University* to compare part-time and full-time employees, eligibility for tenure, was absent in this case. Part-time faculty at the University of Massachusetts were not eligible for tenure. However, the Commission stated that tenure was not a true indication of "community of interest." Quoting Member Fanning's dissent in *New York University* tenure was defined as "no more than a measure of continuity of interest, and an extreme one at that, not whether such interest exists," and the MLRC concluded that "part-time personnel without tenure or the opportunity for tenure maintain a sufficient continuing interest in their working conditions to warrant their inclusion in the unit."⁵⁴

After this decision was handed down by the MLRC, the University, dissatisfied with the ruling, refused to negotiate, assuming that the union would file an unfair labor practice charge and initiate legal proceedings. Such an action had already occurred at Boston University. Boston University had refused to bargain, claiming that the NLRB had erred in excluding certain professionals and part-time faculty from the unit. The decision was appealed to the U.S. First Circuit Court of Appeals and has yet to be decided.⁵⁵

In this sense, the University of Massachusetts desired that legal proceedings would drag on for years.⁵⁶ However, the union did not file an unfair labor practice charge. Instead, it picketed and lobbied. Eventually, State Representative James Collins of Amherst persuaded management and labor to sit down

⁵¹ *Id.* at 20-21.

⁵² *Id.* at 29.

⁵³ *Id.* at 27.

⁵⁴ 205 NLRB at 12, as cited in *University of Massachusetts*, SCR-2079, SCR-2082, at 28-29.

⁵⁵ See *Boston University challenges NLRB, ACBIS FACT SHEET #35*, at 2 (1977).

⁵⁶ See S. Carey, *Reasons why faculty members accept or reject unions in higher education: The University of Massachusetts experience*, 7 *J. LAW AND EDUCATION* 79 (1978).

and thrash out their differences. The conflict was then settled in less than ninety days.⁵⁷

The *Los Rios* Decision

California's collective bargaining statute, the Rodda Bill, enacted in 1975, states: "A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer."⁵⁸ As Thomas Fryer points out:

This provision . . . has enormous significance for the bargaining process in community colleges. A strict constructionist approach would hold that each and every classroom teacher, whether a part-time teacher of one class on an occasional and irregular basis or a full-time tenure faculty member, had equal status and weight in bargaining. This interpretation would vest in the part-time faculty sufficient voting power, at least theoretically, to control the bargaining process.

Another interpretation of the passage, however, could accommodate the definition of a class of "casual" teachers, utilizing National Labor Relations Board precedents, and might exclude from the bargaining process part-time persons who are employed irregularly, below a certain percent of full-time employment, or both.⁵⁹

The question of part-time faculty collective bargaining rights is a matter of great concern in California because of the large number of part-timers employed in the state. This is especially true with respect to the community college sector. Many fear that if part-time teachers are included within a full-time bargaining unit, they may gain enough power to press successfully their demands for better status and compensation. They may outnumber their full-time counterparts, outvote them, and transform faculty unions into organizations asserting primary interest in part-time issues. In this sense, many full-time faculty members are quite vocal in desiring to keep part-timers out of California bargaining units.⁶⁰ Similarly, institutional officials fear that part-time inclusion within faculty collective bargaining units will disrupt negotiations. These officials also point out that part-time claims will result in financial demands that institutions simply cannot meet.⁶¹

In fact, this issue is so important in California that in the spring of 1977 a Hearing Officer released a decision concerning part-time unit determination within the San Joaquin Delta Community College District without even waiting for the California Educational Employment Relations Board (EERB)

⁵⁷ *Id.* at 85-86.

⁵⁸ CAL. LAB. CODE §3545 (b)(1) (1975).

⁵⁹ T. Fryer, *New Policies for the Part-Time Faculty*, in LEADERSHIP FOR HIGHER EDUCATION: THE CAMPUS VIEW, (R. Heyns, ed., 1977).

⁶⁰ See THE CONTROVERSY OVER PART-TIMERS' RIGHTS, PERR 2 (1977).

⁶¹ *Id.* at 5-6. California's community colleges, being financed in substantial part by local property tax revenues, are especially concerned about finances and project a serious impact on part-time faculty employment in the wake of popular approval of "Proposition 13." See B. T. Watkins, *California Community Colleges Brace for Cuts in Local Revenue*, in THE CHRONICLE OF HIGHER EDUCATION, May 30, 1978, p. 10.

to set precedent for the case.⁶² The Hearing Officer decided to include within the full-time unit all part-time teachers who had served more than two semesters within a three-year period. Furthermore, he stated that distinct differences exist between community college and university teachers, so that the NLRB's *New York University* decision is inapplicable at the community college level.

On June 9, 1977, the Educational Employment Relations Board issued guidance on this controversial issue with release of its long-awaited decision concerning the Los Rios Community College District.⁶³ This District consists of three separate campuses, employing (at the time) approximately 740 full-time day instructors, 48 part-time day instructors, and 1100 part-time evening instructors (370 of which were also full-time day instructors). Both the Los Rios Teachers' Association (California Teachers' Association [CTA]/National Education Association [NEA]), petitioners for bargaining agent, and the Los Rios College Federation Teachers, Local 2279 (American Federation of Teachers [AFT/AFL-CIO]), intervenors, urged that part-time faculty be included with full-time faculty in a single bargaining unit. The District, however, urged exclusion of the part-timers from the negotiating unit, claiming that (1) the language of the applicable statute, Section 3545(b) (1), requiring all classroom teachers to be included in the same unit, is not applicable at the community college level, because community college teachers are referred to as "instructors" or "faculty," but not as "classroom teachers," (2) part-time instructors lacked sufficient "community of interest" with full-time instructors to be included in the same unit with them, and (3) including both part-time and full-time instructors in the same unit would "impede the efficient operation of the District because the inherently divergent interests of these two groups of employees necessarily provoke internal instability and strife."⁶⁴

The Board ruled that all part-time instructors who taught classes for an equivalent of three of the preceding six semesters should be included within the faculty bargaining unit. Part-time and full-time faculty, the Board stated, shared nearly identical job qualifications and job functions, were hired in essentially the same manner, participated in the same faculty organizations, were afforded similar benefits (with the exception of tenure for part-timers), and were committed to the same institutional environment.

Noting that their decision was contrary to that of the NLRB in *New York University*, the EERB commented:

We do not find this approach applicable to the context of California's community college system. The NLRB cases deal with four-year universities which place an emphasis on research and writing not found in the community college system. The community colleges are primarily teaching institutions which offer instruction through the second year of college. . . .

We find significant distinctions between the facts in this case and those in *New York University*. Unlike *New York University*, the compensation of part-time

⁶² San Joaquin Delta Community College District, Case No. S-R-459 (EERB, 1977). See also THE CONTROVERSY OVER PART-TIMERS' RIGHTS, *supra*, note 60.

⁶³ Los Rios Community College District, Case No. S-R-438, 1 PERC 185 (EERB, 1977).

⁶⁴ *Id.* at 186.

faculty here is directly related to that of full-time faculty. . . . In addition, part-time faculty participate in the faculty governance functions of the colleges in the same manner as full-time instructors by serving in the faculty senates and on various advisory committees. . . . Finally, while differences do exist in the working conditions of full- and part-time instructors, their job duties and responsibilities are virtually identical.⁶⁵

Thus, three of the four guidelines established by the NLRB in the *New York University* decision were held to be inapplicable at Los Rios. Part-time faculty were paid in a similar manner to full-time faculty, they participated in university governance, and their working conditions were "identical" to full-time conditions, in that all faculty members taught identical courses, counseled students, were evaluated in the same fashion, and enjoyed many of the same privileges and benefits.

With respect to the fourth NLRB guideline, eligibility for tenure, the EERB did not consider tenure as a significant factor in determining "community of interest," because the question of part-time tenure has yet to be completely resolved in the California courts. "Moreover," the Board added, "tenure is but one factor for consideration in determining community of interest."⁶⁶

The Board had the same difficulty in distinguishing "regular" part-time faculty from "casual" or "irregular" part-time faculty that the MLRC had in the *University of Massachusetts* decision. As a matter of fact, in arriving at its solution of including in the unit only those part-timers who had "taught the equivalent of three or more semesters during the last six semesters,"⁶⁷ the EERB cited *University of Massachusetts*. In arriving at this solution the Board commented:

While most jurisdictions have approached this ticklish problem by looking to the percentage of full-time hours taught by part-time faculty, it has not been a particularly satisfying solution. Rather, we think that persons who continually, semester after semester, teach in the community college have demonstrated their commitment to and interest in its objectives. It seems unlikely that persons who have only a minimal interest in the community college will continually seek or obtain employment there.⁶⁸

The *Los Rios* decision seems to have settled the issue of part-time unit determination in California community colleges, as it has already been cited as precedent in a subsequent case involving the San Francisco Community College District.⁶⁹ Despite arguments by the District in the case, the Hearing Officer ruled that "there is insufficient evidence in the record to support a retreat from the recently adopted standard for part-time instructors in *Los Rios*."⁷⁰

⁶⁵ *Id.* at 188.

⁶⁶ *Id.* at 188.

⁶⁷ *Id.* at 189.

⁶⁸ *Id.* at 189. Cases in which the percentage of full-time hours taught by part-timers was used to determine "regular part-time" status include: Community College of Philadelphia, 7 PPER 116 (PLRB, 1976); OSEA v. Eastern Oregon State College, 1 Ore. PECBR 681 (1976).

⁶⁹ San Francisco Community College District, Cases No. SR-R-519, SF-R-525, 2 PERC § 2003 (EERB, 1977).

⁷⁰ *Id.* at 15.

Separate Bargaining Units for Part-Time Faculty

In cases where part-time teachers have been excluded from full-time bargaining units, there have been attempts to organize separate, part-time faculty units. As has been indicated, the first collective bargaining contracts at the City University of New York stipulated separate instructional units for part-time and full-time instructors, and many other institutions have followed this practice, all parties agreeing in advance to the stipulation.⁷¹ In cases where conflict has arisen and the issue has been appealed for resolution to labor boards, the results have been mixed. In many cases, separate units have been approved for certain "irregular" part-time teachers. In Wisconsin, for example, public school substitute teachers constitute a separate bargaining unit; and in Massachusetts a separate unit is proper for evening teachers who teach adults rather than children, are paid on a different scale than other teachers, and lack the substantive and procedural benefits afforded "regular" teachers.⁷² In other cases, separate units have been prohibited. At the Community College of Philadelphia, for example, the Pennsylvania Labor Relations Board (PLRB) ruled in 1976 that part-time instructors do not constitute a unit appropriate for purposes of collective bargaining.⁷³

Goddard College is the only published case in which the National Labor Relations Board has addressed this issue.⁷⁴ The Board determined that there was insufficient "community of interest" between part-time faculty members themselves to warrant establishing a part-time bargaining unit. The Board concluded:

... The record establishes that these employees are different heterogeneous groups of people whose only common identification is their part-time work for the Employer. In our view, such an identification, in light of their different wages, hours, responsibilities, locations, and conditions of employment, does not establish a community of interest sufficient to warrant their being grouped together in a single bargaining unit.⁷⁵

In this respect, separate bargaining units for part-timers are likely to be approved only if there is a "community of interest" among the part-timers at any institution. Similarities and differences must be taken into account, and part-time faculty members must demonstrate that they share the same functions, duties, and working conditions.

Determining Appropriate Unit Composition for Part-Time Faculty

The foregoing discussion has outlined the brief history and trends of determining appropriate unit composition for part-time faculty in collective bargaining. Several points, however, should be made before ending such discussion. First, the significance of part-time unit determination cannot be over-emphasized. Unit determination is a crucial issue because it offers a direct

⁷¹ See D. Ikenberry, *A Descriptive Study of Contract Provisions Affecting Part - Time Faculty Included in the Bargaining Unit at Post - Secondary Institutions*, unpublished Ed.D. dissertation, University of Virginia, 1978.

⁷² See note 46, *supra*.

⁷³ Community College of Philadelphia, 7 PPER 116 (PLRB, 1976).

⁷⁴ 216 NLRB No. 81 (1975).

⁷⁵ *Id.* at 459.

vehicle for securing better working conditions for part-time employees. Within a bargaining unit, part-timers can ask that job status and part-time compensation become items for negotiation. In effect, a bargaining unit can become a channel through which part-time instructors can claim what they feel to be their rights. This is especially true, as has been shown in California, in units in which full-time teachers are outnumbered and outvoted by part-time teachers.

More importantly, once "community of interest" is established between part-time and full-time faculty, a rationale is available for part-time claims concerning status and compensation. In other words, "community of interest" is a principle which can be employed to show equality in status and compensation between part-timers and full-timers. The factors relied upon to determine "community of interest" can be used with respect to status and compensation. If working conditions are virtually identical between part-time and full-time faculty, it can be argued that both groups share an interest in "property." Thus, part-timers can claim a right to permanent status and tenure benefits. Similarly, identical working conditions should confer identical (or pro-rata) pay schedules. In this respect, "community of interest" is an extremely important principle, and unit determination can become a powerful means for achieving part-time employment rights.

"Community of interest" between part-time and full-time faculty, however, has been applied inconsistently. Partly this is the result of confusion among various labor boards. Even more so, it is the result of differences among part-timers themselves within institutions and differences among part-timers in different geographical locations. In effect, such inconsistency has operated against securing better part-time faculty working conditions.

However, certain trends have emerged and these are worthy of note. First, certain factors are consistently applied to determine "community of interest." The most common factors, as should be evident, are those applied by the NLRB in its *New York University* decision: (1) compensation, (2) participation in university governance, (3) eligibility for tenure, and (4) working conditions. Three of these, as has been shown, have been afforded great significance in almost all unit determination decisions. At New York University and CUNY, for instance, compensation and working conditions were different between part-time and full-time faculty members, and part-timers did not participate in institutional governance functions. For these reasons, part-timers were excluded from full-time units. At the University of Massachusetts and in the Los Rios Community College District, though, compensation, working conditions, and participation in governance were essentially identical between part-time and full-time faculty. Thus, part-timers were included in full-time units.

The fourth factor established in the *New York University* decision, eligibility for tenure, has not been afforded as much weight as have the other three. At both the University of Massachusetts and Los Rios Community College District, tenure was considered as only one indication of "community of interest," and not a significant one at that.⁷⁶

⁷⁶ See A. Menard and N. DiGiovanni, *Preparing for Unit Representation Hearings Before Labor Boards*, in HANDBOOK OF FACULTY BARGAINING (G. Angell and E. Kelley, eds., 1977). Under the four factors established by the NLRB in *New York University*, 205 NLRB at 7, the authors list questions which should be asked concerning part-time faculty employment.

As has been indicated with respect to industrial rulings by the NLRB, other factors can also be taken into account. Past bargaining history can be a very important indication of "community of interest" between part-time and full-time faculty, as can the extent of organization of part-timers within a particular institution. In most instances, though, past bargaining history is absent, and part-timers are not organized at all. Another factor to be considered, when either of two groups might be appropriate, is the desires of the employees themselves. Again, this has been afforded little significance to date.

Perhaps the most difficult question faced by labor boards is to decide which instructors are "regular part-time" employees who should be included within a faculty bargaining unit, and which are "irregular" or "casual" who should be excluded. Some labor boards have relied upon industrial precedent and considered the number of hours worked by part-time teachers. This has been unsatisfactory because so many duties of both part-time and full-time teachers lie outside the classroom and cannot be quantified. Other labor boards, including the NLRB, have evaded the issue by denying faculty unit status to almost all part-time instructors. However, the emerging trend in this area, as exemplified in the *University of Massachusetts* and *Los Rios* decisions, seems to be that "regular part-time" teachers are defined by the continuity of their employment and not by the number of hours taught.

One final point needs to be made concerning part-time faculty unit determination, and that is that institutional type is not nearly so instrumental in deciding unit status as might be assumed. For instance, the California Educational Employment Relations Board, in the *Los Rios* decision, indicated that part-time faculty are much more likely to share "community of interest" with full-time faculty at community colleges than they are at four-year institutions. In justification, the EERB pointed out:

The NLRB cases deal with four-year universities which place an emphasis on research and writing not found in the community college system. The community colleges are primarily teaching institutions which offer instruction through the second year of college.⁷⁷

Peter Walther, however, has declared that the NLRB's *New York University* decision is applicable at the community college level: "I have examined the cases since *NYU* with an eye towards determining their applicability to community colleges and have concluded that with slight modifications, 'the shoe fits.'⁷⁸

Similarly, actual decisions either including or excluding part-timers from faculty bargaining units have not been consistent according to institutional type. Part-timers have been excluded in universities (i.e., *New York University*), as well as being included (i.e., *University of Massachusetts*). In community colleges, they have been excluded (i.e., *CUNY*) and included (i.e., *Los Rios*). Yet, more important than institutional type, or even geographical location, in determining part-time faculty unit composition, seem to be such questions as how part-timers are paid, what benefits they receive, their amount of participation in university governance, and the degree to which their working conditions are similar to those of full-time faculty.

⁷⁷ 1 PERC at 188.

⁷⁸ Walther, *supra.*, note 29.