Private University Professors Who Exercise Managerial Authority Held Outside Protection of National Labor Relations Act (NLRB v. Yeshiva University)

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PRIVATE UNIVERSITY PROFESSORS WHO EXERCISE MANAGERIAL AUTHORITY HELD OUTSIDE PROTECTION OF NATIONAL LABOR RELATIONS ACT

NLRB v. Yeshiva University

The National Labor Relations Act\(^1\) was enacted to strengthen the position of the employee in industrial labor-management relations.\(^2\) Persons found to be employees within the meaning of the Act have the right to "join . . . labor unions . . . and to engage in other concerted activities for the purpose of collective bargaining."\(^3\) Sec-

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3. Section 7 of the Act, 29 U.S.C. § 157 (1976), provides that [employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own...
tion 2(11) of the Act, however, excludes supervisors from the definition of employee if they have the authority, “in the interests of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, . . . or effectively to recommend such action.” In addition, under a judicially created exception to the statute’s mandate, “managers” who “formulate and effectuate management policies” are not protected by the provisions of the Act. Since these exceptions were formu-

4 NLRA § 2(11), 29 U.S.C. § 152(11) (1976). An employee is treated as a supervisor under the Act when he has the power to affect directly another’s job status or “to effectively recommend” to the employer that any of the actions enumerated in § 2(11) be taken. Even if the employer merely considers an employee’s recommendation, the employee may be deemed a supervisor within the meaning of the statute. Eastern Greyhound Lines v. NLRB, 337 F.2d 84 (6th Cir. 1964).

Initially, supervisors were allowed to join unions provided they were not in units with the employees they supervised. Union Collieries Coal Co., 44 N.L.R.B. 165, supplementing 41 N.L.R.B. 961 (1942). The Board soon changed this policy, however, ruling that supervisory personnel were per se excluded from the Act’s protection. Maryland Drydock Co., 49 N.L.R.B. 733 (1943). Thus, employers could not be forced to bargain in good faith with a unit composed of supervisors. See Yale & Towne Mfg. Co., 60 N.L.R.B. 626 (1945). The legislative aim of preserving the employer’s leverage over his supervisory personnel was cited as the primary justification for precluding the unionization of those employees who were responsible for implementing the employer’s policies. See, e.g., Laborers & Hod Carriers Local v. NLRB, 564 F.2d 834, 837 (9th Cir. 1977); Stop & Shop Cos. v. NLRB, 548 F.2d 17, 19 (1st Cir. 1977); GAF Corp. v. NLRB, 524 F.2d 492, 495 (5th Cir. 1975); H.R. Rep. No. 245, 80th Cong., 1st Sess. 139 (1974). See generally T. Kheel, supra note 2, §§ 1.03, 5.01-.03.

1 Palace Laundry Dry Cleaning Corp., 75 N.L.R.B. 320, 323 n.4 (1947); see Retail Clerks Int’l Ass’n v. NLRB, 365 F.2d 642, 645 (D.C. Cir. 1966), cert. denied, 386 U.S. 1017 (1967).

4 The exclusion of managerial employees is not required by the language of the Act. NLRB v. Mercy College, 536 F.2d 544, 546 (2d Cir. 1976), denying enforcement of 219 N.L.R.B. 81 (1975). The doctrine was created by the Board and endorsed by the courts. See, e.g., NLRB v. Bell Aerospace Co., 416 U.S. 267, 288 (1974); NLRB v. North Ark. Elec. Coop., 446 F.2d 602, 604-09 (8th Cir. 1971). In Bell Aerospace, the Supreme Court determined that an employee who acts as a “manager” is per se precluded from joining a labor union. 416 U.S. at 289. In so holding, the Court rejected the Board’s intermediate position which permitted managerial employees to unionize unless their activities created a conflict of interest. Id. at 289 n.18. Under the Bell Aerospace rule, if an employee exercises “discretion in the performance of [his job] independent of [the] employer’s established policy,” he is considered a true representative of management who cannot unionize under the Act. General Dynamics Corp., 213 N.L.R.B. 851, 857 (1974); see NLRB v. Retail Store Employees Union, 570 F.2d 586, 592 (6th Cir.), cert. denied, 99 S. Ct. 81 (1978). Although this description of a managerial employee would appear to encompass professionals whose advice often is utilized in the formulation of company policy, the Board and the courts have concluded that such professional employees are not part of management, since the employer need not follow their suggestions. Absent a showing of independent policymaking authority, a professional employee is not considered a manager. General Dynamics Corp., 213 N.L.R.B. 851, 858 (1974); see NLRB v. Retail Store Employees Union, 570 F.2d 586, 592 (6th Cir.), cert. denied, 99 S. Ct. 81 (1978). See also note 10 infra.
lated in the context of industrial labor relations,⁷ analytical difficulties arose when the National Labor Relations Board⁸ attempted to apply them to private, nonprofit educational institutions.⁹ Although faculty members at institutions of higher learning often have many of the characteristics of "supervisors" or "managers," the Board routinely classified them as "professional employees" who are specifically protected by the Act.¹⁰ Recently, however, in NLRB v.

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⁷ See, e.g., NLRB v. Wentworth Inst., 515 F.2d 550, 554 (1st Cir. 1975); Trustees of Columbia Univ., 97 N.L.R.B. 424, 427 (1951); Kahn, supra note 2, at 74.

⁸ The National Labor Relations Board encompasses both the Office of the General Counsel, which has the primary policing responsibility, and the administrative panels chosen to implement the Board’s functions. These functions include resolving unfair labor practice claims, determining whether jurisdiction is proper and evaluating the propriety of proposed bargaining units in representation cases. J. Jenkins, supra note 2, §§ 2.3, .24, .39-42; see note 14 infra. See generally 1 T. Kheel, supra note 2, §§ 1.02, 5.01[4][c], 6.03.

⁹ For many years, the Board, in the exercise of its discretion, declined to apply the Act to nonprofit educational institutions. See Trustees of Columbia Univ., 97 N.L.R.B. 424 (1951). This policy was reversed, however, when the Board found that private universities have a sufficient effect on interstate commerce to warrant federal involvement in their labor disputes. Cornell Univ., 183 N.L.R.B. 329, 329 (1970); see NLRA §§ 2(6)-(7), 29 U.S.C. §§ 152(6)-(7) (1976). Nevertheless, the Board has opted not to exercise jurisdiction over private nonprofit colleges and universities with gross annual revenues of less than $1,000,000 exclusive of contributions unavailable for operating expenses. 29 C.F.R. § 103.1 (1977). Additionally, the Board will not participate unless the proposed union is a bona fide labor organization under 29 U.S.C. § 152(5) (1976) and a question of representation affecting commerce exists under 29 U.S.C. § 159(c)(1) (1976).

Since the assertion of jurisdiction in Cornell involved nonprofessional, nonsupervisory employees, the issues were comparable to those involving employees in the industrial sector. See Cornell Univ., 183 N.L.R.B. 329, 334 (1970). Consequently, application of the Act to such university employees presented few logical difficulties. After Cornell, however, university professors sought to take advantage of the Act’s protection. See C.W. Post Center, 189 N.L.R.B. 904 (1971). While the Board in C.W. Post indicated that both full-time and part-time university professors were entitled to join unions, it concluded that department chairpersons and deans were supervisors whose organizational efforts were unprotected under the Act. Id. at 905-06. This result was modified in New York Univ., 205 N.L.R.B. 4 (1973), wherein the Board refused to recognize part-time faculty unionization but allowed department chairpersons to join faculty unions. Id. at 6, 9; see Kendall College v. NLRB, 570 F.2d 216 (7th Cir. 1978).


(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; . . . (iv) requiring knowledge of an advanced type . . . acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning . . . .

When the Labor Management Reporting Act, popularly known as the Taft-Hartley Amendments, was introduced in the House of Representatives, it did not include a provision specifically addressed to professional employees. See Kahn, supra note 2, at 84-85. Prior to the statute’s enactment, however, a provision was added “cover[ing] such persons as legal,
Yeshiva University, the Second Circuit rejected this view, holding that a university faculty’s extensive participation in the administrative and policy decisions of the institution through various faculty committees made them managerial employees who were outside the protection of the Act.

In Yeshiva, the Yeshiva University Faculty Association (the Union) sought to become the exclusive bargaining agent for full-time faculty members at the University. After obtaining an adequate showing of faculty support, the Union petitioned the Board for certification as an appropriate bargaining unit. The Second Circuit rejected this view, holding that a university faculty’s extensive participation in the administrative and policy decisions of the institution through various faculty committees made them managerial employees who were outside the protection of the Act.

sequent Board hearings, the University contended that "faculty members [were] managerial or supervisory personnel and hence not employees within the meaning of the Act." The Board's Regional Director, however, determined that Yeshiva's faculty members were professional employees entitled to the Act's protection and certified the Union as the exclusive bargaining agent for full-time faculty.

When the University refused to bargain, the Union filed unfair labor practice charges against Yeshiva. Ultimately, the Board sustained the Union's complaint and ordered the University to bargain in good faith.

The Second Circuit denied the petition.

Writing for an unani-

exclusive bargaining agent. Id. § 159(c)(3). This was the route utilized by the union in Yeshiva. Occasionally, a union may circumvent the election procedure by demonstrating to the employer that it has signature cards representing the support of a majority of employees in an appropriate bargaining unit. If the employer concurs in this finding, it can bypass Board procedures and recognize the union as the exclusive bargaining agent. NLRA § 9(a), 29 U.S.C. § 159(a) (1976). See generally 1 T. Kheel, supra note 2, §§ 6.02[3], 13.01[1], .02[4][b]-[c]; 1 J. Jenkins, supra note 2, §§ 3.1, 27, 40.

582 F.2d at 688-89. Several hearings were conducted between Nov. 26, 1974 and May 6, 1975, to determine the appropriateness of the bargaining unit. The union sought a unit comprised of all full-time faculty members, including deans and officers of the university. Yeshiva Univ., 221 N.L.R.B. 1053, 1053 (1975). The university contended that full-time faculty or, in the alternative, department chairpersons, deans and assistant deans were managers or supervisors and therefore should be excluded from the unit. Id. at 1053-54.

582 F.2d at 689. The Board found that the appropriate unit included full-time faculty, assistant deans, department chairpersons and terminal employees who were on staff at the time of the election. 221 N.L.R.B. at 1054-56.

582 F.2d at 689. The only means by which an employer can challenge an order to bargain with a certified union is to refuse to bargain and await the commencement of an unfair labor practice proceeding by the union under 29 U.S.C. § 158(a)(1) (1976) (interference with the right to self-organization) or id. § 158(a)(5) (refusal to bargain collectively with a union).

582 F.2d at 689. Although the Act requires an employer to negotiate in good faith with the exclusive bargaining agent, 29 U.S.C. § 158(a)(5) (1976); see NLRB v. Truit Mfg. Co., 351 U.S. 149 (1956), it does not mandate that the parties reach consensus. White v. NLRB, 255 F.2d 564 (5th Cir. 1958).

582 F.2d at 689. When an unfair labor charge is filed, the General Counsel's Regional Director conducts an investigation. If he decides not to issue a complaint, the decision may be appealed to the General Counsel, who makes a final determination. 29 U.S.C. § 160(b) (1976). If a complaint is issued, the Regional Counsel will represent the complaining party's interest at an adversarial hearing conducted by an administrative law judge whose decision is appealable by either party to the Board's adjudicatory panel. Id. A Board order may be reviewed or enforced in the appropriate federal court of appeals. Id. § 160(e)-(f). The order is entitled to enforcement if supported "by substantial evidence on the record as a whole." Id. § 160(f); see Universal Camera Corp. v. NLRB, 340 U.S. 477 (1950); NLRB v. Retail Store Employees Union, 570 F.2d 586 (6th Cir.), cert. denied, 99 S. Ct. 81 (1978); NLRB v. Stark, 525 F.2d 422 (2d Cir. 1975), cert. denied, 424 U.S. 967 (1976); K. Davis, ADMINISTRATIVE LAW OF THE SEVENTIES § 30.-00, at 691 (1976).

582 F.2d at 703.
mous panel, Judge Mulligan emphasized that the court’s reasoning was addressed only to the internal organizational structure prevailing at Yeshiva. Disputing the Board’s findings that Yeshiva’s faculty members were neither supervisors nor managerial employees, the court proceeded to evaluate the four principles frequently used by the Board as a basis for including full-time private university professors within the protective coverage of the Act. Judge Mulligan examined the Board’s contention that, as professionals, a class of employees specifically protected by the Act, full-time university faculty members cannot also be categorized as supervisors or managers. Stating “that [professional] status per se does not preclude [faculty from being classified] as supervisory or managerial personnel,” the court distinguished between faculty members who exercise discretion solely with respect to teaching methodology, and those who are instrumental in formulating the “central policies of the institution” and are “substantially and pervasively operating the enterprise.” Since they wield extensive influence through their

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21 The Yeshiva panel was comprised of Judges Lumbard, Mulligan and Timbers.
22 582 F.2d at 696. Although he recognized that faculty plays an important role in the decisionmaking process at many universities, Judge Mulligan noted that the organization structure at Yeshiva varies significantly from that at other institutions. Id. at each of Yeshiva’s subdivisions, Judge Mulligan observed, professors freely participate in decisions concerning such educational policies as curriculum, admissions criteria, grading and academic standards. Id. Since professors also have significant input into employment issues such as tenure, promotion, scheduling and hiring, the court concluded that the full-time faculty at Yeshiva, in effect, directs university policy. Id. at 690-94, 698.
23 Although it recognized that the Board’s factual findings are to be accorded great weight by the reviewing court, id. at 702 (citing Stop & Shop Cos. v. NLRB, 548 F.2d 17, 18 (1st Cir. 1977)), the Second Circuit concluded that in Yeshiva the Board “made no factual finding which would preclude supervisory or managerial status, nor [had it] advanced a persuasive rationale for refusing to categorize Yeshiva’s faculty.” 582 F.2d at 702. Expressing some impatience with the Board’s case by case approach to the unique issues raised by unionization in universities, Judge Mulligan suggested that the “appropriate method to explore fully the special problems [in this area] would be rulemaking.” 582 F.2d at 703.
24 582 F.2d at 697-702. The court stated that the Board’s decision in Yeshiva was reached “without any analysis” and could not “withstand careful scrutiny.” Id. at 696-97.
25 Id. at 697-98. Under § 2(12) of the Act, 29 U.S.C. § 152(12) (1976), a professional employee is included within the statute’s coverage even though he exercises broad discretion in his job. See note 10 supra. Relying on this provision, the Board has established a per se rule with respect to faculty members in private universities. Even where the faculty appeared effectively to recommend university policies, a finding sufficient to deny protection in the industrial sector, the Board consistently held that university professors are professional employees who are entitled to unionize. See, e.g., Yeshiva Univ., 221 N.L.R.B. 1053 (1975), enforcement denied, 582 F.2d 866 (2d Cir. 1978); Northeastern Univ., 218 N.L.R.B. 247 (1975); Fordham Univ., 214 N.L.R.B. 971 (1974); University of Miami, 213 N.L.R.B. 634 (1974); New York Univ., 205 N.L.R.B. 4 (1973); Adelphi Univ., 195 N.L.R.B. 639 (1972); C.W. Post Center, 189 N.L.R.B. 904 (1971).
26 582 F.2d at 697.
27 Id. at 697-98. The court stated: “[W]hile we readily concede that Yeshiva’s full-time
committees, Judge Mulligan reasoned that faculty members at Yeshiva are both professional and managerial employees.28

Turning to the Board's contention that full-time faculty members are not supervisors or managers within the meaning of the statute when they act collectively rather than individually,29 Judge Mulligan conceded that the Act is ambiguous but noted that the Board itself had excluded employees who exercised supervisory authority through committees.30 With respect to the Board's theory that faculty members are not supervisors or managers because they act on their own behalf and not in the interests of their employer, the court stressed the atmosphere of "shared authority" that governs the university setting.31 Observing that professional educators faculty satisfy the Act's criteria for professional status, we reject the Board's position that by the possession and exercise of . . . broad powers . . . the full-time faculty at Yeshiva act only as professionals and not in a managerial or supervisory capacity." Id. at 698.

* Id.

** Id. The view that faculty members are not supervisory or managerial personnel when they act collectively was first enunciated by the Board in C.W. Post Center, 189 N.L.R.B. 904 (1971), and reaffirmed in Northeastern Univ., 218 N.L.R.B. 247 (1975); University of Miami, 213 N.L.R.B. 634 (1974); Adelphi Univ., 195 N.L.R.B. 639 (1972), and Fordham Univ., 193 N.L.R.B. 134 (1971). In Adelphi, however, the Board indicated that its "collective authority" rule was, at least in part, a product of the analytical difficulties posed by the attempts of university faculty to unionize. 195 N.L.R.B. at 648.

*** Id. at 698-99 (citing Florida So. College, 196 N.L.R.B. 888, 889 (1972)). Judge Mulligan was particularly concerned that the Board categorically had determined that collective faculty action is nonsupervisory despite the ambiguity of the statute. 582 F.2d at 699. The Board's inconsistent position was compounded, in the court's view, by the lack of support in the Act's legislative history for the "collective authority" doctrine. Id. The court noted that a team approach to decisionmaking is a common occurrence in both the commercial sector and the private university setting. See N.L.R.B. v. Bell Aerospace Co., 416 U.S. 267 (1974). While it did not resolve the issue definitively, the court suggested that a "realistic interpretation" of § 2(11) would lead to the conclusion that "individuals who exercise supervisory functions as part of a group or committee" are "supervisors" within the meaning of that provision. 582 F.2d at 699. Compare Florida So. College, 196 N.L.R.B. 888, 889 (1972), and Sida of Hawaii, Inc., 191 N.L.R.B. 194, 194 (1971), with Northeastern Univ., 218 N.L.R.B. 247, 248 (1975), and University of Miami, 213 N.L.R.B. 634, 635 (1974). It should be noted that, although individual professors "supervise" graduate assistants, students and ancillary personnel, supervisory status requires the direction of statutory employees. 29 U.S.C. § 152(11) (1976). Thus, the Board has held that faculty members are not statutory supervisors because neither students, Fordham Univ., 193 N.L.R.B. 134 (1972), nor graduate assistants, Adelphi Univ., 195 N.L.R.B. 639 (1972), are employees within the meaning of § 2(3).

**** 582 F.2d at 700. Although the system of governance in higher education has been characterized as collegial, it is more accurately described by reference to the "shared authority" model. Kahn, supra note 2, at 72-73. The collegial model involves a community of scholars in which each member is deemed a "first among equals." Baldridge, Curtis, Ecker & Riley, Alternative Models of Governance in Higher Education, reprinted in Governing Academic Organizations 2, 11-13 (G. Riley & J. Baldridge, eds. 1977) [hereinafter cited as Alternative Models]; Mintz, Faculty Collective Bargaining in Higher Education: A Management Perspective, 3 J. of L. & Educ. 413, 414 (1974). Under this approach, only faculty members are involved in the decisionmaking process; the board of trustees, the university
and administrators at private universities necessarily share a set of common goals, the court found no evidence that faculty and university interests at Yeshiva were, in fact, divergent. Finally, the court found the argument that faculty members are not "supervisors" or "managers" because they are subject to the ultimate authority of the Board of Trustees "particularly unconvincing." Judge Mulligan reasoned that, since "every corporation is ultimately operated by its Board of Directors," a literal application of this argument would lead to the nonsensical conclusion that no person working within a corporation could be classified as a manager or supervisor within the meaning of the Act.

Enacted primarily in response to industrial labor strife, the National Labor Relations Act was designed with a view toward the complete divergence in the interests of management and labor.
When the Board determined in the early 1970’s that the Act is applicable to private, nonprofit universities, new theories had to be developed to account for the nonadversarial “labor-management” relationships that typify the educational setting. Consequently, the Board developed an analytical framework in which faculty members who participate in administrative and policy decisions are nevertheless viewed as “professional employees” because they often act collectively, in their own self interest and without the power to ultimately implement their own decisions. While this approach differed significantly from the typical application of the Act in the industrial context, it was thought to be more...
responsive to the unique traits of the educational setting. The result, however, was a *per se* classification of university faculty members as covered employees.

In rejecting this *per se* approach in *Yeshiva*, the Second Circuit appeared to be indicating its preference for a more precise standard for evaluating the applicability of the Act's provisions to the variety of "labor-management" relationships that characterize modern universities. It would seem that the Board's rulemaking authority could provide a satisfactory tool for developing such a framework.42 It is

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42 It has been suggested that rulemaking would be the most effective method for addressing the question whether professional employees of universities are "supervisors." *Interim Report and Recommendations of the Chairman's Task Force on the NLRB*, [1976] 1 LAB. REL. REP. (BNA) 221, 236; AAUP, PETITION TO THE NLRB FOR PROCEEDINGS FOR RULEMAKING IN REPRESENTATION CASES INVOLVING FACULTY MEMBERS IN COLLEGES & UNIVERSITIES, June 18, 1971. The Board, however, has taken the position that the adjudicatory method with its inherent flexibility is a more desirable approach. NLRB, ORDER DENYING THE PETITION OF THE AAUP FOR RULEMAKING, July 16, 1971. See generally, Shapiro, *The Choice of Rulemaking or Adjudication in the Development of Administrative Policy*, 78 HARV. L. REV. 921 (1965).

Challenging this position, one commentator has suggested several alternative approaches for addressing faculty bargaining unit problems. Kahn, supra note 2, at 166-79. According to Professor Kahn, Congress could enact legislation "tailored to the unique characteristics of the academic community," id. at 166, or the Board could utilize its formal rulemaking procedures "to gather sufficient data to make reasoned decisions" regarding faculty unionization. Id. at 172. The Board might also appoint a special advisory panel to assist in evaluating the wisdom
submitted, however, that the Yeshiva court's rationale does not supply adequate guidelines for the Board to use in formulating precise rules for the unionization of university faculty. Implicit in the Yeshiva court's holding is the view that the Act, which was designed to equalize the bargaining positions of employee and employer, ordinarily does not apply to employees who share the organizational goals and decisionmaking authority of their employers. Since most private nonprofit universities are characterized by the "shared authority" model of governance, the Yeshiva reasoning would seem to establish the equivalent of a per se rule that, in most instances, will preclude university faculty from organizing.

The better approach, it is suggested, would include a recognition that, while both university administrators and faculty members have some goals in common, they also have divergent interests. This is reflected in faculty demands for academic freedom and higher salary levels on the one hand and administration attempts to preserve fiscal responsibility on the other. It seems possible to

of permitting unionization. Id. at 175-76. Finally, the Board might establish a division to conduct research into the "economic facts of life in higher education" and the feasibility of collective bargaining at the university level. Id. at 178. Another commentator has suggested that the Board could clarify its position on appropriate faculty bargaining units by institutionalizing the 50% Rule articulated in Adelphi Univ., 196 N.L.R.B. 639 (1972). Finkin, supra note 10, at 832-34. Under this approach only those professors who spend more than one-half of their time engaged in § 2(11) activities would be treated as statutory supervisors. Id.


See generally note 31 supra.

In most academic institutions, the common goals of the trustees, the administration and the faculty include educating students and increasing the knowledge of the intellectual
draw a distinction between faculties at institutions such as Yeshiva, where the professional staff enjoys decisionmaking authority in virtually every aspect of university administration, and faculties whose organizational power is less extensive. An argument might be made, for example, that where the faculty lacks discretion in formulating department budgets and the board of trustees retains substantial control over personnel decisions affecting faculty, the faculty members are not supervisors or managers under the Act. Moreover, since participation in the development of academic policies may be viewed as an integral part of the university faculty member's traditional job function, the Board could conclude that the judicially created “managerial” classification should not be applied in cases involving educational institutions.
While the Second Circuit expressly limited its holding in *Yeshiva* to the facts in that case, it is clear that the decision will have widespread impact on faculty attempts to unionize. The court’s apparent unwillingness to modify the concepts of “supervisor” and “manager” to account for the unique aspects of labor-management relations in academic institutions suggests that it will be reluctant in future cases to extend the Act’s protection to faculty members at other institutions. Considering the likely effect of the *Yeshiva* decision, it is hoped that the Board will act promptly.

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Since the Board first asserted jurisdiction over employees in universities, there has been a dramatic increase in unionization efforts. Trustees of Boston Univ. v. NLRB, 575 F.2d 301, 304 n.2 (1st Cir. 1978); Hagengruber, *supra* note 31, at 53 n.1; Jascourt, *supra* note 47, at 51. As of 1977, faculties in over 400 public and private university campuses had selected unions to serve as their exclusive bargaining representatives. *GOVERNING ACADEMIC ORGANIZATIONS* xv (G. Riley & J. Baldridge eds. 1977). This growth in unionization was stimulated by a deteriorating labor market for full-time faculty, increased governmental involvement in regulating and directing education, reduced public confidence in professional educators, diminished financial resources to compensate faculty and develop innovative programming and the perceived gains obtained by nonacademic personnel who had joined unions. See, e.g., McHugh, *supra* note 43, at 44-45; Sumberg, *Should Faculty Organize?*, in *FACULTY POWER: COLLECTIVE BARGAINING ON CAMPUS* 117 (T. Tice ed. 1972); Marmion, *supra* note 45, at 41. One commentator has suggested that union activities at many universities may have to be reanalyzed in light of *Yeshiva*. Kohn, *Managerial Role Found at Private Universities*, N.Y.L.J., Aug. 3, 1978, at 1, col. 3.
to establish a set of rules to clarify the bargaining rights of university professors at private nonprofit educational institutions.

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