

TOPIC
"FUTURE OF WORKER"

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

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Statement
of
James Perley, President, and Mary Burgan, General Secretary,
of the
American Association of University Professors
before the
Commission on the Future of Worker Management Relations

August 10, 1994

Professor Perley:

As President and General Secretary of the American Association of University Professors, Professor Mary Burgan and I are pleased to have the opportunity to present to this Commission our views on revising the National Labor Relations Act in response to the Supreme Court decision in NLRB v. Yeshiva University. As those of you who are members of AAUP know, we represent a professional organization which has defined and elaborated principles of professional self-governance since its founding in 1915. We believe that our experience in formulating structures of professional practice in a variety of academic settings--from traditional to collective-bargaining chapters--gives us an expertise that may help in resolving some of the problems we all confront as we seek more realistic and functional definitions of the term "employee" in light of changes in the nature of work in the late twentieth century. We appreciate the Commission's attempt to respond to the changes from the brutally divisive labor configurations that prevailed in the thirties, to the more cooperative and interactive structures of professional work in the nineties. I bring to this discussion my own experience as a Professor of Biology at Wooster College, a private liberal arts college. My colleague brings her experience as a Professor of English at Indiana University, a large public research university. Such are the advantages of the academic model of professional work, especially when they are honored by administrations and faculty alike, that despite our different careers as professors, we have been able to share the autonomy of tenure and collegial participation in setting disciplinary standards. These professional conventions have become the hallmarks of American higher education, marking it as a laboratory for exploring relationships beyond the oppositional paradigm of "labor and management." And yet, even as we celebrate the achievements of a professional association like AAUP, we have watched with increasing frustration as our colleagues in private colleges and

universities under the threat of Yeshiva are denied the freedom to negotiate appropriate working conditions and organize themselves to best represent the interests of the profession. Thus we cannot begin our statement to you without pointing to the contradiction between our mutual impulse to describe the spread of the kinds of responsible labor relations that AAUP has established in academe, and the undercutting of such structures through the limited judicial definitions of professional responsibilities that have emanated from the Yeshiva decision.

These restrictions have become even more inimical to the power of professional employees to work with one another in the latest application of Yeshiva to licensed practical nurses in NLRB v. Health Care & Retirement Corporation of America. AAUP's development of collegial structures in academia has always involved maintaining the standards of our various disciplines through 1) mentoring novice faculty members, 2) engaging in peer review of disciplinary competencies, and 3) engaging our disciplinary responsibilities to research and teaching through oversight of schedules, curricula, and the like. We believe that these practices constitute the minimum basic requirements for all sorts of professional work. To define nurses as supervisors when they perform analogous professional functions is not only an injustice to the responsibilities instilled in them through their training, but a troubling attack on our own professional standing. In our earlier statement to you (October 29, 1993), we presented an analysis of how the model of shared governance in academia might inflect your consideration of new patterns of relations between labor and management. We recirculated this document with our letter of last week (August 3, 1994)—the letter which prompted your invitation to us to appear today. In our earlier letter, we submitted an amendment to Section 2 (11) of the NLRA which would effectively exempt faculty members, when exercising their traditional professional responsibilities, from being categorized under the term "supervisor." This amendment constitutes

the basic minimum in legislative relief that we seek through the power and persuasion of your final report. Let me read its most salient features here in the specific language we devised: "...no faculty member or group of faculty members in any educational institution shall be deemed to be managerial or supervisory employees solely because [they]...participate in collegial decisions with respect to courses, curriculum, personnel, budget, or other matters of educational policy."

Though we continue to sponsor this amendment as narrowly drawn to the specific interests of academic professionals, we now urge you also to move towards a broader, more realistic definition of "professional employee." This definition, we submit, should be rooted in an understanding of the core responsibilities and activities related to the work of professional employees. My colleague, Professor Burgan, will amplify upon this broader approach.

As president of the AAUP, I commit the energies and resources of our organization in assisting the Commission to shape legislative recommendations which enfranchise the professional worker and which accommodate the changed and changing American workplace.

Professor Burgan:

If there were ever any doubt about the faculty's *de facto* subjection to management decisions, even within the committee structure that marks so many institutions, the information we receive from colleagues in the AAUP office would show that in real world experience, faculty bodies may propose, but it is the upper administration that disposes. Deans, Provosts, Presidents, and--ultimately--Boards of Trustees determine the most significant material conditions of faculty work--salary levels, institutional allocation of resources, and functional direction of faculty time and energy. I have served with members of the Board of Trustees on a search committee for the president of my university, for example, and although my opinion as a faculty member was sought, it was clear to all of us that the final choice would be made by the Board. Such faculty

participation in advisory roles illustrates the unique double nature of organization within academia--its combination of collegial democracy on the professional level with hierarchy on the managerial level. My own academic experience shows the interaction of these competing forces in a range of activities, for I have moved from directing the Freshman Composition program with oversight of 125 teaching assistants, to chairing the English Department, in which, as first among equals, I organized and represented the professional advice of my colleagues from their deliberations on our hiring priorities, the assessment of the disciplinary adequacy of non-tenured faculty, and the directions of our curriculum. At no time was there any doubt but that I was a full-time faculty member, and that the dean and his superior would be the final arbiter of our proposals because they had the decisive power--especially the power to fund or not to fund. In each of these positions I worked as a professional employee rather than a manager because I was exercising my "core professional responsibilities" as mandated by the culture of my profession and the standards of my discipline. Indeed the AAUP accepts such variations in academic professionalism in its membership by distinguishing between "full-time" faculty and "associate" members who have "primarily administrative responsibilities." Again, our main contention is that revisions of the National Labor Relations Act must recognize such activities as belonging to professional rather than "managerial" responsibilities.

One of the reasons that professional activities have been continually confused with supervisory or managerial control is that our work involves directing and training colleagues, peer evaluation in advising on tenure, hiring and promotion, and making judgments about the appropriateness of policy decisions and working conditions has been mistaken for supervision. I knew the difference not only when I was chairing the English Department, but also when I was not--especially when I served as a "regular" professor and as leader of my university's senate.

There it was quite clear that I must at times resist the administration of my university because I believed that some of its decisions might move in a direction counter to my disciplinary commitments as a professor in a particular field. The question of increasing class size, for example, is frequently presented by administrations in the fiscal interest of the institution; it may be resisted by English teachers not only as an imposition upon their conditions of work but also as an impediment to the learning process among their students. Academic freedom is another, more general area in which professors must at times work against both self-interest and the interest of their academic employers. In such cases--as in the core professional practices of mentoring, peer review, and establishing academically sound practices--we are not managing or supervising, we are committing ourselves to enacting the norms and standards of our profession.

We understand the problems attendant to legislative drafting, precision of language and political realities not least among them. While we have little control over political realities, we can be expected to be precise. We request the opportunity to submit, at a later date, a statutory formulation of our views which are informed by eighty years of developing standards and principles of the academic profession. However, we can state now that the language we will submit will be consistent with the following: namely, that "No professional employee or group of professional employees shall be deemed to be managerial or supervisory employees solely because that employee or group of employees participate in or implement collegial decisions or recommendations related to the nature of the profession, its standards and principles, and to the professional services offered." In the academic context, these subjects include: courses, curriculum, educational standards and policies, budget and personnel (which includes, appointment, promotion and tenure).

