

covering a panel of more than 5,000 young women age 14–24 in 1968. By 1978, more than 75 percent of the original panel were still being interviewed. For further information, see *The National Longitudinal Surveys Handbook* (Columbus, Center for Human Resource Research, The Ohio State University, 1982). This paper is a condensed version of a longer report entitled, "Trends in the Employment of Young Women: Evidence from the National Longitudinal Surveys," which is available from the Center for Human Resource Research.

<sup>2</sup>See Frank L. Mott, "The Changing Roles of Women," in Frank L. Mott, ed., *The Employment Revolution* (Cambridge, MIT Press, 1982); David Shapiro and Joan E. Crowley, "Aspirations and Expectations of Youth in the United States, Part 2: Employment Activity," *Youth and Society* 14, September 1982, pp. 33–58; and Linda J. Waite, "Projecting Female Labor Force Participation from Sex Role Attitudes," in Ralph E. Smith, ed., *Women in the Labor Force in 1990* (Washington, The Urban Institute, 1979).

<sup>3</sup>For documented research on how a woman's attitudes toward employment condition the likelihood of her being employed when she has small children, see Frank L. Mott, Anne Statham, and Nan L. Maxwell, "From Mother to Daughter: the Transmission of Work Behavior Patterns Across Generations," in Frank L. Mott, ed., *The Employment Revolution* (Cambridge, MIT Press, 1982).

<sup>4</sup>Such an effect might be linked to governmental efforts aimed at reducing labor market discrimination against women. For example, see David Shapiro and Lois B. Shaw, "Growth in the Labor Force Attachment of Married Women: Accounting for Changes in the 1970's," *Southern Economic Journal* 50, forthcoming.

<sup>5</sup>For example, see James J. Heckman, "Shadow Prices, Market Wages, and Labor Supply," *Econometrica* 42, July 1974, pp. 679–94.

<sup>6</sup>While data are available from annual interviews to cover each year between 1968 and 1973, the less frequent schedule of interviews after 1973 resulted in gaps in the available work histories. In particular, for the period from 1973 to 1978, data are available only for 3 years (1974–75 and 1976–78). Consequently, not only were ratios used for certain variables (as described in the text), but in addition, estimated total hours worked over the 5-year period 1973–78 were calculated by multiplying hours worked during the three available years by 5/3 (so as to provide a 5-year measure comparable to that for the 1968–73 period).

<sup>7</sup>Because the data for the 1973–78 period are drawn from interviews at the end of years 2, 4 and 5 rather than from all 5 years, the average age is higher for those in the 1973–78 period. This age difference biases somewhat the comparison of marital, fertility, and enrollment statuses, underestimating the changes in each of these variables. That is, had data been available for each year during the 1973–78 period, the average age and, consequently, the proportion of years married and proportion of years with children all would have been lower, while the proportion of years in school would have been higher. By the same token, the age difference serves to exaggerate slightly the change in educational attainment.

<sup>8</sup>Data on the percentage of individuals within each race/fertility status group who did not work at all are consistent with the data on mean hours worked among whites. For the 1968–73 period, 27 percent of white mothers and 5 percent of white nonmothers did not work; the comparable figures for the 1973–78 period were 22 percent and 4 percent, respectively. Among blacks, by contrast, there were slight increases over time in the percentages of nonworkers: while 15 percent of mothers and 4 percent of nonmothers did not work during the 1968–73 period, the corresponding figures were 17 percent and 8 percent, respectively, for the 1973–78 period.

<sup>9</sup>Chow tests confirmed that the sets of coefficients of the hours worked equations differ significantly by fertility status.

<sup>10</sup>Statements about statistically significant changes in coefficients across periods are based on a formal statistical test for such changes in which a pooled equation with interaction terms was estimated for each fertility status group. In addition to the significant changes mentioned in the text, we also found that for the childless white women, there were statistically significant changes in the coefficients of the migration and unemployment variables, while for the black mothers the change in the coefficient of the enrollment variable is statistically significant.

This conclusion concerning the absence of a change in the effect of young children on work hours holds also in equations covering the total sample (that is, not stratifying by fertility status). One might argue that estimation of separate equations for mothers and nonmothers could mask

a reduction in the impact of young children on labor supply. However, it is clear from the equations in which mothers and nonmothers were pooled that there is no evidence of such a reduction, either among whites or among blacks.

<sup>11</sup>The evidence indicating that marital status/husband's earnings is less important among blacks than among whites is quite consistent with the argument here because, traditionally, marital instability has been higher among blacks.

<sup>12</sup>For evidence in this regard, see David Shapiro and Frank L. Mott, "Labor Supply Behavior of Prospective and New Mothers," *Demography*, May 1979, pp. 199–208; and Frank L. Mott and David Shapiro, "Complementarity of Work and Fertility Among Young American Mothers," *Population Studies* 37, July 1983.

<sup>13</sup>It is important to note that, to a considerable degree, the increase in hours due to demographic changes was, for most of the groups in this analysis, counterbalanced by a depressing effect on hours worked due to the changing impact of areal unemployment between the two 5-year periods. If the economy had been as strong during 1973–78 as it had been during 1968–73, the trend in hours of work might well have been sharper and more dramatic than it actually was.

## ***NLRB v. Yeshiva University:* a positive perspective**

CLARENCE R. DEITSCH AND DAVID A. DILTS

*NLRB v. Yeshiva University*<sup>1</sup> may soon stand beside such other landmark U.S. Supreme Court decisions as *Loewe v. Lawlor*<sup>2</sup> and *United States v. Huteson*<sup>3</sup> both in terms of controversy provoked and the number of resulting learned articles written by labor relations scholars and practitioners. The articles have, for the most part, either focused upon the normative issues of whether the Court erred in its reasoning and why,<sup>4</sup> or upon the closely related issue of the proper tack the National Labor Relations Board should have taken in its arguments before the Court.<sup>5</sup> This report examines the *Yeshiva* decision from a positive perspective; the debate as to whether Justice Lewis Powell and the Court were right or wrong is put aside in order to analyze the impact of the decision upon union organization of private-sector institutions of higher education.

### **Union membership: a rational decision**

Students of labor relations have long recognized that the secular behavior of trade union membership is influenced by a number of different variables, including the economic ones that determine the benefits and costs associated with union membership. Thus, an employee's decision to join a labor organization can be assumed to be rational and dependent "upon his subjective assessment of the expected benefits to be obtained from union membership as against

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Clarence R. Deitsch is an arbitrator and professor of economics at Ball State University, and David A. Dilts is an arbitrator and associate professor of labor relations at Kansas State University.

his subjective assessment of expected costs of membership."<sup>6</sup> In short, an employee generally will join a labor organization if the perceived benefits exceed the perceived costs.

Another way of viewing the foregoing decision is in terms of a choice between two bundles of goods: a nonunion bundle, consisting of those items available without union membership, and a union bundle, consisting of items available as a result of union membership. The union bundle will be selected if it contains more of one item and at least as many units of the other items as the nonunion bundle does. If selection of the union bundle containing additional units of one or more goods entails the sacrifice of units of the other goods making up the bundle, the decision (that is, choice) is no longer costless. Whether the substitution (that is, exchange) will be made hinges upon the relative subjective values placed upon the goods to be substituted. If what has to be given up is of greater value than what is received in trade, no exchange will occur; the individual will not become a union member.<sup>7</sup>

### Faculty priorities and concerns

Bargaining topics in higher education may be classified into one of four categories: academic, faculty status (that is, personnel), economic, and other matters. Academic matters, according to John A. Gray, "include determinations of overall curriculum requirements, course mixes for majors, and academic admission. They relate directly to the educational process and educational opportunities that the institution exists to provide . . ."<sup>8</sup> Decisions affecting academic matters therefore influence the nature of the product provided and the clientele (that is, market) served by institutions of higher learning. Faculty status matters encompass topics affecting the number and qualifications of teaching personnel—such items as initial appointment, reappointment, promotion, and tenure criteria—the usual personnel topics. Economic matters cover the traditional salary and fringe benefit areas. The final category, other matters, includes all issues, subjects, topics, and items not falling within the first three, for example, building usage, parking privileges, and so forth.

A long-recognized difference between blue-collar and professional employees is that the latter distinguish between professional and economic bargaining goals and attach greater priority to the former goals.<sup>9</sup> Therefore, as professionals, faculty members also attach greater importance to professional concerns (to topics falling within the academic and faculty status bargaining categories noted above). Joseph W. Garbarino has noted that professional concerns are so important to educators that the impetus for organization and bargaining in higher education usually stems from a deep concern over professional matters rather than from a concern about economic issues.<sup>10</sup> In short, the probability of unionism is greatest where faculty members believe professional prerogatives to be threatened.

A recent study undertaken by Sahab Dayal at Central Michigan University lends significant support to the conclusions of the preceding paragraph.<sup>11</sup> Dayal's objective was the examination of "the unionized faculty's perceptions of bargaining goals and their attitudes and opinions of bargaining priorities . . ."<sup>12</sup> Faculty members were presented an undifferentiated list of professional and economic bargaining issues and were asked to rank in priority order their top five bargaining concerns. Respondents ranked the professional issues of academic freedom first; hiring standards, fourth; and reappointment criteria, fifth. The economic issues of salary and inflation-based compensation were slotted second and third.<sup>13</sup>

Although Dayal's research indicates a high priority assigned by educators to professional concerns in collective bargaining, in all probability, the study underestimates the importance faculty members attach to these issues. Professional matters may be of greater concern than indicated by Dayal's survey because many faculty members may believe that collective bargaining is an inappropriate vehicle for the determination of professional issues. Having an alternative governance mechanism available for this purpose—"an academic senate in which faculty participation is required from each academic department"<sup>14</sup>—faculty members holding the aforementioned viewpoint may not have ranked professional issues as high priority *bargaining* items. Yet, denied an alternative governance mechanism, these same individuals may very well have given a high priority ranking to professional matters. Thus, the Central Michigan study tends to underestimate the importance of professional goals to faculty members. These results cannot be dismissed as unique to the Central Michigan University campus. As noted by Dayal: ". . . interviews with key officials of the National Education Association, American Federation of Teachers, and American Association of University Professors seem to indicate that this is widely representative of higher education faculty across campuses today."<sup>15</sup> In addition, there is no reason to believe that faculty attitudes differ from public to private 4-year colleges and universities.

### The Yeshiva decision

The Supreme Court's decision in *Yeshiva* established a two-pronged test for purposes of determining faculty status under Taft-Hartley: whether faculty members were simply professional employees entitled to the protective features of Federal labor law or whether they were also managerial employees and thereby excluded from Taft-Hartley. According to Powell and the Supreme Court majority, the determination was and is dependent upon two factors; the nature of faculty input to an institution's decisionmaking process, and the weight assigned to these faculty decisions. When the decisions concern "the academic product" and "the academic market" of the institution and are controlling, they are managerial in nature; those making the decisions assume managerial attributes and qualities. John A.

Gray succinctly described the Court's position in the following terms:

For the Supreme Court majority, as long as an individual faculty member's responsibilities are restricted to teaching assigned courses, evaluating students' academic performances, and individual research and scholarship, then the individual faculty member is clearly a professional employee with [National Labor Relations Act] rights. However, as soon as this individual leaves the classroom or office to meet with colleagues to decide broader academic matters and where their collective academic recommendations are normally determinative, then the same faculty member has been transformed into a "managerial employee" without [National Labor Relations Act] rights.<sup>16</sup>

In short, the Court held that faculty members are managers when their decisions are normally determinative of what the institution will offer (that is, "the academic product") and to whom it will be offered (that is, "the academic market").

### Case effects on union membership

As noted earlier, the individual faculty member's contemplated decision concerning union membership may be viewed in terms of a choice between two bundles of goods: a nonunion bundle, consisting of those items available without joining a union, and a union bundle, consisting of items available as a result of union membership. The membership decision for faculty members at private institutions during the pre-Yeshiva years might appropriately be labeled a "nondecision." The choice was reduced to one where the faculty member was asked to decide between nonunion and union bundles of goods—the union bundle containing more of one good (that is, input on economic matters) and the same amount of another good (that is, input on professional matters) in comparison to the nonunion bundle. Selection of the union bundle was the only rational action open to faculty members, involving, as it did, the acquisition of more of one good with no sacrifice of other goods. Union membership was perceived as productive of benefits at essentially little or no cost. This was also the case for faculty members employed by public institutions operating under similarly structured and interpreted State statutes. Given the costless nature of the union membership decision during the pre-Yeshiva years, quite possibly the sole prerequisite for rapid organization of faculty members was their popular belief that collective bargaining provided some additional input, however marginal, in the determination of economic matters. The rapid growth in collective bargaining chronicled by Joseph W. Garbarino<sup>17</sup> during 1966–79 can thus be explained on the basis of long-understood decision principles<sup>18</sup> without recourse to a theory of faculty "proletarianization" such as that expounded by Marina Angel.<sup>19</sup>

*NLRB v. Yeshiva University* made the union membership decision by faculty members of private-sector institutions of higher education more complex. The *Yeshiva* decision introduced a significant cost factor to the decisionmaking process; National Labor Relations Act coverage (that is, union membership) required faculty members to forgo de-

terminative input concerning the nature of "the academic product" and "the academic market." Faculty members tend to view such a sacrifice:

... as creative of a semiprofessional status denying them their proper professional 'primary voice' in academic and faculty status matters and as not allowing them to exercise the full scope of their professional responsibilities. Faculties probably read the *Yeshiva* decision as saying that semiprofessional faculties have [National Labor Relations Act] rights, but fully professional faculties do not.<sup>20</sup>

Thus, the choice of union membership may no longer be costless.

The impact of *Yeshiva* upon union membership growth at private institutions critically depends upon the relative magnitudes of the benefits and costs associated with union membership. If, as Marina Angel claims, there has occurred an emasculation of the faculty member's role in determinative decisionmaking concerning academic and faculty status matters brought on by "the lean years of the 1960's and 1970's,"<sup>21</sup> the decision to become a union member is costless—the faculty member has already been transformed to semiprofessional status. Consequently, *Yeshiva* would have little, if any, impact upon the growth of unions and collective bargaining in higher education.

If the "proletarianization" of higher education has not occurred to the extent cited by Angel and others, the *Yeshiva* decision takes on added importance as an obstacle to the continued organization of private colleges and universities. Given the priority assigned to professional status by individual faculty members, the decision drastically increases the cost of union membership by requiring faculty members to become semiprofessionals. However, despite the increased cost, faculty members would continue to join unions as long as economic benefits exceeded the costs or what had to be forgone to achieve collective bargaining (that is, sacrifice of professional status) could be regained through collective bargaining, or both. Prospects for the realization of either of these conditions are limited. With regard to the impact of faculty bargaining upon economic variables, recent studies tend to indicate that faculty salaries have not been affected by unionization and collective bargaining.<sup>22</sup> Indeed, even the critical issue of reduction in academic staff (that is, job security) has remained relatively insulated from the influence of faculty bargaining. Lawler reports that of 22 contracts sampled, all of which had been negotiated since 1978, none contained retrenchment provisions for faculty input regarding the determination of financial exigency or the allocation of budget cuts. In the area of the allocation of layoffs, only 22 percent of the contracts contained language which could be construed as providing faculty input, and in those in the area of the right to interdepartmental transfer, 32 percent.<sup>23</sup> Although Lawler's sample was restricted to public-sector institutions, it can be roughly interpreted as indicative of the limited success that labor organizations generally have had in bargaining strong con-

tractual retrenchment provisions.

As for reacquiring professional status through collective bargaining the outlook is similarly bleak. D. Alder, in a followup survey to one conducted by the American Association of University Professors in 1970 covering a thousand institutions, found little or no evidence that faculty bargaining increases input into institutional governance over what it would have been in the absence of bargaining.<sup>24</sup> One aspect of the *Yeshiva* decision that has a direct bearing upon a labor organization's ability to reestablish input on academic matters and which has gone unnoticed until now concerns the categories of bargaining topics. Not all subjects are mandatory topics for good-faith bargaining. The National Labor Relations Board, with Court approval, has established three categories of bargaining subjects: illegal, voluntary, and mandatory. Only the last must be bargained in good faith.<sup>25</sup> Given *Yeshiva*, consistency would appear to leave the Board and Court no alternative but to adhere to the Borg-Warner classification scheme and designate academic matters (that is, issues affecting the nature of "the academic product" and the breadth of "the academic market") as voluntary bargaining topics, nonbargainable if employers desire.<sup>26</sup> Thus, not only have faculty labor organizations failed in the past to augment faculty decisionmaking authority, but the *Yeshiva* decision, in context of the Borg-Warner bargaining categories, appears to seriously limit, if not preclude, this possibility in the future, at least in the area of academic matters.

MOST AUTHORS TO DATE have chosen the normative approach to examine *NLRB v. Yeshiva*, arguing the pros and cons of the Court's decision itself. By contrast, this report has examined the likely impact of the Court's ruling upon union organization of private-sector colleges and universities through its impact upon the benefits and costs associated with union membership. Given the basically rational nature of the union membership decision, the high priority attached by faculty members to matters relating to professional status, the consequent high cost of union membership imposed by *Yeshiva* (that is, potential loss of professional status), the limited success that faculty bargaining has had regarding economic and governance matters, and the likelihood that academic topics will be classified as voluntary bargaining items (nonbargainable in most instances), only one conclusion appears reasonable: *Yeshiva* will severely hinder union organization of private colleges and universities. In purely positive terms, the case may have rendered union membership prohibitively expensive (that is, costs may far exceed benefits) for most faculty members of these private institutions. To the extent that State administrative agencies

and courts follow the lead of the U.S. Supreme Court, the same impact may occur in the public sector—a sort of spillover effect. □

—FOOTNOTES—

<sup>1</sup> 444 U.S. 672 (1980).

<sup>2</sup> 208 U.S. 274 (1908).

<sup>3</sup> 321 U.S. 219 (1941); also see "Significant Decisions In Labor Cases," *Monthly Labor Review*, April 1980, pp. 57–58.

<sup>4</sup> Marina Angel, "White-Collar and Professional Unionization," *Labor Law Journal*, February 1982, pp. 82–101.

<sup>5</sup> John A. Gray, "Managerial Employees and the Industrial Analogy: *NLRB v. Yeshiva University*," *Labor Law Journal*, July 1982, pp. 390–408.

<sup>6</sup> Orley Ashenfelter and John H. Pencavel, "American Trade Union Growth: 1900–1960," *Quarterly Journal of Economics*, August 1969, pp. 434–48.

<sup>7</sup> Whether this individual is represented by a union, however, depends upon the collective choice of those in the bargaining unit.

<sup>8</sup> John A. Gray, "Managerial Employees and the Industrial Analogy," p. 397.

<sup>9</sup> For example, see Alan Edward Bent and T. Zane Reeves, *Collective Bargaining in the Public Sector* (Menlo Park, Calif., The Benjamin Cummings' Publishing Co., Inc., 1978), chapter 2; Allen Ponak, "Unionized Professionals and the Scope of Bargaining: A Study of Nurses," *Industrial and Labor Relations Review*, April 1981, pp. 396–407.

<sup>10</sup> Joseph W. Garbarino, *Faculty Bargaining: Change and Conflict* (New York, McGraw-Hill Book Co., 1975), chapter 4.

<sup>11</sup> Sahab Dayal, "Faculty Unionism and Bargaining Unit Attitudes and Perceptions: A Case Study of Central Michigan University," *Labor Law Journal*, August 1982, pp. 554–60.

<sup>12</sup> *Ibid.*, p. 555.

<sup>13</sup> *Ibid.*, pp. 557–58.

<sup>14</sup> *Ibid.*, pp. 559–60.

<sup>15</sup> *Ibid.*, p. 559.

<sup>16</sup> John A. Gray, "Managerial Employees and the Industrial Analogy," p. 391.

<sup>17</sup> Joseph W. Garbarino, "Faculty Unionization: The Pre-*Yeshiva* Years, 1966–1979," *Industrial Relations*, Spring 1980, pp. 221–30.

<sup>18</sup> Robert S. Main and Charles W. Baird, *Elements of Microeconomics* (St. Paul, Minn., West Publishing Co., 1981), chapter 2.

<sup>19</sup> Marina Angel, "White-Collar and Professional Unionization," pp. 84–89.

<sup>20</sup> John A. Gray, "Managerial Employees and the Industrial Analogy," pp. 391–92.

<sup>21</sup> Marina Angel, "White-Collar and Professional Unionization," p. 85.

<sup>22</sup> J. Marshall, "The Effects of Collective Bargaining on Faculty Salaries in Higher Education," *Journal of Higher Education*, May 1979, pp. 310–22.

<sup>23</sup> John J. Lawler, "Faculty Unionism in Higher Education: The Public Sector Experience," *Labor Law Journal*, August 1982, pp. 475–80.

<sup>24</sup> D. Adler, *Governance and Collective Bargaining in Four-Year Institutions 1970–77* (Washington, Academic Collective Bargaining Information Service, 1977).

<sup>25</sup> *NLRB v. Wooster Division of Borg-Warner Corporation*, 356 U.S. 342 (1958).

<sup>26</sup> See, R. A. Gorman, *Basic Text on Labor Law—Unionization and Collective Bargaining* (St. Paul, Minn., West Publishing Co., 1976), pp. 523–29.