No. 06-RC-012276

UNITED STATES OF AMERICA
AMICUS BRIEF
FOR THE NATIONAL LABOR RELATIONS BOARD

POINT PARK UNIVERSITY,
Employer,

vs.

NEWSPAPER GUILD OF PITTSBURGH/
COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 38061, AFL-CIO, CLC,
Petitioner

BRIEF OF *AMICUS CURIAE* ON INVITATION BY THE NATIONAL LABOR RELATIONS BOARD

"Recent Developments in Models of Decision Making"

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STATEMENT OF INTEREST OF AMICUS CURIAE

Dr. Michael Hoerger, PhD, is a social scientist with a decade of experience conducting research on decision making. Recent developments in decision-making research support the need for protecting, rather than limiting, the right to shared governance in the workplace, which is often codified through union representation and collective bargaining. By participating as an amicus in this case, Dr. Hoerger seeks to assist the NLRB in understanding recent developments in models of decision making, which support a narrow interpretation of the scope of *Yeshiva*, NLRB v. Yeshiva University, 444 U.S. 672 (1980).

ARGUMENT

I. Introduction

Recent developments in social science research on models of decision making make clear the societal benefits of shared decision making (shared governance), and given the increasingly top-down structure of American universities, *Yeshiva* should be interpreted narrowly, classifying faculty employees as "managers" only where particular universities can clearly demonstrate the absence of a top-down hierarchy. This amicus brief responds to Question 7 listed in the NLRB's Invitation to File Briefs. The AAUP's amicus brief, dated June 29, 2012, responds to Questions 3, 4, and 7, emphasizing the rise of top-down decision making by administrative management at private universities. There, they request the inclusion of "the extent of university administration hierarchy" (p. 5) when considering whether faculty ought to be classified as non-managerial professional employees. As that brief describes, this top-down administrative structure is often driven by external market forces. Recent developments in social science research take their argument one step further – top-down administrative decision-making structures have inherent flaws, even when motivated by benevolence toward employees.

II. Response to Question 7: Social Science Research on Models of Decision Making

> Question 7. Have there been developments in models of decision making in private universities since the issuance of *Yeshiva* that are relevant to the factors the Board should consider in making a determination of faculty managerial status? If so, what are those developments and how should they influence the Board's analysis?

Overview

In order to contextualize the changes in decision making at private universities, it is important to understand more generally the rapid advances made since *Yeshiva* in social science research on models of decision making. This research demonstrates the inherent flaws of top-down decision making and supports the AAUP's request for the inclusion of "the extent of university administration hierarchy" (p. 5) when considering whether faculty may be classified as non-managerial professional employees.

Sample Decisions

When discussing decision-making models, it is important to consider a range of decisions individuals may desire to make. In the context of private universities, relevant decisions include choices about health insurance plans, retirement plans, course scheduling, policies for admitting students, tenure and promotion policies, and the like. As the AAUP's amicus brief makes clear, these and other decisions are increasingly being made unilaterally by administrative managers, rather than through a shared decision-making process that includes both the administration and non-managerial professional faculty employees.

Social Science Models of Decision Making

Research by myself [1] and others [2] indicates that when individuals face decisions, they often predict how their various options will impact their well-being (referred to throughout as "well-being prediction" [3]). As an example of well-being prediction, an individual might predict whether they would be better off with Health Insurance Plan A or Health Insurance Plan B, admitting two highly-qualified graduate students this year or

[1] Hoerger, M., Quirk, S. W., Lucas, R. E., & Carr, T. H. (2009). Immune neglect in affective forecasting. *Journal of Research in Personality, 43*, 91-94.
Hoerger, M., Quirk, S. W., Lucas, R. E., & Carr, T. H. (2010). Cognitive determinants of affective forecasting errors. *Judgment and Decision Making, 5*, 365-373.
Hoerger, M., Quirk, S. W. (2010). Affective forecasting and the Big Five. *Personality and Individual Differences, 49*, 972-976.
Hoerger, M., Quirk, S. W., & Weed, N. C. (2011). Development and validation of the Delaying Gratification Inventory. *Psychological Assessment, 23*, 725-738.
Hoerger, M. (2012). Coping strategies and immune neglect in affective forecasting: Direct evidence and key moderators. *Judgment and Decision Making, 7*, 86-96.
Hoerger, M., Quirk, S. W., Chapman, B. P., & Duberstein, P. R. (in press). Affective forecasting and self-rated symptoms of depression, anxiety, and hypomania: Evidence for a dysphoric forecasting bias. *Cognition & Emotion*.
Hoerger, M., Chapman, B. P., Epstein, R. M., & Duberstein, P. R. (in press). Emotional intelligence: A theoretical framework for individual differences in affective forecasting. *Emotion*.

[2] Gilbert, D. T., Pinel, E. C., Wilson, T. D., Blumberg, S. J., & Wheatley, T. P. (1998). Immune neglect: A source of durability bias in affective forecasting. *Journal of Personality and Social Psychology, 75*, 617-638.
Wilson, T., Wheatley, T., Meyers, J., Gilbert, D., & Axsom, D. (2000). Focalism: A source of durability bias in affective forecasting. *Journal of Personality and Social Psychology, 78*, 821-836.
Dunn, E. W., & Laham, S. A. (2006). Affective forecasting: A user's guide to emotional time travel. In J. Forgas (Ed.), Affect in social thinking and behavior (pp. 177-196). New York: Psychology Press.
Chapman, G. B., & Coups, E. J. (2006). Emotions and preventive health behavior: Worry, regret, and influenza vaccination. *Health Psychology, 25*, 82-90.
Gilbert, D. T., & Wilson, T. D. (2007). Prospection: Experiencing the future. *Science, 317*, 1351-1354.
Gilbert, D. T., Killingsworth, M. A., Eyre, R. E., & Wilson, T. D. (2009). The surprising power of neighborly advice. *Science, 323*, 1617-1619.
Dillard, A. J., Fagerlin, A., Cin, S. D., Zikmund-Fisher, B. J., & Ubel, P. A. (2010). Narratives that address affective forecasting errors reduce perceived barriers to colorectal cancer screening. *Social Science & Medicine, 71*, 45-52.
Ruby, M. B., Dunn, E. W., Perrino, A., Gillis, R., & Viel, S. (2011). The invisible benefits of exercise. *Health Psychology, 30*, 67-74.

[3] Psychologists and behavioral economists often use the term "affective forecasting" to describe this phenomenon

just one, with a tenure policy that favors research productivity or favors teaching. Individuals will differ in each of these preferences.

The problem is that well-being prediction is challenging, which leads people to make decisions that fail to optimize future well-being.[4] For example, people avoid exercise, vaccinations, and cancer screenings because they overestimate the distress evoked by these behaviors and underestimate their potential benefits for well-being.[5] Similar examples of faulty well-being prediction can be found in society's high divorce rate, consumer dissatisfaction with purchasing decisions, as well as workplace managerial policies, that even when good-intentioned, foster employee dissatisfaction. In fact, well-being prediction goes into the *architecture of decision making*, decisions about what options should exist, what health insurance plans should be made available, what retirement options should be available, what course scheduling options should be available, and the like. Because well-being prediction is challenging, these decisions warrant careful consideration.

[4] Wilson, T. D., & Gilbert, D. T. (2005). Affective forecasting: Knowing what to want. *Current Directions in Psychological Science, 14*, 131-134.

[5] Chapman, G. B., & Coups, E. J. (2006). Emotions and preventive health behavior: Worry, regret, and influenza vaccination. *Health Psychology, 25*, 82-90.
Dillard, A. J., Fagerlin, A., Cin, S. D., Zikmund-Fisher, B. J., & Ubel, P. A. (2010). Narratives that address affective forecasting errors reduce perceived barriers to colorectal cancer screening. *Social Science & Medicine, 71*, 45-52.
Ruby, M. B., Dunn, E. W., Perrino, A., Gillis, R., & Viel, S. (2011). The invisible benefits of exercise. *Health Psychology, 30*, 67-74.

Well-being prediction is challenging, but social science research shows that people are better off predicting their own well-being than predicting somebody else's.[6] Accordingly, when it comes to well-being prediction, an individual faculty member should be better than administrative management at accurately predicting what that faculty member will want. The implication is that faculty employees should have a say in the decisions that affect their lives, have a say in the architecture of decision making, as even a benevolent-but-top-down administrative decision-making structure has inherent flaws – a problem that has increased within the private university administrative structure over the past three decades. Simply put, when it comes to well-being prediction, individual faculty members have a much better idea than administrative management of what health plan they would prefer, or when they would want to hold office hours, meaning that a top-down hierarchy can inflict unnecessary harm. In fact, well-being prediction tends to be at its best when made through a shared process, where multiple individuals can offer perspectives[7] -- the very stance argued by the AAUP. Thus, in considering *Yeshiva*, faculty should be classified as non-managerial professional employees, unless an employer fulfills the burden of specifically demonstrating the absence of top-down decision making.

[6] Igou, E. R. (2008). "How long will I suffer?" versus "How long will you suffer?" A self-other effect in affective forecasting. *Journal of Personality and Social Psychology*, *95*, 899-917.

[7] Gilbert, D. T., Killingsworth, M. A., Eyre, R. E., & Wilson, T. D. (2009). The surprising power of neighborly advice. *Science*, *323*, 1617-1619.

CONCLUSION

In summary, recent advances in social science research document the underlying flaws inherent in top-down decision-making processes. Given the increasing administrative hierarchy since *Yeshiva*, it is recommended that faculty at private universities be classified as non-managerial professional employees, unless specific employers can provide evidence indicating the absence of a top-down administrative hierarchy.

Dated: July 6, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the foregoing BRIEF OF AMICUS CURIAE IN SUPPORT OF THE PETITIONER, NEWSPAPER GUILD OF PITTSBURGH/ COMMUNICATIONS WORKERS OF AMERICA LOCAL 38061, AFL-CIO, CLC, was served electronically on this 6th day of July 2012, to the parties and their counsel in this case by e-filing via the NLRB website: http://mynlrb.nlrb.gov/efile.

/s/ Michael Hoerger