

**The President and Fellows of Harvard College and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Petitioner. Case 1-RC-17904**

30 March 1984

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN, HUNTER, AND DENNIS**

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer Don C. Firenze on 26 May 1983, 7 June 1983, and 9 June 1983. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, the Regional Director for Region 1 transferred this case to the Board for decision. The Employer and the Petitioner filed briefs with the Board.<sup>1</sup>

The Board has reviewed the hearing officer's rulings made at the hearing and finds that they are free from prejudicial error. They are affirmed.

Upon the entire record in this case, the Board finds, for the following reasons, that a unit limited to clerical and technical (including service) employees of the Harvard Medical Area Schools is inappropriate.

In 1975 the Petitioner<sup>2</sup> filed a petition seeking to represent a unit of clerical and technical (including service) employees of the Harvard Medical Area Schools. The Regional Director dismissed the petition because he found that the employees in the proposed unit did not share a sufficiently special community of interest to justify a separate unit. In 1977 the Board (former Members Penello and Walther dissenting) reversed the Regional Director and found that the petitioned-for group of employees constituted an appropriate unit. *Harvard College*, 229 NLRB 586 (1977) (hereinafter *Harvard I*). In the instant proceeding, the unit the Petitioner seeks to represent is substantially the same as that sought in *Harvard I*.

The Board's role is to determine whether the petitioned-for unit is appropriate for purposes of collective bargaining. In determining whether a unit that is less than universitywide is appropriate, the Board considers such factors as prior bargaining history; centralization of management, particularly in regard to labor relations; extent of employee interchange; differences or similarities in the em-

ployees' skills and functions; and geographical location of the facilities in relation to each other. *Cornell University*, 183 NLRB 329, 336 (1970).

We cannot agree with *Harvard I's* conclusion that Medical Area employees were an appropriate unit, and events subsequent to *Harvard I* do not alter our judgment. Accordingly, a separate Medical Area unit is (and was) inappropriate for purposes of collective bargaining.

The Employer operates Harvard College, Radcliffe College, 10 graduate schools (including Harvard Medical School, Harvard School of Dental Medicine, and Harvard School of Public Health—i.e., the Harvard Medical Area Schools), museums, scientific laboratories, and a library system. Operation of this institution is highly centralized. A central management controls funding, budgeting, accounting, payroll, maintenance, dining facilities, utilities, and protective and custodial services.

Effectuation and implementation of personnel policies is also highly centralized. The authority to establish wages, job classifications, and working conditions throughout the University is delegated to the University Personnel Office (UPO). UPO formulates and administers all nonfaculty personnel matters on a universitywide basis. Consequently, employees in the petitioned-for unit and other University employees share the same salary schedule, the same benefits or options, and identical job classifications.

Nevertheless, *Harvard I* utilized "the existence of a separate personnel office to serve the Medical Area employees exclusively" to infer that Medical Area employees were hired separately and treated differently from other University employees. Yet the record showed that the hiring process was similar throughout the University; that terms of any offer of employment had to be approved centrally;<sup>3</sup> and that handling of grievances (whether formal or informal) was uniform throughout the University, with personal participation of employee relations specialists from UPO when grievances could not be resolved at the departmental level.

The Medical Area personnel office handled some employment functions, such as placing job advertisements, conducting interviews and job-related skills testing, and reference checking. Even in performing these routine functions, however, the Medical Area office acted only within policies and procedures UPO established. In February 1982 the Employer abolished the Medical Area personnel

<sup>1</sup> The following filed amicus curiae briefs: American Council on Education, Association of Independent Colleges and Universities in Massachusetts, College and University Personnel Association, Cornell University, and Stanford University.

<sup>2</sup> District 65, formerly affiliated with the Distributive Workers of America, is now affiliated with and is a part of the Petitioner.

<sup>3</sup> The employing department made the hiring decision. The ability to select from among candidates is a function of hiring authorities throughout the University. It does not suggest that Medical Area employees share a community of interest separate from employees hired the same way elsewhere in the University.

office and transferred that office's functions to UPO. As a result, UPO now exclusively handles job advertising, interviewing, testing, and reference checking.<sup>4</sup>

We find that, when the Medical Area personnel office existed, it operated essentially as a satellite of UPO. We further find that the elimination of that office has had no significant impact on the manner in which labor relations is conducted in the Medical Area, and that UPO continues to be responsible for the development, implementation, and administration of personnel policies throughout the University. Thus, the evidence (pre- and post-*Harvard I*) regarding centralization of management (particularly with reference to labor relations) militates against finding the Medical Area employees to be an appropriate unit.<sup>5</sup>

We are equally unpersuaded by *Harvard I*'s analysis regarding the other factors cited in *Cornell*. Because the parties stipulated that the facts relevant to these other factors have not changed since *Harvard I*,<sup>6</sup> we need only repeat the dissent's thorough analysis of the evidence pertinent to the remaining *Cornell* factors (229 NLRB at 590-591, 593).<sup>7</sup>

<sup>4</sup> The Employer now maintains an employment office in a portion of the location formerly occupied by the Medical Area personnel office. The employment office posts notices of vacancies and receives applications for positions throughout the University, conducts typing tests and screens applicants, and refers qualified applicants to hiring authorities in the Medical Area and elsewhere.

<sup>5</sup> The Employer employs "personnel officers" who are located in most schools and major departments. Personnel officers are under the general supervision of their administrative dean, and are on the payroll of their school or department rather than UPO, but are under the functional direction of the director of personnel. The Medical Area began employing personnel officers in 1980 and continues to do so. The two personnel officers in the Medical Area function no differently from the other 16 personnel officers elsewhere in the University. A personnel officer's responsibility is to ensure that the application of personnel policies in that officer's school or department is consistent with universitywide policies and procedures.

The Petitioner argues that the presence of personnel officers represents a clear increase in the Medical Area's autonomy in personnel administration. We cannot agree. Rather than evidencing autonomy within the Medical Area, we find that the personnel officers' presence in the Medical Area tends to substantiate the Employer's claim that its personnel policies are uniformly administered.

<sup>6</sup> The parties stipulated that the record would consist of *Harvard I*'s evidentiary record, except as modified by additional evidence regarding the manner in which personnel policies are formulated and administered and personnel practices are effectuated. The additional evidence is not relevant to the factors discussed below.

<sup>7</sup> *Harvard I* also cited as a factor supporting its finding of a separate Medical Area unit "the separate supervision of the employees." As the *Harvard I* dissent remarked, reliance on this factor was also misplaced (229 NLRB at 591).

While our reading of the record indicates that the supervisors in the Medical Area do indeed have the power to affect the employment relationship with respect to decisions pertaining to hiring, firing, etc., supervisors throughout the entire University possess this same authority. In any event, such authority is exercised strictly within established university guidelines. Accordingly, we find little justification in relying upon this factor as a basis for concluding that the employees in question somehow enjoy a separate community of interest.

[Geographical location of the facilities in relation to each other]

[T]he petition herein seeks to represent salaried employees employed in Harvard's "Medical Area." This area is located in the Roxbury section of Boston approximately 3 miles from the main campus, and consists of Harvard's Medical School, School of Dental Medicine, and School of Public Health. In addition, the area is also said to include five teaching hospitals and eight research facilities.

The majority concludes that the medical schools and related facilities "share a campus apart from the rest of the University and constitute a single entity identifiable as the 'Medical Area.'" The evidence simply does not support this conclusion. While it is true that the medical school buildings are all located within a span of 4 blocks, and 6 of the 13 related facilities are located within a 6-block area surrounding the medical schools, the remaining 5 facilities are located several miles away in other parts of Boston. In fact, 2 facilities employing 68 individuals sought to be represented are located in Southboro, Massachusetts, approximately 22 miles from the Medical Area.

Given the fact that the employees included within the petitioned-for unit are spread throughout the city of Boston—and indeed throughout the entire Boston metropolitan area—the majority cannot persuasively rely upon geographical separation as a basis for finding a community of interest among the employees sought. Whatever other reasons may exist for creating a community of interest, geographical separation may not be included among them because the petitioned-for employees, quite simply, are not geographically separate.

[Extent of employee interchange]

As with the purported geographical separation, the majority's contentions with respect to transfers are simply not borne out by the facts which they themselves recite. Our colleagues note that "[o]f 249 transfers of salaried supporting staff employees between schools and major departments in the University during a recent 2-1/2-year period, only 49 were between schools in the Medical Area and other schools or departments." These figures establish that, of all the permanent transfers between schools and departments universitywide during the control period, 20 percent were

either into or out of the Medical Area. While these figures may indicate that permanent interdepartmental transfers of clerical, technical, and service employees at Harvard are infrequent, we think the fact that one in every five such transfers involves Medical Area personnel is hardly a strong argument for finding that the Medical Area personnel share a community of interest separate and apart from their colleagues in other areas of the University.

[Differences or similarities in employees' skills and functions]

Our colleagues in the majority discuss "medical orientation" in terms of analyzing the skills and functions of the requested employees. However, as they are forced to acknowledge, "the work in the Medical Area [performed by the employees in question] involves skills and functions similar to those in other schools and departments of the University." They contend, however, that in spite of this rather crucial finding there are "some important distinctions." These distinctions are that the work is "primarily medically oriented," and there exists a larger percentage of technical employees and a smaller percentage of clerical employees in the Medical Area than in comparable research departments in the University. Such differences, they argue, provides the Medical Area with a "distinct character."

Since the majority does not expound upon what they mean by "distinct character" and "medically oriented," we are left to speculate as to precisely what these terms mean. In analyzing the concept of "medical orientation," it is important to note that the employees here sought to be represented are not in any way medical "specialists," such as doctors, nurses, anesthetists, and so forth. Rather, they are clericals, librarians, research technicians, and keypunch operators—individuals whose skills are readily transferrable to virtually any discipline. The record indicates, for example, that the techniques, procedures, and equipment utilized by research technicians throughout the University both within and without the Medical Area are similar. With respect to clericals, those in the Medical Area, as elsewhere, perform the usual secretarial functions, work at desks, type manuscripts and correspondence, take dictation, order supplies, etc. Similarly, the Medical Area library assistants sought to be represented maintain serial record files and index, catalogue, shelve, and purchase books in

the same fashion as librarians throughout the University. Precisely the same situation pertains with respect to other employees sought to be represented.

In view of the above, it is evident that the essential nature of the work performed by the employees sought to be represented in the Medical Area, as well as the skills which are required to perform their responsibilities, are virtually identical to employees in the same classifications employed in other areas of the University. Given this similarity in work functions and skills, we give little weight to the fact that the work may be medically oriented or the fact that the medical area may have proportionally more technicals than clericals than other departments. Carried to its logical extreme, the majority's rationale would presumably result in finding other units of employees appropriate on the basis that their work is economically oriented, sociologically oriented, legally oriented, etc. In our view, it is the nature of the work and the skills required which creates a community of interest—not its academic orientation.

[Prior bargaining history]

The majority accurately points out that there is no prior history of bargaining among the employees encompassed by the instant petition. As the majority notes, however, all of the University's hourly paid employees, including many assigned to the Medical Area, are represented. They have been organized by nine unions in separate units which, with the exception of three craft units located in the printing office, are universitywide in scope. Thus, many employees assigned to the Medical Area who work side by side with the employees sought to be represented herein are already represented on a universitywide basis. Today's decision constitutes the first time that Harvard employees have been permitted to organize on a strict departmental basis. In our judgment, existing patterns of bargaining at educational institutions should not be disrupted in the absence of compelling reasons to do so. There is, as the above analysis so clearly indicates, absolutely no justification for such a departure from prior bargaining patterns in this case.

[Footnote omitted.]

In summary, in deciding whether a unit that is less than universitywide is appropriate, the Board determines whether the petitioned-for group of employees share a community of interest sufficiently

special to warrant separating them from other employees. That the Medical Area employees do not share such a special community of interest is evidenced by several factors. The Employer's general and fiscal operations are centrally managed and controlled. The Employer's personnel and labor relations policies are universitywide and are centrally administered. Consequently, the Medical Area employees share the same salary schedule, benefits and options, and job classifications that other University employees enjoy. Further, the Medical Area employees' skills and functions are similar to those of employees in comparable job classifications in other schools and departments.<sup>8</sup> This evidence, as the *Harvard I* dissent stated, "points towards an inordinately high degree of centralization at Harvard," and does not warrant a finding that Medical Area employees enjoy a separate community of interest. 229 NLRB at 593.

Accordingly, we find that the proposed unit of clerical and technical (including service) employees of the Harvard Medical Area Schools is inappropriate for purposes of collective bargaining.<sup>9</sup> We therefore shall dismiss the petition.<sup>10</sup>

#### ORDER

The petition is dismissed.

MEMBER ZIMMERMAN, dissenting.

In *Harvard I* the Board found that the clerical and technical employees of Harvard's Medical Area Schools comprised an appropriate unit. The additional evidence offered in the instant proceeding only bolsters that conclusion. Because the majority advances no cogent rationale for abandoning the reasoning of *Harvard I* or subsequent similar cases,<sup>1</sup> I dissent.

<sup>8</sup> Moreover, that prior bargaining patterns are universitywide in scope demonstrates that bargaining on that basis is practicable.

None of the other *Cornell* factors supports a finding that a separate unit is appropriate. The Medical Area employees are spread throughout the Boston metropolitan area and are therefore not a geographically distinct unit. The employee interchange between the Medical Area and other schools and departments represented 20 percent of all transfers occurring in the University over a 2-1/2-year period—hardly persuasive evidence that the Medical Area employees possess a special community of interest.

<sup>9</sup> The Petitioner alleges certain factual similarities between the instant case and two post-*Harvard I* cases—*Tufts College*, 251 NLRB 785 (1980), and *Boston University*, 235 NLRB 1233 (1978). As these cases relied in part on *Harvard I*, which we overrule today, and are also factually distinguishable, we find that they are inapposite. We intimate no views on the continuing validity of *Tufts College* and *Boston University*.

<sup>10</sup> The instant case does not present, and we do not pass on, any health care unit questions.

<sup>1</sup> The majority declares "inapposite" our decisions in *Tufts College*, 251 NLRB 785 (1980), and *Boston University*, 235 NLRB 1233 (1978). Admittedly, these cases are factually distinguishable, as are virtually all unit cases. But they embody the same legal principle applied in *Harvard I* and it is clear that, after today's decision, they have been overruled.

In *Cornell University*, 183 NLRB 329 (1970), the Board announced that it would apply traditional unit-determination principles in the university setting. In *Harvard I*, we determined on the basis of a number of these considerations that the petitioned-for unit was appropriate. Thus we found on largely uncontested evidence that the Medical Area constituted a geographically distinct entity from the main (Cambridge) campus, that the unit employees' work was medically oriented and differed in character from the nonunit work, that the unit employees were separately supervised, and that there was no evidence of everyday interchange between unit and nonunit employees and only a small number of permanent transfers between the two groups. We also took note of the University's own recognition of the Medical Area's separateness in maintaining a separate personnel office and hiring facility at the Medical Area. On the basis of these factors, more fully discussed in *Harvard I*, the Board reasonably and justifiably concluded that the petitioned-for Medical Area unit was an appropriate unit.

As stated, the decision in *Harvard I* gave weight to the existence of a separate personnel office for the Medical Area. Although *Harvard I* and subsequent decisions<sup>2</sup> have relied on this factor, and the University makes much of its recent alleged abolition in this case, the separate personnel office is not a sine qua non. Rather, it is simply an indication that the employer as well as the petitioner regards the unit as having its own "separate character" and "separate community of interest." *Harvard I*, 229 NLRB at 588.<sup>3</sup> Bearing this in mind, an examination of the alleged changed circumstances is nonetheless illuminating.

In *Harvard I* the evidence established that the University operated a Medical Area Personnel Office (MAPO), the only branch facility of its Central Personnel Office. MAPO served the needs of the Medical Area and related facilities only and did so with certain of its own programs and procedures. On these facts the Board reasonably consid-

<sup>2</sup> See *ibid.*

<sup>3</sup> The record in *Harvard I*, here incorporated by the parties' stipulation, is replete with evidence that the University treats the Medical Area as a distinct unit for numerous purposes. For examples, the University refers to the "Harvard Medical Area" in its catalog and has created such entities as the Medical Area news office, the Medical Area Committee on Environmental Health and Safety, and the Medical Area Services Company. An orientation pamphlet entitled "Working in the Medical Area" (P. Exh. 9) includes the following paragraph:

#### MEDICAL AREA EMPLOYMENT

You should know about the many benefits extended by Harvard to its employees. The nature of the Medical Area in which you will be working necessarily influences the character of the employment, both as related to job performance and to the benefits that you, as an employee, will receive.

ered the existence of MAPO one factor in determining that the Medical Area clerical and technical employees constituted an appropriate unit.

At the brief hearing in the instant case the University devoted its energies to establishing that MAPO itself no longer existed. This much the University proved. However, the essentially uncontested evidence compels the conclusion that the University continues to maintain a personnel office at the geographically separate Medical Area, and that the Medical Area's unique personnel needs continue to be met with special accommodations from the University's personnel system.

The record establishes that at the address where MAPO was located, in the Medical Area, the Central Personnel Office maintains its only branch facility, called an Employment Office.<sup>4</sup> While this Medical Area Employment Office (MAEO) accepts employment applications for the entire University, 85 percent of the applications at MAEO are for Medical Area jobs exclusively. Of the remainder, unspecified percentage request Medical Area jobs and request main campus (Cambridge) jobs as second choices only.

The hiring process in the Medical Area is initiated by a hiring authority within an individual Medical Area school, and the hiring personnel at MAEO work directly with those authorities. Newspaper advertisements placed by the University for Medical Area jobs direct applicants to MAEO.<sup>5</sup> Applications received at MAEO for Medical Area jobs are processed at MAEO. Applications received at MAEO for Cambridge employment are sent to the Central Personnel Office in Cambridge.

MAEO itself is staffed principally by the hiring personnel and by personnel services and benefit representatives. The personnel service representatives assigned to MAEO also serve other departments, which they visit on an occasional basis. Among their assignments, however, it is only at the Medical Area that they maintain regularly scheduled hours. Only one of the University's benefit representatives handles benefit matters (retirement, health, life insurance, etc.) for the Medical Area, and she too works regularly scheduled hours at MAEO.

Among other tasks, personnel service representatives work with the individual schools' hiring authorities in setting salaries. Unit employees' salaries

are fixed within discretionary guidelines set by the University.<sup>6</sup>

In addition to the abolition of MAPO and the creation of MAEO, the University has recently established, in the Medical Area, Personnel Offices at the school of Public Health and at the Medical School (which for administrative purposes is joined with the School of Dental Medicine). Each of these Personnel Offices employs a Personnel Officer and a staff assistant. The Personnel Officers, like others throughout the University, have a "straight line" reporting relationship to the Deans of their respective schools and a less distinct relationship with the Central Personnel Office.

The Personnel Officers, among other tasks, assist employees and supervisory personnel in finding promotional and transfer opportunities within their schools. They also initiate training programs on a Medical Area-wide basis. Orientation programs are also conducted on a Medical Area-wide basis.

The record in the instant proceeding also shows that, subsequent to *Harvard I*, the Medical Area schools jointly determined to issue special ID cards to Medical Area personnel. In addition to facilitating security, the Medical Area ID card entitles the bearer to free transportation on the University's shuttle bus between the Medical Area and Cambridge. Non-Medical Area employees pay for this service. The record also establishes that the University conducts numerous cultural, athletic, and recreational events at the Medical Area for Medical Area employees. Finally, the record shows, as it did in *Harvard I*, that the Medical Area schools and other facilities operate an entity called the Medical Area Service Company for separate long and short range physical planning and development of the Medical Area. In sum, contrary to the University's assertions, the additional evidence submitted in this proceeding shows that a separate personnel office for the Medical Area continues to exist.

Anxious to overturn the Board's *Harvard I* decision but unable to alter the realities of the Medical Area's separateness, the University has seized on the easiest of facts to change and nominally abolished MAPO. But the substitution of MAEO for MAPO is little more than cosmetic, while the creation of personnel offices at the individual schools appears to give the Medical Area schools even

<sup>4</sup> At the time of the hearing a portion of the former MAPO facility was being converted into a child care facility designed primarily for Medical Area employees.

<sup>5</sup> The University's own personnel newspaper, *The Balloon*, includes a separate section called "Medical Area Matters" covering personnel matters of specific interest to Medical Area personnel. No other unit of the University receives its own similar coverage.

<sup>6</sup> The record shows that average salaries in the Medical Area are higher than in the University at large. The record also establishes that the Medical Area has flexibility beyond universitywide guidelines to grant higher merit increases.

more autonomy than before from the University's personnel office.<sup>7</sup>

The separate and distinct character of Medical Area personnel practices has not changed since *Harvard I*. Nor was any evidence submitted calling into question the analysis of the other unit-determination considerations relied on in *Harvard I*. It follows that the petitioned-for unit is appropriate.<sup>8</sup>

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<sup>7</sup> It is uncontested that one of the University's express purposes in abolishing MAPO was to remove a "key factor" underlying the Board's *Harvard I* decision and thereby justify the University's continuing opposition to a Medical Area bargaining unit. See 5 February 1982 memorandum of Director of Personnel Cantor, P. Exh. 7.

<sup>8</sup> Two other schools, Cornell University and Stanford University, submitted amicus briefs opposing separate unit status for the University's Medical Area employees. I note that each of these schools, when faced with petitioners seeking universitywide units, contended that exclusion of medical school or hospital employees was appropriate. See *Cornell University*, 202 NLRB 290, (1973) (*Cornell II*); *Leland Stanford Jr. University*, 194 NLRB 1210, 1211 (1972).

In making unit determinations in the university setting, as elsewhere, "the Board's task is not to determine whether the petitioned-for unit is the most appropriate. Rather, it is to determine whether the petitioned-for unit is appropriate for purposes of collective bargaining." *Harvard I*, 229 NLRB at 587 (fn. omitted). See also *Cornell University*, 189 NLRB at 336. Today's decision in fact presumes that only the larger, universitywide unit is appropriate unless otherwise proved. Thus, the majority repeatedly frames the issue as whether a "less than universitywide [unit] is appropriate," and asks "whether the petitioned-for group of employees share[s] a community of interest sufficiently special to warrant separating them from other employees." This presumption in favor of the largest appropriate unit has no basis in Board law. Accordingly I dissent.