

Lewis and Clark College and Lewis and Clark Chapter, American Association of University Professors, Petitioner. Case 36-RC-4988

September 28, 1990

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

On April 1, 1988, the Regional Director for Region 19 issued a Decision and Direction of Election for the following unit: all tenured and tenure-track undergraduate and graduate faculty. In accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's Decision and Direction of Election. The Employer contended, *inter alia*, that the Regional Director should have dismissed the petition because the faculty members are managerial employees within the meaning of *NLRB v. Yeshiva University*, 444 U.S. 672 (1980).¹ The Petitioner filed an opposition to the request for review. The Board, by Order dated May 9, 1988, granted the Employer's request for review, but denied its request to stay the election. Hence, the election was conducted as scheduled on May 11, 1988, and the ballots were impounded.

The Board has considered the entire record in this case, including the brief on review filed by the Employer, and concludes that the undergraduate faculty members are managerial employees as defined in *Yeshiva University*, *supra*, and, therefore, the petition must be dismissed.²

Lewis and Clark College (the College) is a private liberal arts institution located in Portland, Oregon. The College consists of three separate educational units: the College of Arts and Sciences (CAS), the graduate school, and the law school. The Petitioner initially sought a unit limited to the CAS (undergraduate) faculty. The Employer contended that even if the CAS faculty members were not managerial, the only appropriate unit must also include the graduate school faculty. The Petitioner, while not seeking inclusion of the graduate faculty, took no position on the issue. The Regional Director found that only an overall unit of CAS and graduate school faculty was appropriate.³

Approximately 1500 undergraduate and 750 graduate students attend the College. There are approximately 95 undergraduate tenured and tenure-track fac-

ulty members in the unit. In addition, there are approximately 10 unit faculty members in the graduate school, which was established in 1984. The CAS faculty members generally work in departments, while the graduate school faculty members work in programs.⁴

Ultimate authority for educational and financial policy decisions is vested in the College's board of trustees (the board). The College president sits on the board and serves as chief executive officer. Reporting to the president are the provost, who is the chief academic officer; the law school dean; and the vice president for institutional advancement. Reporting to the president through the provost are the CAS dean, the graduate dean, the dean of international education, the vice president of student affairs, the vice president of business and finance, the assistant provost and director of planning/analytical studies, the registrar, and five directors of programs.⁵ Reporting to the CAS dean are the associate dean, the director of the core programs,⁶ the division heads,⁷ and the director of athletics.⁸

Board of Trustees Committees

One faculty representative from the CAS, the graduate school, and the law school may attend full board of trustees meetings in a nonvoting, advisory capacity. Faculty representatives are excluded from executive sessions. Although faculty representatives elected by the entire faculty sit on some board standing and ad hoc committees, and may vote, they do not constitute a majority on any committee.

Faculty Committees

The CAS constitution sets forth six committees on which faculty members are elected to serve by their fellow faculty members. Faculty members constitute a majority on each committee and on most subcommittees. Although administrative, nonunit individuals are members of some of these committees, most serve *ex officio*.

The *curriculum committee* consists of 15 faculty members, 4 nonvoting administrators, and 3 students. It is charged with consideration of all aspects of the CAS educational programs and formulation of recommendations concerning those programs. The *admis-*

⁴The parties agreed to include department chairs in the unit but to exclude the graduate program directors as supervisors under Sec. 2(11) of the Act.

⁵Several positions report to the vice presidents for institutional advancement and for business and finance.

⁶These positions are included in the unit sought.

⁷Related CAS departments are grouped together into four divisions. Currently, the division-head positions are vacant. When the division-head positions are filled, the department chairs report to the division heads; at present, they report to the CAS dean.

⁸The parties stipulated that the following individuals are supervisors within the meaning of Sec. 2(11), and should be excluded from any unit found appropriate: deans, assistant deans, associate deans, provost, assistant provost, graduate school program directors, directors of athletic programs, and the undergraduate division heads. The parties also agreed to exclude several individuals because they do not hold faculty status, or are administrators and do not share a community of interest with the faculty.

¹The Employer also contended in its request for review that the faculty members are supervisors within the meaning of Sec. 2(11) of the Act. Although it appears that the Employer never raised that issue before the Regional Director (see Sec. 102.67(d) of the Board's Rules and Regulations), we find it unnecessary to address the supervisory issue in view of the result we reach on the managerial issue.

²For the reasons stated *infra* at fn. 43, we do not reach the issue of the managerial status of the graduate school faculty.

³The parties stipulated to exclude the law school faculty members from the unit.

sions and financial aid policy committee (AFAPC) consists of five faculty members, four nonvoting administrators, and two students.⁹ The *faculty personnel advisory committee* (FPAC) has six voting faculty members and four nonvoting administrators.¹⁰ This committee develops and recommends policy and procedures regarding faculty personnel. The *budget advisory committee* has six faculty members and four nonvoting administrators. It recommends policies and procedures regarding the budget, interpreting such policies to the faculty, and cooperating with the president in implementing board policies.

The *faculty council* consists of seven faculty members, and provides a mechanism for formulating faculty opinion on any matter concerning the CAS. It approves administration-proposed appointments to committees, and serves as a hearing committee in faculty cases involving dismissal "for cause." The last constitutional committee is the *faculty executive council*, which consists of the chairs of each of the other five constitutional committees and the CAS dean. It coordinates the committee work of the faculty.

The CAS also has several standing faculty committees, the most notable of which is the *advancement, promotion, and tenure committee* (review board). The review board makes recommendations on promotion and tenure decisions. It consists of four elected CAS faculty members (one serving as chair), two faculty members from other colleges in the area (jointly chosen by the FPAC chair and the CAS dean), and a member of the board of trustees.

The faculty members also participate on several *search committees* for the hiring of faculty members and administrators. The faculty search committees almost always contain a faculty majority, while the administrative search committees vary in membership.

In addition to participation through faculty committees, the faculty members are involved in academic and nonacademic decisions either individually or by consensus within particular departments.

Faculty Decision-Making

1. *Academic.* Faculty members individually determine their teaching methods, research projects, and students' grades. In the one instance in which a grade was appealed, the grade given by the faculty member was upheld. Retention policies, including scholastic standing policies, are determined by the admission and financial aid policy committee (AFAPC). Actual grade-

point-average policy is recommended by the AFAPC and the curriculum committee to the faculty, and decided by the faculty at its monthly meetings. The AFAPC's scholastic standing subcommittee performs case-by-case reviews of the standing of individual students. Although the majority of this committee is composed of administrators (three administrators, two faculty members, and one student), there is no indication whether the administrators have a vote. However, as noted, AFAPC sets the policy implemented by this subcommittee, and the faculty constitutes the voting majority on the AFAPC.

The *curriculum committee* considers all proposals for earned degrees and their requirements, for establishing departments in the College, for establishing educational programs, for academic calendars and schedules, and for all courses offered by the College, including additions, deletions, and alterations. The committee also entertains proposals for the addition of new programs and graduation requirements, including core curriculum requirements. Recommendations of the committee that involve only minor or routine changes, such as changes in a course number or name, are reported to the faculty and are accepted as binding unless the faculty members wish to put the matter to a vote. If a majority votes against the curriculum committee's action, it is rejected.

Recommendations of the curriculum committee that involve major changes, such as degrees and degree requirements, departments of instruction, or the academic calendar, are reported to the full faculty by the curriculum committee, voted on, and, if approved, are forwarded to the CAS dean. The dean in turn makes a recommendation through the provost to the president, and the president makes a recommendation to the board of trustees. Although there is not extensive testimony on specific curriculum recommendations or on later administrative review, it appears that the faculty's recommendations have not been overturned at higher administration levels.¹¹

Affirming that a student has fulfilled graduation requirements for a particular department is the responsibility of the department chair, who signs a form which is forwarded to the registrar. The full faculty in each department approves a list of graduating students.

Admissions policies and standards are determined by AFAPC and then recommended to the president. Such recommendations have not been rejected. The faculty is not involved in the actual selection of applicants for the college. Nor is the faculty involved in the setting of overall enrollment levels, although individual instructors may make exceptions in the case of their individual class size limitations.

⁹The AFAPC has subcommittees on scholastic standing, awards, and merit awards. The scholastic standing and the awards subcommittees each consist of three administrators and two faculty members. Administrators on the awards subcommittee may vote. The record does not indicate whether administrators on the scholastic subcommittee may vote. In any event, the policy of these subcommittees is determined by the full committee which consists of a majority of voting faculty members.

¹⁰It has subcommittees on benefits, affirmative action, faculty research, faculty review policy, and sabbaticals.

¹¹Although graduation requirements generally follow the same approval route, some recommendations of the faculty members have been implemented after only the CAS dean's approval.

Teaching assignments for particular courses are decided through faculty consensus at the department level. Faculty workload policies are determined by the administration. The administration also sets tuition levels. The overseas and off-campus subcommittee of the CAS curriculum committee has made recommendations to the curriculum committee regarding the location of off-campus programs, and the selection of faculty members to lead overseas trips. No recommendations have been overruled during the 3 years preceding the hearing.

AFAPC formulates and reviews policies governing CAS financial aid and awards. The awards subcommittee makes individual determinations, within the parameters of AFAPC policy, regarding the amount that will be awarded a student. This subcommittee is one of the few committees within the faculty committee structure on which the administrators with voting rights outnumber voting faculty members. As noted previously, however, this committee works under policies formulated by AFAPC, which has a faculty majority. Each department within the CAS may initiate awards programs and nominate candidates. The AFAPC honors subcommittee selects the students who will receive the awards.

2. *Nonacademic.* When a tenure or tenure-track faculty position becomes vacant, the department chair first seeks approval from the faculty personnel advisory committee (FPAC) to fill the position. FPAC makes a recommendation to the CAS dean. Although there is some testimony that in the past FPAC made these decisions, it appears that the CAS dean currently makes such decisions following a recommendation from FPAC. The only statistics available show that in November 1985, FPAC made 10 recommendations to fill positions, but the CAS dean agreed with only 4 recommendations and disagreed with the other 6. The administration agreed with the dean.

To hire faculty members to fill authorized positions, the department chair establishes a four-person search committee, usually comprising the chair, one faculty member from the department involved, one faculty member from another department in the same division, and one faculty member from a different division. The committee ranks candidates and sends to the dean its recommendation for an interview and visit to the College. The candidate is then interviewed by the search committee, the CAS dean, the provost, and the president. The committee makes a recommendation to the dean. The recommendation of the search committee and that of the dean are sent to the provost for her recommendation. All the recommendations are forwarded to the president. All but one of the search committees' recommendations were followed by the administration during the 1984–1987 academic years.

CAS faculty members also have participated on collegewide committees to recommend the selection of administrators. CAS faculty members were a majority on the committee to select the CAS dean, but no candidate received a majority of votes and an acting CAS dean was appointed by the administration. CAS faculty members were a minority on committees to select the provost, although with the law school and graduate school faculty representatives, their numbers were equal to the total student, trustee, and administration representatives. The recommendation of that committee was followed. The CAS faculty members were a minority on the committee which selected the associate provost. The faculty members also were a minority on the 1980 search committee for president.

The CAS advancement, promotion, and tenure committee, or "review board," reviews CAS faculty members eligible for promotion or tenure.¹² A promotion involves a change in rank (e.g., associate professor to assistant professor). Tenure and promotion decisions are termed "major reviews." For a major review, a recommendation is sent to the CAS dean by the review board. The review board's recommendation, together with the dean's recommendation, are sent to the provost, who performs an independent review of the candidate's file. All three recommendations go to the president. The review board also considers requests for "accelerated" change in rank. Those recommendations proceed similarly.

During the period 1977 through 1987, a total of 67 faculty members were considered by the review board for promotion to professor rank. The administration followed 65 of the review board's recommendations. The president and the review board also were in agreement on 52 of 57 tenure reviews during the same period. No overall figures were supplied for requests for accelerated change in rank, but for the past year, only 1 of 10 recommendations by the review board was rejected by the administration.

If the review board recommends against promotion or tenure, the faculty member may appeal the recommendation to a three-member appeals body consisting of one faculty member recommended by the aggrieved professor, one faculty member recommended by the CAS dean, and a third faculty member agreed on by the other two. The appeals body sends its recommendation to the dean. That recommendation, together with the original recommendation of the review board, is sent to the provost and to the president. There is no evidence regarding the use of these procedures.

In addition to tenure and promotion decisions, the review board also considers advancement within rank for associate professors and professors, and the first

¹² The current tenure and promotion policy was approved by the faculty and adopted by the board in 1979. A revision by FPAC is under consideration by the full faculty.

advancement for assistant professors. This procedure, called "ordinary review," is performed by the CAS dean. It is based on the faculty member's resume, the department chair's recommendation, and any supplementary material from the faculty member. The evidence is conflicting whether the department chair's recommendation is followed, for it varies by department and no overall figures were provided. The dean's decision may be appealed to the review board, in which case the review board's recommendation is forwarded, along with the dean's, to the provost and the president. In those instances in which the department chair's recommendation was not followed and the dean's recommendation was appealed to the review committee, it appears that the review committee's recommendation usually was upheld by the administration.

A faculty member also may be removed "for cause." An "advisory committee" is charged with advising whether to bring formal proceedings, although the president may begin proceedings even if the committee makes a contrary recommendation. The advisory committee consists of the CAS dean, five senior members of the faculty who are not members of the faculty council, and the chair of the department involved. If a faculty member is recommended for dismissal by the committee or the president, a hearing committee consisting of the faculty council conducts a hearing, makes findings, and presents them to the board of trustees. The board makes the final decision. There is no evidence on the use of this procedure.

Requests from CAS faculty members for sabbaticals are submitted to the FPAC sabbatical subcommittee for review and rank-ordering. The subcommittee's recommendations are forwarded to the full FPAC, which forwards its recommendation through the dean to the provost and then to the president. There is no evidence that FPAC recommendations have been overturned.

Although the committee structure provides for a budget advisory committee, the faculty members do not vote on the overall budget of the College. There is considerable testimony demonstrating consultation and flow of information between the administration and the committee, and individual faculty members. There is no evidence, however, that the faculty members make recommendations regarding the budget.¹³

Umbrella Committees

In addition to the faculty committees, the board of trustees initiated several "umbrella" or overall policy-making committees during the 1980s in response to the

¹³In 1984-1985, the faculty members participated on a task force which made recommendations concerning a new comparative salary structure. The administration agreed to the major features of the policy. But in the policy's implementation the administration appears to have selected different colleges for comparison from those recommended by the faculty. The faculty had no role in freezing cost-of-living increases during the 1986-1987 academic year.

planning and financial needs of the College. Although the degree of CAS faculty representation on these committees varies, none contains a majority of CAS faculty. The faculty, through its committee structure, has carried out, or is in the process of carrying out, most of the decisions made by the umbrella committees.

1. *Mission Planning Committee (MPC)*. The MPC was formed in 1982 as part of an "extraordinary two-year mission planning process." This process was prompted by the College's desire to review its mission and purpose, and the allocation of its resources with regard for the College's continued financial health. Thus, the board authorized an examination of a broad range of academic, financial, and administrative matters at the undergraduate, graduate, and law school levels.

The College considered these broad matters to be beyond the normal mechanisms for faculty review, i.e., the faculty constitutional committees. Thus, the board appointed what it termed an "extraordinary ad hoc committee," the MPC, to make recommendations to the Board arising from this planning process. Generally, the MPC consisted of nine administrators and two faculty members, although the composition fluctuated somewhat over the course of deliberations.

During the period when the MPC developed its recommendations, the College informally solicited faculty input. This included various meetings and forums. It is unclear precisely what matters were presented to the faculty members for their review at these meetings. Within the MPC itself, there is testimony establishing that the full committee refused to bring some matters before the full faculty despite a request by a faculty representative on the MPC. The "mission planning statement" was adopted by the MPC despite the objection of the only two faculty representatives on the committee. The administration told the faculty that it would have an "advisory" vote on the MPC recommendations.

The report of the MPC, the mission planning statement, and its recommendations were issued in late April 1984.¹⁴ The report also contained a list of "suggestions" for referral to the curriculum committee for "evaluation." Shortly thereafter, the faculty took its advisory votes. The faculty tabled a motion to approve the mission planning statement. The faculty essentially was in agreement with the administration, however, on six of the seven recommendations for the undergraduate school, except for some minor changes that the board agreed to in its resolution adopting the final recommendations.¹⁵

¹⁴Apparently, the MPC's mandate was fulfilled with the issuance of its April 1984 report, and the board's acceptance of that report.

¹⁵The MPC recommended that the core undergraduate curriculum be strengthened and that the School of Music be converted to the Department of Music. The faculty agreed, but requested and obtained language requiring, that

The lone recommendation in which the faculty did not concur involved the future of teacher education at the undergraduate school. This recommendation “tied in” with recommendations concerning the creation of a graduate school. Although the faculty and the administration agreed that the College should continue to offer graduate programs, they disagreed about what programs, including teacher education, should be part of the graduate school, and whether the graduate school should be a separate entity.¹⁶ The administration prevailed on its programs for the graduate school and on the creation of a separate graduate school and faculty.¹⁷

The board resolution adopting the MPC’s recommendations concluded by directing “the faculty and its constitutional committees to complete consideration of the recommendations within their jurisdiction.” The MPC’s recommendations and suggestions were implemented by the faculty through its curriculum committee or the faculty as a whole.¹⁸

2. *Planning and Resource Council (PRC)*. The PRC is the lead committee for a group of committees called the Interim Planning and Self-Study Committees (IPSS), which were created in late 1986 and early 1987. The dual purpose of these committees was to (1) conduct a self-study of the College in preparation for

a reaccreditation evaluation by the Northwest Association of Colleges and Schools; and (2) have in place interim, ongoing planning committees while the College undertook a review, mandated by the board of trustees, of its governance policies and procedures.

The PRC consists of four undergraduate faculty, one faculty member from the graduate school, one from the law school, and four administrators. One member of the undergraduate faculty serves as chair and is non-voting. The lone graduate school representative, a program director, was stipulated to be a statutory supervisor. Hence, the CAS faculty constitute a minority of the voting members of the PRC. The faculty representatives were recommended by the deans of each respective school and endorsed by the faculty council.

In early 1987, the College faced a financial crisis. As part of the president’s authority to integrate planning priorities with the budget, the PRC, as a planning body, was called on by the president to help resolve the crisis. According to the College’s president, the basic charge of the PRC was programmatic and educational. The PRC was asked to address the question: “What should we teach and to whom in the coming decade?” The PRC evaluated all academic programs, administrative functions, and student support services, and recommended which should be maintained at current levels, or enhanced, reduced, or eliminated.

The PRC was responsible for recommending and advising the President’s Planning and Budget Team (PPBT), which in turn was to make recommendations to the president. The PPBT consisted of the president, provost, several other administrators, and one faculty member, who is the chair of the PRC.

The PRC received reports from undergraduate departments, graduate school programs, and from other IPSS committees regarding which programs to continue, reduce, or increase, and which to eliminate, based on priorities. The PRC’s deliberations were confidential.

The PRC’s recommendations were made public by the president in late May 1987, at which time the PRC held meetings with affected groups, as did the president. Around June 8, 1987, the president issued a memorandum to the College community setting forth the recommendations he planned to make to the board, noting that “these issues are subject to continuing review, student and faculty input, and the review of affected [b]oard committees.” His recommendations, the PPBT’s, and the PRC’s were attached to the June 8 memorandum. The president agreed with most of the recommendations of the PPBT and the PRC, although some revisions were made in response to concerns raised following meetings with the affected groups. The president’s memorandum to the College stated that the recommendations would be implemented “over a two to five year period.”

the “specifics . . . be assigned by the Faculty Executive Committee, in consultation with the Dean and the President, to the appropriate faculty constitutional committee.” The faculty members agreed to a recommendation to maintain salaries comparable to those from competitive schools, and the administration agreed to include increased funding for faculty development. The faculty members also agreed to certain faculty/student ratios, and the administration agreed that if reductions in faculty were necessary, there would be comparable reductions in administration and staff. The faculty members agreed in toto to recommendations that the school remain selective in admissions, and that the curriculum committee and FPAC be governed by various specified “working principles” that essentially would balance the College’s mission objectives with its fiscal constraints.

¹⁶ Prior to the MPC recommendations, the College maintained graduate programs and degrees, but there was not a separate graduate school or faculty. Although the faculty agreed to creation of a “financially self-sustaining Graduate School of Professional Studies,” it was opposed to a separate administrative unit. When voting on the MPC recommendations, the faculty recommended that teacher education remain part of the undergraduate mission. The practical effect of the administration’s recommendations for the graduate school was to abolish the undergraduate department of education and its major, transfer teacher preparation to the graduate school, and to retain only a minor in education in the undergraduate school.

¹⁷ A faculty proposal that future reductions of the faculty be governed by a set of principles decided on by a majority of the faculty was not contained in the final MPC recommendations adopted by the board. It appears that some principles were later agreed to by the administration but rescinded by the board in 1987 because of financial problems. The task of developing new principles was turned over to the president.

¹⁸ Thus, the faculty approved a new core curriculum, new minors in areas emphasized in the recommendations, and conversion of the music school to a department with a new curriculum; and the faculty adopted at least some of the “working principle” policy recommendations. The faculty involved in elementary education made proposals for modifications necessary for the new education minor, which were adopted by the full education faculty and referred to the curriculum committee. The faculty also implemented some undergraduate “suggestions” that the MPC forwarded with its report (adoption of a new core curriculum; changed foreign language requirement for bachelor of arts degree and writing policy). The faculty retained, without change, other policies where changes had been recommended, such as overall math proficiency and the ceiling on required credits for a major.

On July 1, 1987, the board passed a resolution supporting the president's recommendations.¹⁹ It also resolved that the planning process had provided ample opportunity for faculty input,²⁰ and therefore the PRC's recommendations did not need to be submitted to the constitutional committees or the faculty as a whole. The recommendations adopted by the board currently are before faculty committees for implementation.²¹

3. *Task Force on Governance (TFG)*. The TFG was created by the board's resolution setting forth its "Policy on Governance." The TFG currently consists of one unit faculty member and approximately five administrative representatives. Various subcommittees, including the one drafting the faculty handbook, have only a minority of faculty members. The CAS constitutional committees remain in place and continue to operate while the TFG finishes its work.

The primary charge of the TFG is to revise, review, and develop new governing documents and procedures for the entire College. The board resolution creating the TFG provides that the final TFG proposals for faculty governance must be presented to the full faculty of each of the three units for an advisory vote. The president and chairman of the board rejected a resolution by the faculty that called for approval by a majority of the faculty for all governance changes that affect the CAS faculty. The board chairman also rejected a request that he not forward to the board any governance proposal that does not have the support of the three faculty units.

The *Yeshiva* Decision

In *NLRB v. Yeshiva University*, 444 U.S. 672 (1980), the Supreme Court found that faculty members at Yeshiva University were managerial employees excluded from the Act's coverage. The Court defined managerial employees as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer."²² It held that managerial employees "must exercise discretion within, or even independently of, established employer policy and must be aligned with management,"²³ and that they must represent "management

interests by taking or recommending discretionary actions that effectively control or implement employer policy."²⁴

The Court found that the faculty of Yeshiva, through participation in meetings and committees, effectively determined its curriculum, academic calendar, grading system, admission and matriculation standards, course schedules, and teaching methods, and which students were to be admitted, retained, and graduated. The faculty sometimes determined the size of the student body and the location of a school. The Court found that the faculty's control over academic matters at Yeshiva was absolute, and that the faculty played a predominant role in faculty hiring, tenure, sabbaticals, termination, and promotion.²⁵ Although faculty decisions were subject to a rarely exercised veto authority, the Court found that this did not diminish the faculty's effective policy-making and policy implementation.²⁶ In concluding that the *Yeshiva* faculty members were managerial, the Court relied primarily on their extensive authority over academic affairs.²⁷

Analysis

In finding the College of Arts and Science (CAS) faculty members to be employees, the Regional Director acknowledged that the CAS faculty participate in decision-making and implementation of a variety of academic and nonacademic matters. He concluded, however, that they do not "substantially and pervasively" operate the College, and that their role does not rise to the level of "effective recommendation or control" as defined in *Yeshiva*. He found that because of actions by the umbrella committees, which are not faculty controlled, there had been a "significant abrogation" of the faculty's participation in major curriculum decisions. He also noted that, because the new governance structure being considered by the TFG is not final, the future governing role of the faculty is unknown. The Regional Director further found that the faculty members are not aligned with management because an effective "buffer" exists between faculty and top management, i.e., there are administrators who possess the required expertise that the College can rely on for the formulation and implementation of policies.

For the reasons stated below, we disagree with the significance that the Regional Director attached to the umbrella committees' authority, and we believe that the College's administrators are not a decisional "buff-

¹⁹The academic recommendations of the president adopted by the board included, inter alia, the elimination or reduction of academic programs, departments and majors; further review of such actions; and elimination of the term system and institution of a semester schedule.

²⁰This input was described in the resolution as (a) input and access to consultants who assisted in the formulation of the review process; (b) faculty submission of reports and requests to the PRC; (c) faculty participation and membership on the PRC; (d) faculty membership on the PPBT; and (e) presidential consultation with affected academic units, programs, departments, and students prior to final recommendations to the board for action.

²¹E.g., implementation of the change from a term system to a semester system is currently being considered by the curriculum committee.

²²444 U.S. at 682, quoting *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 288 (1974).

²³Id. at 683.

²⁴Ibid.

²⁵Although the final decision with respect to these nonacademic matters was made by the central administration on the advice of a dean or director of the University's various schools, the Court noted that the faculty made recommendations in all cases, and that the overwhelming majority of faculty recommendations were implemented. 444 U.S. at 677.

²⁶Id. at 683 fn. 17.

²⁷Id. at 686 fn. 23.

er” between the faculty and the top management in many important areas of College governance.

We look first at the faculty’s authority, exclusive of the umbrella committees or the so-called buffer of administrators. The CAS faculty members exercise authority in a majority of the critical areas identified in *Yeshiva University* and its progeny.²⁸ The Regional Director acknowledged that the faculty has a critical role in important areas of College governance. Thus, whether individually, by department consensus, through constitutional committees, or in meetings of the whole, the faculty makes academic decisions or effective recommendations for such decisions in the following academic areas: teaching methods; grades; retention standards; scholastic standards; matriculation standards; admission standards; curriculum and course content; degree and degree requirements; teaching assignments; graduation and graduation requirements; academic calendars; departments of instruction; honors programs; scholarships; and financial aid.²⁹ They also have made effective recommendations for school locations off campus and overseas, research funds, and individual class enrollments.³⁰

Contrary to the Regional Director, we do not believe that the faculty’s authority as described above was negated or significantly diminished by the umbrella committees’ decisions. We note first that the faculty’s structure for academic decision-making has not been abolished or restructured. Although the TFG is drawing up new governance plans for the school, those plans are unfinished. In the interim, the current CAS faculty governing structures remain in effect. There is

²⁸ 444 U.S. at 686. In later cases the Board applied the *Yeshiva* test and found faculty members to be managerial employees. See *University of Dubuque*, 289 NLRB 349 (1988), in which the faculty as a whole had exclusive authority to set general student grading, classroom conduct standards, and degree requirements; recommend earned-degree recipients; initially receive and consider new degree programs; and develop, recommend, and ultimately approve curriculum content and course offerings; and made “effective recommendations concerning course schedules, admission standards, student retention, distribution of financial aid, and the modification of programs and departments.” *Supra* at 352. See also *Livingstone College*, 286 NLRB 1308 (1987), in which the faculty had substantial authority in the areas of “curriculum, degree requirements, course content and selection, graduation requirements, matriculation standards, and [selection of] scholarship recipients.” 286 NLRB at 1313.

²⁹ There is no evidence on the faculty members’ role, if any, in formulating student absence policies.

³⁰ The faculty members also make recommendations for several nonacademic matters, which usually are followed by the administration. Thus, the faculty members make effective recommendations for faculty tenure, promotion, and sabbaticals. Faculty members also have input into hiring. Nonacademic matters, however, are accorded less significance in deciding faculty managerial status. Thus, in *Yeshiva*, although the Court found that faculty members played a predominant role in faculty hiring, tenure, sabbaticals, termination, and promotion, the Court did not rely primarily on these features of faculty authority. *Id.* at 686 fn. 23. Indeed, the Board has accorded less weight to these factors in determining whether faculty members are managerial employees. *University of Dubuque*, 289 NLRB at 352; *Livingstone College*, 286 NLRB 1308, 1314 (1987). Although a reduction-in-force proposal by the faculty was rescinded by the board of trustees and 6 of 10 recent recommendations of FPAC to fill faculty positions have not been followed, these also involved nonacademic matters that, as noted above, are accorded limited significance.

no indication that the College has any intention of permanently removing the authority of the faculty, of making permanent the interim authority of the umbrella committees over academic matters, or of removing the faculty’s authority over daily academic matters.³¹ Indeed, faculty committees, including the curriculum committee, continue to meet and consider academic matters. The faculty’s committees and decision-making authority coexist with the umbrella committees and their interim authority.

Although excluded from the umbrella committees’ policy-making decisions, the faculty members have formulated other academic policies when implementing the umbrella committees’ recommendations. Under *Yeshiva*, individuals may be excluded as managerial employees if they take or recommend discretionary actions that effectively control or *implement* employer policy.³² Here, the faculty exhibited its independent discretion when it effectively implemented the MPC’s recommendations by, *inter alia*, approving a new core curriculum, new minors, and conversion of the music school to a department (including a new curriculum), and by adopting some of the “working principle” recommendations which balance the school’s mission with fiscal constraints. The faculty also carried out MPC “suggestions” by changing foreign language, math, and writing policy requirements. As for the PRC’s recommendations, these are currently before faculty committees for implementation (e.g., the curriculum committee is considering matters related to implementing the change from a quarter to a semester system.).

We disagree with the significance the Regional Director attached to the umbrella committees because the types of policies considered by the committees are distinct from those considered by the faculty. The umbrella committees were designed to address the College’s financial viability and its long-term planning. Although the umbrella committees’ decisions have had an impact on academic departments and programs, the policy considerations that these committees weigh are much broader than those that the faculty members consider in their academic decision-making. The faculty’s lack of control over these particular decisions does not

³¹ The TFG’s mission and composition do not diminish the faculty’s authority. The faculty’s lack of control over the process of determining how they and the College will be governed does not reflect on the faculty members’ authority, or indicate that their current authority will be reduced in the future. It would be speculative to conclude before the TFG is finished with its work that the faculty’s authority has been substantially diminished. *Cf. Cooper Union for the Advancement of Science & Art*, 273 NLRB 1768 (1985), *enfd.* 783 F.2d 29 (2d Cir. 1986), in which a reorganization—over faculty opposition—divided the school of art and architecture into two separate schools entirely outside the degree-granting schools. This effectively disenfranchised almost one-half of the faculty. Also, the faculty “governances” were amended without a faculty vote. Unlike *Cooper Union*, there is no evidence in this case that the governing structure has been changed. In that case, moreover, there was a clear pattern over the years of faculty disenfranchisement in academic matters. Here, the faculty continues to make important academic decisions.

³² 444 U.S. at 683.

nullify the faculty's extensive authority over academic matters.³³

An organization can have several levels of policy-making and, hence, several levels of managerial employees. There is, therefore, nothing inconsistent with the faculty members' having authority over one level of policy (e.g., academics), and the administration (including the board of trustees), having control over another (e.g., financial viability and long-term planning). The board of trustees and others in the administration are entrusted with the ultimate policy-making and fiduciary responsibility for the College, not the faculty. But, even as to those areas in which the administration has exercised its own managerial decision-making authority, high-level implementation of those decisions is performed by the faculty.

As the Court recognized in *Yeshiva*, the predominant policy at a university normally is to operate a school that will achieve broad educational goals within the "limits of its [the institution's] financial resources."³⁴ *Yeshiva* depended on the faculty's professional judgment to formulate and apply policies "constrained only by necessarily general institutional goals."³⁵ Moreover, the faculty in *Yeshiva* were found to be managerial employees despite occasional vetoes of faculty action caused by "administrative concerns with scarce resources and University-wide balance."³⁶

³³ Contrary to our dissenting colleague's suggestions, we do not minimize the importance of the umbrella committees' decisions through a "strained" distinction between academic policy and the larger scale decisions made by the umbrella committees. We acknowledge that the umbrella committees examined academic policies in the course of their deliberations and made some decisions that affected areas of academic policy. We do not agree, however, that the umbrella committees controlled, or even influenced, all or most of the decisions made by the faculty. The MPC was part of an "extraordinary planning process" prompted by concerns for the College's financial health, and the PRC was a planning committee asked to address a financial crisis at the College. Given the format and timing of their policy recommendations, they could not possibly have operated as substitutes for the bodies responsible for the on-going governance of the College. The record shows, for example, that in the 3-year period between April 1984, when the MPC issued its recommendations, and May 1987, when the PRC issued its recommendations, no decisions or recommendations were issued by any umbrella body. The College continued to operate during this period by virtue of the faculty's decision-making and effective recommendations discussed above. The umbrella committees thus did not represent an attempt by the administration to wrest from the faculty fundamental control of academic policy. Finally, with respect to our colleague's contention that the faculty members' statutory employee status is established in part by their lack of authority to make such decisions as whether to create a graduate school or to eliminate certain departments, we note that in cases involving manufacturing employers, the absence of evidence that individuals such as credit managers, buyers, or price estimators possess authority to shut down plants or eliminate entire plant lines has not prevented the Board from finding that they were managerial employees. See *Simplex Industries*, 243 NLRB 111, 111-113 (1979); *General Dynamics Corp.*, 213 NLRB 851, 862 (1974).

³⁴ 444 U.S. at 688.

³⁵ *Id.* at 689.

³⁶ *Id.* at 688 fn. 27. See *American International College*, 282 NLRB 189, 202 (1986) (vetoes of faculty proposals did not preclude finding faculty members to be managerial employees, as incidents were not substantial or predominant, and did not show a pattern of unilateral action that undermined faculty authority); *Boston University*, 281 NLRB 798 (1986), *enfd.* 835 F.2d 399 (1st Cir. 1987) (that administration occasionally made and implemented policy decisions without faculty input did not detract from the faculty's managerial authority).

Thus, there are college policy questions (i.e., "financial resources," "general institutional goals," or "University-wide balance") that are broader than academic policy matters and from which the faculty members may be excluded yet they remain managerial employees. We find that the actions of the umbrella committees have not significantly diminished the substantial authority of the faculty.³⁷

The Regional Director also erred in finding that the Employer's administrators constitute a substantial buffer between the faculty and the board of trustees. He found that because there are "several steps of administrative hierarchy above the faculty level," with veto power and an independent review at each step, the faculty is not allied with management. Moreover, the Regional Director found that the administration does not hesitate to use its veto power. He concluded that the "professional expertise," which the Court found in *Yeshiva* to be "indispensable to the formulation and implementation of academic policies,"³⁸ was available within the ranks of the College's administration.

Although the College has a number of administrators and programs, it does not require layers of administration to implement the faculty's academic decisions. Academic recommendations usually are made by the faculty to the CAS dean, and are sent to the provost, the president, and the board of trustees. This hierarchy is similar to the one in *Yeshiva*, where there was a board of trustees, a president, a vice president for aca-

³⁷ This case is distinguishable from cases in which an administration's unilateral actions were a factor in finding faculty members to be employees. Thus, in *St. Thomas University*, 298 NLRB No. 32 (Apr. 25, 1990), the administration unilaterally established a law school and adopted a reorganization plan formulated by a consultant, which eliminated entire degree programs without faculty approval. In *Cooper Union*, *supra*, and *Bradford College*, 261 NLRB 565 (1982), the administrations created and eliminated entire programs without faculty input or over faculty opposition. Moreover, in *St. Thomas*, the faculty committees met infrequently, and any recommendations they made regarding academic or nonacademic matters usually were ignored or reversed by the administration. In *Cooper Union*, full-time faculty members constituted a minority on most governance committees and something less than a voting majority on about one-half of the committees. Deans controlled the agenda and meeting times of committees, and administrators voted on some committees in contravention of the "governances." In *Bradford College*, the president often ignored or reversed faculty recommendations concerning academic and nonacademic matters. Here, the faculty members constitute a majority on most committees, and the committees' recommendations regarding both academic and nonacademic matters usually are followed by the administration.

The dissent relies on these three cases for its view that administrative decision-making at Lewis and Clark has likewise become institutionalized and regularized. The dissent contends that the administrations in those schools made decisions similar in magnitude and significance to those made by the Lewis and Clark College administration. The dissent ignores, however, the interim nature of the umbrella committees and the continued existence and effective functioning of the faculty committees. Although the faculty and the administration disagreed over the creation of a separate graduate school and the faculty did not vote on other umbrella committees' decisions, the dissent does not dispute that the CAS faculty implemented the umbrella committees' decisions using independent discretion. In our view, the CAS faculty thus effectively implemented College policy. *Yeshiva*, 444 U.S. at 683. Moreover, the dissent ignores that, unlike the CAS faculty members here, the faculty members in the three cases cited above either were a minority on most academic policy committees or had their recommendations reversed by the administrations on most occasions.

³⁸ 444 U.S. at 689.

democratic affairs, and the deans or directors of the various schools.³⁹

Nearly all recommendations on academic matters are routinely approved by the administrative hierarchy. Although some faculty recommendations are independently reviewed as they travel up the administrative hierarchy, this occurs predominantly with nonacademic rather than academic decisions. The administrative vetoes that the Regional Director relied on involved non-academic matters that, as stated above, are of lesser significance in determining managerial status. The evidence in this case is insufficient to show the kind of buffer between the faculty and the administration that would negate the faculty's managerial status. The mere existence of an administrative hierarchy that routinely approves the faculty's academic recommendations is insufficient to establish that buffer. To satisfy *Yeshiva*, there must be evidence that the administrators are relied on for their independent review and recommendation regarding academic matters.⁴⁰ The fact that the faculty does not have absolute control over academic matters does not preclude finding managerial status.⁴¹

In sum, the CAS faculty members' responsibilities go beyond routine professional duties and are managerial in nature, for faculty members do more than deter-

mine the "content of their own courses, evaluate their own students, and supervise their own research."⁴² They exercise substantial, independent authority over academic matters in the majority of the academic areas identified in *Yeshiva University* and its progeny as important to a determination of managerial authority in colleges and universities. We find that the CAS faculty plays a major and effective role in the formulation and effectuation of academic policy. They are managerial employees as defined in *Yeshiva*. Accordingly, we shall dismiss the petition.⁴³

ORDER

The petition is dismissed.

MEMBER DEVANEY, dissenting.

I would affirm the Regional Director's decision, pertinent portions appended hereto, that the tenured and tenure-track faculty of the Employer's undergraduate school, the College of Arts and Sciences (CAS), are not managerial employees within the meaning of *NLRB v. Yeshiva University*, 444 U.S. 672 (1980). I therefore respectfully dissent from my colleagues' dismissal of the petition.¹

My legal conclusions as to the CAS faculty at Lewis and Clark College are based largely on the role of the "umbrella" committees in the framework of the College's academic decisionmaking. Major curricular and other academic policy decisions are made by the umbrella committees—the Mission Planning Committee; the Planning and Resources Council; the Interim Planning/Self Study Committees; and the Task Force on Governance—the College president, and the board of trustees, and not by the faculty's constitutional committees.²

The board of trustees has made many significant decisions based on the recommendations of the umbrella committees. The faculty members generally constitute a small minority on these committees. The board of trustees in 1982 established a "mission planning" process to examine and plan for the overall purpose, programs, and structure of the College. The Mission Planning Committee was composed of approximately

³⁹Id. at 675.

⁴⁰Cf. *St. Thomas University*, in which faculty members were found not to be managerial, in part because top management in the form of the Division Chairpersons Committee (DCC), consisting of the dean and five division chairpersons, were relied on heavily by the administration for their professional expertise and were indispensable to the formulation and implementation of academic policy. Thus, "[e]very proposal regarding curriculum matters or academic policy [was] subject to the DCC's review and approval." Slip op. at 22. In the instant case, academic policy is formulated and implemented by the faculty. When the faculty makes recommendations, they are forwarded through the administration and almost always approved. There is no administration-controlled committee at Lewis and Clark with authority comparable to that of the DCC.

Loretto Heights College, 264 NLRB 1107 (1982), enf. 742 F.2d 1245 (10th Cir. 1984), also is distinguishable. In that case, program directors largely controlled the budget, served in key positions on committees, and were administrators rather than instructors. The school had a large administrative staff that ran the school. Here, the College's administrative staff is not small and the faculty members are not directly involved in decision making on the budget. But in academic matters, the faculty's expertise is relied on heavily, as reflected in the composition of academic committees and in academic decision-making.

⁴¹*Yeshiva University*, 444 U.S. at 685 fn. 21, and 688 fn. 27; *University of Dubuque*, 289 NLRB at 353. The Regional Director noted that in *Yeshiva* the faculty had absolute authority, and in *Livingstone* the faculty had almost plenary control of curriculum matters. He found that *Livingstone* differed markedly from the instant case because in *Livingstone* all curriculum changes had to be approved by a curriculum committee, and the administration could not make changes in academic policy without presenting them to the curriculum committee. But neither the Board nor the Court requires that a faculty possess absolute or plenary authority in order to be found to be managerial; the standard set forth in the Court's decision is "effective recommendation or control." *Yeshiva*, 444 U.S. at 683 fn. 17 (emphasis added). Here, the faculty effectively controls academic matters, as its recommendations are virtually always approved and the faculty directly decides some academic matters without making recommendations to higher management. That the faculty in *Livingstone* had almost plenary authority, and in *Yeshiva* absolute authority, does not preclude finding managerial authority where, as here, the faculty effectively recommends and controls academic policy. Thus, that *Yeshiva* may have presented "an extreme case on its facts," as the dissent states, does not warrant ignoring the Court's legal standard of effective recommendation or control.

⁴²*Yeshiva*, 444 U.S. at 690 fn. 31.

⁴³Because the petition requested only CAS faculty, and the Petitioner did not indicate that it wished to represent the graduate school faculty without the CAS faculty, we need not reach the issue of the graduate school faculty's status. Therefore, with regard to the graduate school faculty, the petition is dismissed without prejudice.

¹I would affirm the Regional Director as to the nonmanagerial status of the graduate school faculty, who have even less authority than the CAS faculty.

I find it unnecessary to pass on whether the CAS faculty members are supervisors within the meaning of Sec. 2(11) of the Act. The Employer did not timely raise this issue before the Regional Director. See Sec. 102.67(d) of the Board's Rules and Regulations. I further note that the Employer did not pursue this issue in its brief to the Board following the granting of the request for review.

²In view of the crucial significance of the umbrella committees, I find it unnecessary to pass on whether *University of Dubuque*, 289 NLRB 349 (1988), and *Livingstone College*, 286 NLRB 1308 (1987), were correctly decided on their facts.

14 individuals; only one or two members were unit faculty members. The Mission Planning Committee made academic and program recommendations including the creation of a separate graduate school. Although the issue of a separate graduate school was not presented to the faculty for a vote, the faculty took its own vote, with a majority voting against it. Notwithstanding the faculty vote, the graduate school was established in 1984. Further, while the faculty voted in favor of another proposal that undergraduate teacher education be part of the undergraduate mission, neither the faculty's curriculum committee nor the faculty as a whole was given the opportunity to vote on the abolition of the undergraduate education major and department and the institution of the undergraduate education minor.

In January 1987 the board, without faculty input, passed two resolutions which found the existing governance documents no longer appropriate and established a task force on governance (TFG) to review, revise, and develop new documents. The final document was to be presented to the faculty only for an advisory vote. Further, although the faculty passed a resolution stating that majority approval was required for all governance changes which affect the CAS, the board rejected the faculty resolution. The work of the TFG apparently is ongoing.

In February 1987, as a result of an unexpected financial crisis, the board's finance committee mandated a 10-percent reduction in expenditures. The Planning and Resources Council (PRC), 1 of 10 interim planning/self-study committees established by the College president, engaged in confidential deliberations, resulting in recommendations to eliminate departments, programs, and faculty positions, and to convert the academic calendar from a term system to a semester system. The president's final set of recommendations incorporated and revised many of the PRC recommendations. The question arose whether to put the recommendations before the faculty committees or the faculty as a whole prior to board consideration. The board resolved that the PRC's recommendations should not be submitted for further review by the faculty. The board subsequently adopted most of the president's recommendations. As with the mission planning package, the PRC-generated changes were turned over to the appropriate faculty committees for implementation.

I agree with the Regional Director's conclusion that while faculty members participate in decision-making and implementation in various areas, their role does not rise to the level of effective control contemplated in *Yeshiva*. Administrative decision-making has not been infrequent or isolated; on the contrary, it has been institutionalized and regularized.³ Although the faculty

³I find support for this view of the facts in the post-*Yeshiva* line of cases exemplified by *Bradford College*, 261 NLRB 565 (1982); *Cooper Union for*

governing structure remains in effect, the faculty has effectively been removed from the larger, and most critical, academic policy decisions which have been made in recent years.

Moreover, although the faculty members have authority over day-to-day matters, such authority is either routine or circumscribed by the administration's recommendations. On this point, I believe my colleagues minimize the import of the decisions made by the umbrella committees, characterizing the types of policies they consider as distinct from those considered by the faculty. Although the implementation of policies by the faculty may be distinct, the umbrella committees frame the administrative agenda for the college and define day-to-day matters and are thus a pervasive presence in critical decisions made by the faculty.⁴

I also believe my colleagues set out a strained distinction between "academic policies," purportedly controlled by the faculty, and, "financial viability and long-term planning," controlled by the administration. The mission planning process included examination of a wide variety of curricular matters as part of its planning for the overall purpose, mission, programs, and structure of the institution.⁵ The interim planning/self-study process involved programmatic changes and the restructuring of limited academic resources. Further, as the majority notes, the basic charge of the PRC was to address the question: "What should we teach and to whom in the coming decade?" In this type of context, it cannot be reasonably argued that the PRC's role is limited to financial, as opposed to academic, policy-making.⁶

the Advancement of Science & Art, 273 NLRB 1768 (1985); and, most recently, *St. Thomas University*, 298 NLRB 280 (1990). Contrary to my colleagues, I do not find these cases distinguishable on the basis that they involve unilateral administrative action. In *St. Thomas*, for example, the administration unilaterally established a law school and adopted a reorganization plan which created and eliminated entire degree programs without the faculty's review or approval. The *St. Thomas* administration's action is indistinguishable in its magnitude and significance from *Lewis and Clark College's* decision here to create a separate graduate school over the objections of the faculty. I would find the *Lewis and Clark* faculty's minority participation on the umbrella committees to be comparable to the minority faculty participation on the governance committees in *Cooper Union* and to the absence of faculty participation on the Division Chairpersons Committee, which reviewed curricular and other academic proposals, in *St. Thomas University*.

⁴In view of this pervasive influence, I disagree with my colleagues' assertion that the faculty's implementation of the administration's academic decisions is characterized by a degree of independent discretion that would rise to the level of effective recommendations or control contemplated in *Yeshiva*.

⁵The MPC was initiated by the board in 1982—5 years prior to the College's 1987 financial crisis—to review the mission and purpose of the College, along with the allocation of resources. The 2 years taken to make its recommendations, and the wide-ranging scope of those recommendations, evidences the fact that the MPC was not merely a response to immediate issues confronting the College at that particular time, but rather was a chief component of the managerial decision-making process.

⁶Contrary to the implications of the majority decision, I do not suggest that the MPC and PRC acted as a substitute for the faculty committees. Rather, although the umbrella committees themselves may not be permanent, their recommendations—such as the creation of the separate graduate school and the new governing documents to be developed by the TFG—are intended to be permanent in effect when adopted by the administration.

On the broader issue of whether faculty members are managerial employees and therefore exempt from the protections of the Act, I believe the *Yeshiva* case presented an extreme case on its facts of absolute faculty authority over virtually all academic and nonacademic matters alike. There are wide variations, however, in the comparative authority of faculties and administrations in different academic institutions. Thus, I do not believe that the facts of *Yeshiva* provide the best standard on which to judge other cases. A broad application of the managerial exclusion to institutions of higher education effectively removes a whole category of employees from the protection of the Act; faculty members at most colleges and universities exercise some policy-making functions. In those cases where it is clear that the faculty members exercise less managerial authority than the *Yeshiva* faculty, I believe the statute should be construed to emphasize *inclusion employee choice*.

APPENDIX

4. Managerial Issue

The Petitioner seeks to represent the following bargaining unit:

All tenured and tenure-track faculty of the Employer's undergraduate school, the College of Arts and Sciences (CAS), but excluding employees on administrative or staff contracts; adjunct faculty, CAS, graduate school faculty; and law school faculty.

The Employer asserts that the CAS faculty sought are managerial employees. If they are not found to be managers, the Employer argues that CAS faculty standing alone constitute an inappropriate unit, and that the only appropriate unit is one which combines the tenured and tenure-track faculties of the CAS and the graduate schools. In its brief, the Union indicated that it would not oppose inclusion of the graduate faculty and stated that it takes no position on this issue.

The Employer is a private liberal arts institution located in Portland Oregon and is composed of three separate units: the CAS, the graduate school and the law school. The parties stipulated that the law school faculty should be excluded from the bargaining unit inasmuch as they share no significant community of interest with the faculty of the other two units. There are approximately 1500 undergraduate students, 750 graduate students, 95 tenured and tenure-track CAS faculty and 10 nonsupervisory tenured and tenure-track graduate school faculty. Ultimate authority for establishment of the general, educational, and financial policies of the Employer is vested in the board of trustees (herein board). The president sits on the board and serves as chief executive officer. Reporting directly to the president are the provost/executive vice-president (herein provost), the Employer's chief academic officer; the law dean; and the vice president for institutional advancement. Reporting to the president through the provost are the CAS dean, the graduate dean, the dean of international education, the vice president of student affairs, the vice president of business and finance,

the director of gender program, the director of science and society program, the assistant provost and director of planning/analytical studies, the director of the Watzek library and academic computing, the director of information systems, the registrar, and the director of cultural arts. Reporting to the vice president for institutional advancement are several positions, including those of director of academic grants/corporate foundation giving, assistant treasurer, and director of alumni relations. Reporting to the vice-president of business and finance are the director of management and budgets, the controller, and the assistant treasurer, to each of whom several administrative and/or support staff report. Reporting to the CAS dean are the associate dean, the directors of the core program, the division heads,² and the director of athletics. Each CAS department is headed by a department chair. When the division head positions are filled, the chairs report to the CAS dean through the appropriate division head; otherwise, they report directly to the dean. Reporting to the graduate dean are two assistant deans, the director of the core program, the director of continuing professional studies/continuing education, the director of the Northwest Writing Institute, and five program directors, each of whom is responsible for one of the five graduate programs.³ The parties stipulated that the following positions should be excluded from any unit found appropriate by virtue of the supervisory authority possessed by the incumbents: deans, assistant deans, associate deans, assistant provost, provost, graduate school program directors, director of athletics, director of women's athletics, and the undergraduate division heads. The parties further stipulated that the director of the Northwest Writing Institute and the director of continuing professional studies/continuing education be excluded due to the fact that the incumbents do not hold faculty status and therefore do not share a community of interest with the petitioned-for employees. The parties stipulated that the following should be excluded from the unit because their jobs are administrative in function and because the incumbents do not possess tenured or tenure-track faculty status: the director of culture and arts, the director of information systems, the director of the library, the director of the math skill center, and the director of the writing center. The parties stipulated that the directors of interdisciplinary minors, the director of gender studies, the director of science and society program, and the director of forensics should be included in the unit because these jobs are held by tenured or tenure-track faculty who do not possess supervisory authority and who share a community of interest with the petitioned-for employees. The parties stipulated that the co-directors of the CAS core program should be included when those positions are held by tenured or tenure-track faculty members in light of a shared community of interest. The parties stipulated that the CAS department chairs are not statutory supervisors and therefore should not be excluded should a unit of faculty be found ap-

² It appears that the division head positions are not filled at this time.

³ Several of the academic officers hold faculty rank: acting CAS associate dean Hart holds academic rank as a tenured professor of English; associate provost Baxter holds rank as a tenured associate professor; acting graduate dean Bullard has a joint faculty appointment and thus may return to her tenured professorship when she no longer serves as an administrator; and both of the assistant graduate deans have faculty appointments. Some of these administrators teach courses while serving in an administrative capacity.

appropriate. Inasmuch as the record supports the parties' stipulations, I shall accept them.

Each unit of the institution has one elected faculty representative who attends board meetings in an advisory, non-voting capacity; such faculty observers are excluded from the executive session which usually follows the board meeting. Between board meetings, the board conducts its business through its standing and ad hoc committees and its executive committee. There are no faculty on the two board ad hoc committees: the trustee governance oversight committee, which reviews documents received from the task force on governance (TFG), and the investment divestiture committee. Voting faculty representatives, elected by the faculty, sit, along with voting representatives of other constituencies, on the following board standing committees: academic and student affairs; finance; institutional advancement; physical plant; and religious affairs. In no case do faculty constitute a majority of the voting committee members. There also are a graduate school standing Committee, with graduate faculty representation, and a law school standing committee, with law faculty representation. There is no faculty representation on the board's audit or board development and assessment standing committees. A faculty member testified that one of the board committees on which he served met twice in a two-year period, and two board subcommittees on which he served did not meet at all.

Until 1984, the undergraduate and graduate programs operated as one administrative unit. In fall 1984, the board mandated the creation of the graduate school as a separate semi-autonomous administrative unit, despite the fact that a majority of the combined faculty voted against such an act. A new dean's position, the graduate school dean, was created and graduate programs and their faculty were transferred to the graduate school unit. Following the creation of the graduate school, the constitution, which sets forth the policies and procedures for academic governance of the college, has continued to apply, with certain exceptions to be discussed below, to the CAS faculty. The graduate faculty are governed, in part, by interim policies and procedures adopted by the board in December 1984 and revised by it in April, 1986. While faculty input into the creation of these interim procedures was solicited, the board-adopted interim procedures represent a compromise package. Interim procedures serve as an interim constitution for the graduate faculty and provide, among other things, that major curricular, personnel and budgetary decisions of the graduate school shall be reviewed by the graduate faculty as a whole. There is no date certain upon which the interim procedures are to expire, although it is envisioned that these eventually will be superseded by a permanent graduate school constitution. As to matters not specifically addressed by the interim procedures, such matters are governed by existing practice as outlined in the CAS constitution or other documents, unless superseded by procedures or policies developed by the graduate school during the interim period.

The CAS constitution sets forth six constitutional CAS committees, on all of which the undergraduate faculty members, elected by the faculty, constitute a majority of the voting members.⁴ The committee chairs are selected by majority

⁴As clarified by witness testimony, administrative officers serving on CAS constitutional committees as *ex officio* members do not have voting rights.

vote of the committee members. As described in the constitution, the admissions and financial aid policy committee (AFAPC) has as members four nonvoting administrators, five faculty and two students, and has as its purpose the formulation and review of policies governing student admission and financial aid. It has subcommittees on scholastic standing, awards, and merit awards. The budget advisory committee (BAC) has as members four nonvoting administrators and six CAS faculty and is to recommend policies and procedures in budget matters, to interpret to faculty the implications of such policy, and to cooperate with the president in implementing the policies established by the board. The faculty personnel advisory committee (FPAC) has as members four nonvoting administrators and six faculty, and is to develop and recommend policy and procedures in matters pertaining to faculty personnel, to work with the president to implement the policies and procedures in this area, and to advise the dean and president with regard to the recommendations of department chairs relative to vacancies and additions requested. It has subcommittees on benefits, affirmative action, faculty research, faculty review policy, and sabbaticals. The curriculum committee is composed of four nonvoting administrators, fifteen faculty, and three students, and is to consider 211 aspects of the CAS educational program and to formulate recommendations concerning these programs. It has subcommittees on the core program, honors, overseas and off-campus programs, writing, and the Burlington Northern grant. The faculty council is composed of seven faculty and is to provide a mechanism for the formulation of faculty opinion on any matter concerning the welfare of CAS. It also screens commencement speakers, approves administration-proposed faculty appointments to various committees, and serves as the hearing body in faculty dismissal-for-cause cases.⁵ The faculty executive council is composed of the chairs of the other constitutional committees and the CAS dean and is to coordinate and communicate the committee work of the faculty.

In addition to its constitutional committees, the CAS has several standing committees, one of which, the advancement, promotion and tenure committee (herein review board), is charged with the review of faculty candidates for promotion or tenure and, in certain cases, advancement within rank. Meetings of the CAS faculty as a whole, chaired by the CAS dean, are held once a month, at which time matters referred for action to the faculty by the constitutional committees are debated and voted upon.

The graduate school interim procedures specify the graduate standing committees, which are the curriculum committee, the faculty personnel committee, and the committee for promotion and tenure. The curriculum committee and the faculty personnel committee are committees of the whole; the committee for promotion and tenure is composed of the graduate dean, three tenured graduate faculty members elected by the graduate faculty, and one academic or practitioner from the outside community. Eight of the thirteen tenured graduate faculty hold joint administrative/faculty positions, serving either as acting dean, assistant dean, or program director, all of which are excluded supervisory positions. In addition, this academic year there are five tenure-track graduate faculty on

Witness testimony further indicates that on at least some of the subcommittees of the CAS constitutional committees, administrators do vote.

⁵No evidence was presented with respect to specific instances of such cases.

campus. According to the interim procedures, for voting purposes, the graduate faculty consists of the graduate school dean, one librarian to be designated by the director of the library, the president, and all those holding at least a half-time faculty and/or administrative appointment in one of the graduate programs. Thus, the composition of those committees which are committees of the whole can vary from year to year in terms of whether nonsupervisory tenured and tenure-track faculty constitute a majority of the voting members. As no information was provided to establish the number of adjunct faculty, if any, who hold at least half-time positions, the exact relative voting composition of this year's curriculum committee and faculty personnel committee cannot be determined. Theoretically, even assuming that this year, all faculty eligible to vote are tenured or tenure-track and all faculty shown as holding such positions work at least half-time, then, at best, the voting composition of the committees of the whole is ten persons who are excluded from any bargaining unit (graduate dean, two assistant deans, five program directors, one librarian, and the president) and ten nonsupervisory tenured and tenure-track graduate faculty. Hence, even under the most Liberal analysis, the nonsupervisory tenured and tenure-track faculty do not constitute a majority of these faculty-wide committees. Moreover, there are no nonsupervisory graduate faculty on this year's committee on promotion and tenure. Among the graduate ad hoc committees, supervisory graduate faculty comprise a majority on the leadership committee and the faculty search oversight committee, and constitute a minority on most of the other ad hoc committees. The admissions committee is an administrative committee composed of program directors.

The graduate curriculum committee has the responsibility for generating, reviewing, evaluating, and making recommendations concerning any curricular matter or issue relating to the graduate academic programs. The graduate dean decides the final disposition of all graduate curricular recommendations subject to the review and authority of the provost, president, and board. The graduate faculty personnel committee generates, reviews, or evaluates and makes recommendations to the graduate dean concerning matters of graduate faculty hiring, academic freedom, sabbatical leaves, research grants and other personnel matters within the graduate school except those specific matters and duties which are reserved to the graduate faculty committee for promotion and tenure. The dean forwards such recommendations, along with her own, to the president through the provost. The graduate faculty committee for promotion and tenure conducts all major graduate faculty reviews, including those for promotion and tenure, and forwards its recommendations to the graduate dean, who makes her own recommendations to the president through the provost. The graduate faculty as a whole meets periodically to discuss policies and procedures relating to the graduate school, to conduct internal business which does not come within the specified jurisdiction of its standing committees, and to evaluate proposals from the various graduate committees.

Curriculum and Recent Developments

The CAS faculty constitution states, at Article V, that committees dealing with degrees, requirements for degrees, and creation or abolition of departments of instruction are among the committees deemed "constitutional committees."

The constitutional charge to the curriculum committee is to "consider all aspects of the educational program of the college . . . and to formulate recommendations concerning these programs to be presented to the Board of Trustees for adoption and establishment." Pursuant to constitutional language the committee is to consider all proposals for "earned degrees . . . and the requirements for them," "the establishment of educational programs," and "the academic calendar and schedule," and is to "review all courses offered . . . to include additions, deletions and alterations." Under the committee's procedures, the constitution indicates that the curriculum committee is to consider proposals to change by addition, deletion, or alteration, the types of degrees offered, requirements for degrees, departments of instruction, additional courses, and major changes in the calendar and schedule, among other items.⁶ According to the constitution, the actions of the curriculum committee regarding minor changes—which include such routine matters as changes in course number or name—are reported to the faculty and are accepted as binding unless the faculty wishes to put the action to a vote, and a majority of the faculty vote against the committee's action. Recommendations of the committee regarding major changes, such as changes in degrees and requirements for degrees, departments of instruction, and the academic calendar, are reported to and voted upon by the faculty and, if approved, are forwarded for approval to the CAS dean, who in turn makes a recommendation on the issue through the provost to the president; the president in turn recommends to the board. There is no evidence that on those major curricular issues recommended to and approved by the faculty, the faculty was overturned at a higher level of authority. There is evidence, however, that in the recent past, as will be more fully discussed below, certain major curricular issues which, under the language of the constitution, properly are within the domain of the curriculum committee have been prevented, through board action, from reaching the appropriate faculty committee and the faculty as a whole for action.

Mission planning (level I) was a board-initiated process undertaken in the early 1980's for the purpose of examining and planning for the overall purpose and mission, programs, and structure of the institution. Several mission planning committees were created to this end. The primary or umbrella mission planning committee had 11 members, two of whom were faculty. The subcommittee which drafted the mission planning statement had minority faculty representation during its initial stages and no faculty representation during its final stages. During the mission planning process, faculty input was solicited through fora and advisory votes. The record is vague or silent with respect to whether the faculty's input effectively determined the final mission planning proposals. The creation of the graduate school as a separate administrative unit was not presented to the faculty for a vote, although it was an outcome of the mission planning process; the faculty nevertheless put this issue to a vote, and a majority voted against the plan, as noted earlier. Certain of the final curriculum-related proposals that were put before the faculty by the administration

⁶While the Employer contends that the curriculum committee does not have the authority to pass on the deletion of departments, the foregoing constitutional language clearly indicates that the abolition of departments of instruction is a matter properly within the jurisdiction of this committee.

were supported by majority faculty votes, such as the proposal to convert the school of music to a department. While the faculty voted in favor of the broad proposal that undergraduate teacher education should be part of the undergraduate mission, it appears that neither the curriculum committee nor the faculty as a whole was given the opportunity to vote on the abolishment of the undergraduate education department and major and the institution of an undergraduate education minor, which actions were an outcome of the mission planning process. The mission planning statement was adopted by the board in May 1984 despite the fact that the faculty had deferred to a later date further consideration and action on it.

Once the mission planning package was adopted by the board, it turned over to the appropriate faculty committees the implementation of the resolutions and the consideration, appraisal, and implementation of a number of "suggestions" which had resulted from a mission planning subcommittee's deliberations. It was the faculty, through departmental action and curriculum committee review, which revised the music school curriculum and implemented the conversion of the music school to a department. With respect to the abolishment of the undergraduate education major and the institution of an undergraduate education minor, it was the faculty teaching elementary education courses who devised the modifications of curriculum necessary to develop the new minor; upon approval by the entire teacher education faculty, these modifications were transmitted to the curriculum committee for review. Witness testimony established that with respect to a variety of curricular matters generated by the board-adopted package, it was the faculty and/or the curriculum committee which devised the actual revisions, developed the curriculum plan, or otherwise developed the specific means by which the resolutions or suggestions were to be implemented. With respect to certain of the suggestions, the curriculum committee decided, upon review, to retain the current policies without change, as for example, in the matters of the suitable ceiling on the number of courses required for majors and the ceiling on the number of credits required in certain situations.

In January, 1987, the board, without faculty input, passed board resolutions 9 and 10. In resolution 9, the board found that the existing governance documents no longer were appropriate for a variety of reasons and adopted a Policy on Governance, rescinding or repealing any policy, procedure or other document to the extent it was inconsistent with the Policy. The Policy defines the authority and responsibility of the board, president, senior executive officers, executive officers, administrative officers, and faculty, and states that the general educational policy defining the nature, shape and character of the institution is expressed in the Statement of Mission, as adopted by the board in May 1984. The resolution authorizes the president to promulgate interim procedures of operation as necessary until new governance documents and procedures are prepared and enacted. Based on its finding that the evolution of the institution from an undergraduate program to an institution including both a law school and a graduate school had created a need for institution-level policies, procedures, and governance documents in certain areas, the board, in resolution 10, established a task force on governance documents (TFG) to review, revise, and develop governance documents. According to the resolution, the

board created the TFG because there was no pre-existing committee with both representation of all appropriate constituencies and the expertise on all relevant facets of this task. The TFG is responsible to the president and is to prepare draft policies and procedures in the areas outlined by the board. While CAS and graduate faculty serve on the TFG, they do not constitute a majority of the voting members. The provost is given the power to establish task force subcommittees and to appoint members to these subcommittees. It appears that CAS and/or graduate faculty do not constitute a majority on any of the TFG subcommittees, including the one revising the faculty handbook. The resolution calls for draft proposals to be made available to faculty through the appropriate faculty committees and for faculty input to TFG through these committees. The TFG is charged with incorporating those faculty ideas and concerns which it feels will help the documents. When the TFG completes its final proposed document, that document is to be presented to the full voting faculty of each unit for an advisory vote only. In November, 1987, the CAS faculty passed a resolution stating that approval by a majority of the CAS faculty is required for all governance changes which affect the CAS and requesting that the president respond to the resolution indicating that he will not forward to the board any recommendation regarding institutional governance which does not have the support of the individual faculties of the three units. The faculty resolution was rejected by the board as being inconsistent with its earlier directives; in rejecting the resolution, the board noted that "not only the pressure of the ongoing accreditation review, but also the urgency of fiscal and legal concerns indicate this matter needs to be brought to closure this year." Once the board adopts new institution-level governance items, each unit will be expected to bring its policies, procedures and governance documents into compliance.

At around the same time that board resolutions 9 and 10 were passed, the president established several interim planning/self-study committees, the primary committee being the planning and resources council (PRC). The faculty members to PRC were appointed by the administration with the concurrence, in the case of CAS faculty, of the Faculty Council. Serving as PRC members are four undergraduate faculty members, one of whom serves as committee chair; one graduate faculty member; one law faculty member; and 4 administrators. According to the committee's draft charge, all of these members have a vote except the chair. The graduate faculty representative, Michael Stark, who was appointed to the committee by the graduate school dean and associate dean, was a graduate school program director during the relevant period, 1986-87, a position excluded by stipulation of the parties due to its supervisory nature. Thus, it would be inappropriate to include him amongst the voting faculty contingent. In light of the foregoing, it is clear that CAS and graduate faculty did not, and do not, constitute a majority of the PRC voting members. The planning/self-study committees were established in part to prepare for re-accreditation by the Northwest Association of Colleges and Schools by engaging in a planning and self-study process covering every aspect of the institution. It appears that on most of the other planning/self-study committees, non-supervisory tenured and tenure-track CAS and/or graduate faculty are not a majority of the voting members. The plan-

ning assumptions which guide the planning/self-study process were developed by the administration. PRC was to deliberate upon a variety of matters, including academic program enhancement, elimination, reduction, or retention, and to make advisory recommendations on such matters directly to the administration through the president's planning and budgeting team (PPBT), a body created by the president which has minority faculty representation, appointed by the administration. To aid in the formulation of its recommendations, PRC requested that department chairs submit information in the form of planning reports.

Around late February, 1987, the institution found itself facing an unexpected financial crisis and the board's finance committee mandated a 10% reduction in the expenditure base. As a result, PRC was asked to focus first on areas that they might recommend for reductions or elimination over the next several years. Pursuant to its charge, the deliberations of PRC were confidential; neither the faculty as a whole nor any of the CAS faculty constitutional committees or the graduate faculty committees were informed of the specific matters under consideration nor provided an opportunity for debate or recommendation. PRC's recommendations were forwarded to PPBT, which made its own recommendations on each item, some of which differed from the PRC recommendations. Both sets of recommendations went to the president. Around late May, 1987, the president held a meeting of the faculty at which, for the first time, the PRC recommendations were made public. These included such proposals as the elimination of the CAS religious studies department, the abolishment of the CAS health and physical education department, the creation of a program of computer-across-the-curriculum rather than the planned creation of a CAS major in computer science, and other actions affecting a number of faculty in various CAS academic departments; the elimination of the graduate program in educational administration as well as the elimination of an additional two graduate faculty positions; and the conversion of the academic calendar from a term system to a semester system. Following public announcement of the recommendations, members of PRC and the administration made themselves available for meetings with affected and/or concerned community members, including faculty. Apparently as a result of some of the opinions and arguments forwarded by the community, the president's final set of recommendations which subsequently issued contained revisions of certain items; for example, the recommendation to eliminate the religious study department was changed to a recommendation to retain the department but to conduct an external peer review of that department and the recommendation to eliminate the educational administration program was changed to a recommendation to retain the program but to reduce total graduate staff by four faculty. Certain other recommendations, such as the recommendations to abolish the health and physical education department, to establish a computer-across-the-curriculum program rather than the planned computer science program, to change to a semester system, and to reduce faculty in particular departments, thereby affecting the curricular emphasis and offerings of such departments, were retained. In the June 8, 1987 cover letter to the community by which he transmitted his recommendations, the president noted that the basic PRC charge had been programmatic and educational in character and that PRC had been asked to address

the question "what should we teach and to whom in the coming decade." The president stated that "within this context, the PRC is making recommendations on areas for maintenance and enhancement as well as areas for elimination and reduction." He noted that the PRC recommendations are educational in nature and attentive to issues such as centrality to mission, quality of faculty, quality of library holdings, and student demand and that the larger issues of cost and community impact were weighed by the PPBT and the president.

Following the issuance of the president's recommendations, the question arose as to whether such recommendations should not be put to the faculty committees or the faculty as a whole for action prior to board consideration of the package. This question was answered by board resolution 29, adopted in July, 1987. In that resolution, the board noted that the president had initiated a planning process and that the planning body had been examining program priorities in the CAS and the graduate school in light of current information on available resources; found that there was need to implement programmatic changes and restructure academic resources within those units in light of pressing fiscal problems; and directed that PRC's recommendations not be submitted for further review and comment by the constitutional committees, the graduate faculty committees, or the faculty as a whole of either unit, but rather that these recommendations be presented "directly and expeditiously" to the board by the president, along with his recommendations, for board review and action. Testimony of the provost confirms that the effect of this resolution was to remove from consideration by the curriculum committees and the faculties as a whole matters under consideration by PRC which, under the constitution and the interim procedures, properly are within the domain of those faculty bodies.⁷ Subsequently, the board endorsed and adopted most of the president's recommendations. The changes thus mandated by the board have been forwarded, as appropriate, to the proper faculty committees for implementation.⁸

Degree Requirements

The faculty of each unit determines the degree requirements for the degrees each offers. In the case of the CAS, it is the CAS curriculum committee which recommends to the faculty with respect to matters involving degree requirements; upon faculty approval, the action follows the normal course through the administrative hierarchy for approval. With respect to the graduate school, it is the graduate curriculum committee which recommends on such matters to the graduate dean; the recommendations of the committee and the dean then follow the route earlier described. No evidence was presented to suggest that CAS or graduate faculty action on degree requirements has been overturned at a higher level.

⁷A CAS committee had studied the issue of a computer science department and had concluded that such a department and major should be established; this recommendation was to be submitted to the curriculum committee for consideration and, pursuant to constitutional procedures, eventually to the faculty for a vote. However, such action was preempted by the action of the president in taking his recommendations directly to the board.

⁸Thus, for example, the CAS curriculum committee currently has before it the task of devising the means by which the semester system will be implemented by the CAS.

Course Content, Assignment and Grading/Teaching Method and Load

Course content is determined by the respective faculties and their curriculum committees. Teaching assignments of particular courses are decided by faculty consensus. The method by which a course is taught and graded is determined by the faculty members. A student wishing a grade change must first go to the professor, although the professor's decision can be appealed to the administration. In the one example provided, an appeal taken of the professor's decision in a grade change matter resulted in the professor's determination being upheld by the department chair and the acting dean of students. It is the individual faculty member teaching a course who grants or denies student requests for an incomplete grade or for a pass/fail grading basis. The general CAS and graduate faculty workload requirement policies are determined by the administration of the unit rather than by the faculty.

Graduation Requirements

The CAS curriculum committee is charged with considering and recommending to the CAS faculty on changes affecting CAS graduation requirements; upon approval by the faculty, the recommended action is forwarded to the dean, provost, president and board for approval and adoption, although some recommendations have been implemented upon dean approval. For a senior graduating with a major in a particular department, the department chair signs off on a form required by the registrar's office, thereby affirming that the student has fulfilled the departmental requirements for the major. Shortly before commencement, the registrar's office circulates to the CAS departments a list of all graduating students, which list is adopted through what appears to be a routine vote by the faculty as a whole.

The graduate curriculum committee recommends to the graduate dean with respect to graduation requirements for the graduate school. No evidence was presented to suggest that such recommendations have been overturned by higher administration.

Scholarship Recipients

The faculty-dominated CAS admissions and financial aid policy committee (AFAPC) formulates and reviews policies governing CAS student financial aid, including athletic and merit awards. The faculty-dominated merit awards subcommittee makes recommendations concerning proposed and existing merit award programs. Another subcommittee, the awards subcommittee, makes the individual determinations within policy as to the amount of aid given to a student. There are three administrators and two faculty members on this subcommittee; according to witness testimony, the administrators have voting rights.

Unlike the CAS, the graduate school has little or no scholarship monies available. When such funds are available, the faculty members of the program for which the funds are reserved determine which students will receive the aid.⁹ Student loan decisions are made by the financial aid office without faculty input.

⁹ Among the faculty making such decisions are the program director and the administrators who teach in the program.

Admission Standards/Recruitment

CAS admissions standards are recommended by the AFAPC to the president; the president always has approved such recommendations as presented. CAS faculty are not involved in the actual interviewing of prospective students or the application of the admissions standards to individual cases, nor are they significantly involved in recruitment activity.

Graduate admissions standards are considered and recommended by the graduate curriculum committee to the dean, who recommends in turn to higher administration, as described. The admissions policies thus established are implemented by the admissions committee, composed of all program directors. Graduate faculty screen student applicants and recommend to the admissions committee; such faculty recommendations have, on occasion, been overruled by the admissions committee. While all graduate faculty may be involved in interviewing applicants, only the program directors are significantly involved in recruitment activities.

Retention Policies/Scholastic Standing

The formulation and review of CAS student retention policies and standards based on scholastic standing are performed by the AFAPC. Grade point average is one criterion used to assess a student's standing. The grade point average policy is recommended by the AFAPC and the curriculum committee to the faculty and decided by the faculty. It is the scholastic standing subcommittee which implements the policies and performs the case-by-case reviews of students not meeting the academic policy standards. There are two faculty, one student and three administrative members on this subcommittee; the record is unclear as to whether the administrators have voting rights.

Retention policies for graduate students are determined through the graduate curriculum committee with the recommendations of the program directors.

Class/Student Body Size

The CAS faculty does not effectively determine the size of the entering class. With respect to the size of individual classes, prior to registration, the department places an enrollment ceiling on each of its classes. Additional students may be enrolled in a full class upon permission of the professor.

In certain of the graduate programs, the graduate faculty are involved in setting upper limits for student enrollment due to constraints imposed by staff and resources.

Tuition

Neither the CAS nor the graduate nonsupervisory faculty are involved in the setting of tuition levels.

Student Honors, Awards and Internships

Each CAS department decides at the department level whether to propose a departmental honors program; in those departments with such programs, it is the faculty of the department which nominates to the honors subcommittee of the curriculum committee the individual student candidates for honors. In no instance have the departmental recommendations been overruled. In addition, the honors subcommittee, which appears to be composed predominantly of

faculty, determines which individual students will receive specific honors awards.

The record is silent regarding graduate student honors or awards. There are teaching internships available through the graduate teacher education program. The program faculty arrange the internships with the participating schools. The determination as to which graduate students shall intern is made by a faculty committee.

Off-Campus and Overseas Programs

The Employer offers off-campus and overseas programs. The overseas and off-campus study subcommittee of the CAS curriculum committee, on which CAS faculty appear to be a majority of the voting members, makes recommendations regarding the location of such programs, interviews faculty members who wish to lead overseas groups, and makes recommendations through the curriculum committee to the administration regarding the appointment of particular faculty members to such assignments. During a recent three-year period, no recommendation of the subcommittee was overruled by the administration.

The graduate school offers courses at off-campus locations; such programs are taught by both the regular and the adjunct graduate faculty. The program directors work with the faculty in assigning particular faculty members to the off-campus programs.

Sabbaticals

CAS faculty requests for sabbaticals are submitted to the faculty-dominated sabbatical subcommittee of FPAC for review and rank-ordering. The subcommittee's recommendations are forwarded to the full FPAC, which in turn forwards its recommendations through the dean to the provost and president. There is no evidence that any faculty committee recommendation regarding sabbatical requests has been overruled by the administration.

Graduate faculty sabbatical requests are ranked by the graduate faculty personnel committee, utilizing the same criteria applied by the CAS. The record is silent with respect to the effectiveness of the committee's recommendations on such requests.

Research Funds and Grants

The individual faculty member determines his/her own research projects. The CAS faculty member seeking internal funding applies through the faculty-dominated research subcommittee of FPAC, which assesses such requests and recommends to FPAC. FPAC in turn recommends to the dean. In all cases, the dean has accepted such recommendations. The record is silent as to the amount of internal research funds available. Recently, there was an opportunity for one faculty member to be forwarded by the institution as an nominee for an NEH fellowship; a faculty-dominated committee, including faculty representatives of CAS and the graduate school, was created to review faculty applicants' proposals and to recommend which faculty member should be chosen as the institution's nominee. In that case, the committee's recommendation was accepted by the administration.

According to the interim procedures, the graduate faculty personnel committee evaluates and recommends to the administration on graduate faculty requests for internal research

funds. No evidence was presented regarding the amount of such funds available nor the effectiveness of the committee's recommendations.

Reduction-in-Personnel Policies

As a result of faculty deliberation and action, on February 14, 1985, the CAS faculty approved a working principles policy which set forth the criteria by which faculty reductions in force would be accomplished; this document subsequently was accepted by the president. On May 5, 1985, the graduate faculty approved its own set of reduction-in-force criteria. On July 1, 1987, the board adopted resolution no. 30, in which, in essence, it rejected the faculty-passed criteria by which reductions in force were to be accomplished on the grounds that these "are not acceptable to the Board, which finds them inappropriate to the present circumstances and lacking in desired institutional uniformity, clarity and adequate means to preserve the quality, content and vitality of retained programs" The board noted that the "pressing financial problems and a need to balance budgets" had necessitated the future termination of academic positions and directed the president to develop and present to the board a uniform institutional set of procedures and criteria to be applied in achieving academic personnel reductions within programs affected by board-mandated reductions, reorganizations, or eliminations. It appears that no such institutional set of procedures had been developed and adopted as of the hearing.

Hiring

In consultation with the director of personnel, the CAS department chairs participate in the interviewing and hiring of departmental clerical employees. CAS faculty participate on search committees for many administrative positions and constituted a majority on the CAS dean search committee. The process of hiring replacement adjunct faculty is performed primarily at the department level. If the post needs to be filled only for a short period of time, such as a term, the department chair interviews adjunct applicants and may consult with other department faculty prior to forwarding a recommendation to the dean. If the position must be filled for a longer period of time, as for a year-long replacement, the department chair forms a mini-search committee of the chair and two other faculty members which, after reviewing applicants, makes a recommendation to the dean. The evidence presented with respect to specific hiring recommendations for adjunct positions establishes that in those particular instances, the departmental recommendations were approved by the administration. The record is devoid of any indication that there have been instances in which such recommendations were overruled by the dean.

When a CAS tenured or tenure-track faculty position becomes available, a vacancy is declared by the department chair and presented to FPAC for approval. FPAC recommends on the matter to the CAS dean, who may or may not approve the position.¹⁰ Upon approval of the vacancy,

¹⁰In November, 1985, FPAC forwarded to the acting dean its recommendations regarding position requests for the following academic year. Prior to action by the dean, one of these requests was withdrawn by the department; of the 10 remaining FPAC recommendations, the dean agreed with four and disagreed with six, without discussion with FPAC. Higher administra-

Continued

the department chair initiates the search by establishing a search committee comprised of two faculty from the department conducting the search, one faculty member from the division, and one faculty member from outside the division. The search committee proposes the method of advertisement and the job description to FPAC for approval. The search committee then reviews applications and forwards to the CAS dean its choices of applicants it wishes brought to the campus for interview. When the applicant is on campus, the search committee interviews him/her, as do the dean, provost and/or president. In addition, the applicant may be interviewed by members of any of the other constituencies and usually is expected to make a presentation to the community. Upon completion of this process, the search committee formulates its final recommendation for hire which it forwards to the dean. The dean may accept or reject the recommendation. Both the dean's and the search committee's recommendations are forwarded to the provost for her recommendation and then forwarded to the president. Analyzing record evidence on the hiring issue in light of witness testimony, it appears that for the three academic years commencing 1984-85, the search committee's first choice for a CAS tenured/tenure-track position or other recommendation was accepted by the administration in all but one instance. In the rare case where the committee was deadlocked, the administration invoked the affirmative action policy to decide the matter; this policy had been developed by FPAC and approved by faculty vote, then approved by the administration. Several faculty members testified regarding their experiences in serving on search committees prior to the 1984 academic year; out of a number of such searches, there was only one instance in which the committee's recommendation was overruled.

Searches for graduate tenured and tenure-track faculty are conducted by graduate personnel in the same fashion as CAS faculty searches. Graduate faculty, including program directors, sit on the search committees. Since July, 1984, all graduate search committee recommendations have been accepted by the administration. Regular graduate faculty also serve on search committees for graduate program director, as well as serving, along with CAS faculty, on search committees for CAS and graduate school deans and other administrative positions. The program directors are responsible for hiring adjunct faculty; during a four-term graduate academic year, the graduate school employs approximately 135 adjunct faculty who teach approximately 50-60% of the graduate courses.

Advancement, Promotion and Tenure

The CAS advancement, promotion and tenure committee (review board) is composed of four elected CAS faculty members, one of whom serves as chair, two faculty members from other colleges in the area who are jointly chosen by the FPAC chair and the CAS dean, and a member of the board of trustees. The CAS dean sits with the committee without a vote, although he does have veto power over the committee's recommendations. The review board reviews individual CAS faculty members who are eligible for promotion (i.e., a change in rank or tenure and makes recommendations to

tion concurred with the dean's recommendations. The current FPAC has recommended adding a psychology position; the CAS dean has opposed this recommendation, but no final administration decision had been made as of the hearing.

the CAS dean. The dean's recommendation, along with that of the review board, is forwarded to the provost, who performs an independent review of the candidate's file; all three recommendations are forwarded to the president. The review board also reviews and recommends on CAS faculty applications for accelerated advancement within rank, and its recommendations in this regard are forwarded through the dean and provost to the president, as described above. Should the review board recommend against promotion or tenure, the faculty member may appeal the recommendation to an appeals body consisting of a faculty member recommended by the aggrieved, a faculty member recommended by the CAS dean, and a faculty member agreed to by the other two appeals board members. The appeals body forwards its recommendations to the CAS dean, and that recommendation, along with those of the review board and the dean, is forwarded to the provost and the president. Decisions on accelerated advancement may not be appealed.

Besides the foregoing types of major reviews, there is an ordinary review process used to determine advancement within rank for associate professors, professors, and for the first advancement within rank for assistant professors. The ordinary review is done by the CAS dean, without review board deliberation. The reviewee may appeal the dean's recommendation to the review board. In that case, the review board's recommendation is forwarded along with the dean's to the provost and the president.

The document specifying the procedures for faculty review for advancement, promotion and tenure was approved by the faculty in 1979 and adopted by the board. During the 1986-87 academic year, this document was reviewed and revised by the faculty review policy subcommittee of FPAC, which appears to be a faculty-dominated body. The subcommittee's proposed, revised document was reviewed and further revised by FPAC. The final proposal has been submitted by FPAC to the faculty for consideration and a vote on a date subsequent to the hearing. If approved by the faculty, the document will proceed up the administrative ladder for approval.

When engaging in its deliberations, the review board considers a reviewee's file in light of certain criteria outlined in the review document; it is the review board which interprets what the criteria mean and how they are to be applied to a particular faculty member in light of his/her area of scholarship and expertise. The committee reviews approximately 30 cases per year and witness testimony indicates that the review board members devote a substantial amount of time to the review deliberations.

According to a document introduced by the Employer, during the ten-year period from 1977-78 through 1986-87, a total of 67 faculty were reviewed for promotion to professor rank, with the administration confirming 65 of the review board's recommendations. Witness testimony indicates that these figures may not be entirely accurate and that there may be another one or two instances in which the administration failed to concur with the review board, apparently without explanation to or discussion with that body. The Employer's exhibit further shows that the president and the review board were in agreement on 52 of the 57 tenure reviews performed during this same period. No figures for this time period were provided with respect to reviews for promotion to positions other than that of professor. Although no overall figures were given regarding the disposition of review board recommenda-

tions on requests for accelerated advancement, of approximately 10 such requests entertained by the review board last year, all but one of its recommendations were accepted by the administration. Generally, the administration's failure to accept a review board recommendation occurs in cases in which the review board was itself closely divided in its vote.

Graduate faculty who are eligible for promotion or tenure are reviewed by the graduate committee on promotion and tenure (graduate review board) which, as earlier indicated, this year is composed solely of supervisory personnel. The graduate review board follows the promotion and tenure policies and procedures utilized by the CAS, although the graduate faculty are in the process of developing a promotion and tenure document tailored for the graduate school.

Budget and Salary Matters

Despite the conflicting testimony on the topic of salary policy formulation and implementation, a careful reading of the record establishes that faculty input into salary matters is more a matter of form than of substance. Thus, for example, in the early 1980's, the dean created a salary task force, apparently comprised predominantly of faculty chosen by the dean, to devise a new salary policy which would meet certain criteria established by the board and the administration. The first policy so formulated was not approved by the administration, which reconstituted the task force. The second task force, with faculty approval, presented a new salary policy to the administration late in academic year 1984-85. The policy was adopted, albeit with changes made by the administration in the cost of living mechanism and the comparative schools listing; these changes were made without consultation with the task force or the faculty. The budget advisory committee (BAC) is the CAS committee which is to monitor implementation of that policy. However, the administration has failed to provide clear information to that body and has made cost of living decisions without consulting the BAC, despite such requirements in the policy.

With respect to budgetary matters in general, the committees, such as the PPBT and the provost's budget development group, which are involved in budget deliberations in a meaningful way essentially are administrative bodies, with appointed faculty members in the minority. While CAS departments annually forward to the administration certain information regarding anticipated expenses for operating supplies, it is the administration and its committees, rather than the faculty or faculty committees, which deliberate on and prepare the overall departmental and institutional budgets. Although, pursuant to its constitutional charge, the BAC is to participate in the budgetary process, the record as a whole establishes that in the last few years, that committee has had neither effective input into nor significant participation in this area.¹¹

Fund Raising

CAS faculty have no significant involvement in fund-raising activities. Graduate faculty are somewhat more involved in fund-raising efforts through their participation in alumni

activities and in writing some of the materials for the institution's fund-raising office. However, they are not primarily responsible for graduate school fund raising and their involvement does not appear to be of a significant nature.

Analysis and Conclusions

In *NLRB v. Yeshiva University*, 444 U.S. 672 (1980), the Supreme Court held that the *Yeshiva* faculty were managerial employees, defining managerial employees as those who formulate and effectuate management policies by expressing and making operative the decisions of their employer. In so ruling, the Court noted that managerial employees "must exercise discretion within, or even independently of, established employer policy and must be aligned with management" and normally must represent "management interests by taking or recommending discretionary actions that effectively control or implement employer policy." The Court indicated that the purpose of excluding managerial employees from bargaining units is to assure employers of the undivided loyalty of their representatives. Under *Yeshiva*, a faculty need only exercise effective recommendation or control, rather than final authority, to be managerial.

The Court found that through faculty-wide meetings and participation on faculty committees, the faculty at each of the *Yeshiva* University schools effectively determined curriculum, grading systems, admissions, matriculation standards, academic calendars, and course schedules. In addition, faculty at some schools made decisions regarding admission, expulsion, and graduation of individual students, and others had made decisions involving teaching loads, student absence policies, tuition, enrollment levels and, in one case, the location of a school. In nonacademic areas, the Court found that the faculty made recommendations regarding hiring, tenure, sabbaticals, terminations, and promotions, the majority of which had been implemented. The Court approved the Second Circuit's conclusion that the faculty members were "in effect, substantially and pervasively operating the enterprise." The Court concluded:

"Their authority in academic matters is absolute. They decide what courses will be offered, when they will be scheduled, and to whom they will be taught. They debate and determine teaching methods, grading policies, and matriculation standards. They effectively decide which students will be admitted, retained, and graduated. On occasion their views have determined the size of the student body, the tuition to be charged, and the location of a school."

In *Loretto Heights College v. NLRB*, 117 NLRB 2225 (10th Cir. 1984), the court found that while faculty played a substantial role in governance, participating in decision making and implementation in a wide range of areas, the faculty's authority in most aspects of governance was severely circumscribed. The court stated that "while faculty members do take part in the formulation and implementation of management policy . . . their role does not in our view rise to the level of 'effective recommendation or control' contemplated in *Yeshiva*." In so concluding, the court relied upon the infrequent or insignificant nature of committee work, the mixed membership of many committees, the fac-

¹¹ For example, during the Spring 1987 budget crisis, the administration failed to involve the BAC in its deliberations regarding measures to be taken, such as freezing faculty wages. For the graduate school, it is the program directors who develop and oversee the program budgets.

ulty's limited decision-making authority, and the layers of administrative approval required for many decisions.

In a recently-decided case, *Livingstone College*, 286 NLRB No. 124 (1987), the Board concluded that the faculty were managerial employees, based on its finding that the faculty exercised "almost plenary control over curriculum and academic policy." The Board found significant the fact that all curriculum changes must be approved by the faculty-dominated curriculum catalog committee and that the administration could not make changes in academic policy without presenting the changes to this committee. The Board noted that in certain academic areas,¹² the majority of the recommendations made by the various committees and approved by the faculty were implemented without prior approval from the administration and that there was no evidence that the administration ever had countermanded these faculty decisions. The fact that faculty members lacked authority in nonacademic matters was accorded limited significance. Rather, having found that the faculty members had substantial authority in formulating and effectuating policies in academic areas, the Board stated that given "that the business of a university is education, it is the faculty members' participation in formulating academic policy that aligns their interest with that of management."

Analyzing the facts of the instant case in light of *Yeshiva* and subsequent cases, I conclude that while the faculty members of the Employer participate in decision making and implementation in various areas, they do not "substantially and pervasively" operate the enterprise nor does their role rise to the level of "effective recommendation or control." In so concluding, I am mindful that the faculty here determine the content, grading method and teaching method of their own courses; that, subject to a rarely-invoked administrative veto power, the CAS faculty have decided CAS degree requirements, graduation requirements, scholarship and financial aid policies,¹³ admissions standards, student retention policies, student honors recipients, and the location and leadership of overseas programs; and that, where appropriate, the CS faculty are given the task of devising the means by which the administrators' decisions on important academic matters are to be implemented.¹⁴ Nevertheless, I find significant the abrogation of faculty participation in the decision-making process regarding major curricular matters for if, as the Board and the courts have stated, the business of a university is education, then the determination of the courses of study offered by an educational institution is central to that busi-

ness.¹⁵ The Court emphasized in *Yeshiva* that it was the faculty who decided what courses will be offered, when they will be scheduled, and to whom they will be taught." In contrast, here, as the presidents June, 1987 letter to the community makes clear, it is PRC and the administration not the faculty, who address the question "what should we teach and to whom in the coming decade." It is significant, moreover, that the board of trustees refused to permit either the PRC recommendations or the final administration recommendations in academic areas to be presented to the curriculum committees or the CAS faculty as a whole for official action prior to being forwarded to the board. Thus, recent decisions regarding the elimination or reduction of departments, the merger of departments, the academic calendar, the establishment of new courses or programs, and the abandonment of a planned but as yet unimplemented course of study were made by committees which are not faculty-controlled and/or by the administration and the board.¹⁶ The situation in the instant case differs markedly from that of *Livingstone*, where all curriculum changes had to be approved by the faculty curriculum committee and the administration could not make changes in academic policy without presenting the changes to that committee. Nor can the current situation be seen as an isolated instance. As the president noted in his letter, the PRC recommendations are wide ranging and will have an impact upon course offerings and the educational direction of the institution for years to come. Moreover, in the absence of a new governance document and committee structure, PRC and other interim planning self-study committees having only minority faculty representation continue to deliberate upon academic matters. Finally, inasmuch as the new governance structure has yet to be finalized, it is unknown what degree of recommendation authority or control over such matters will be vested in the faculty in the future.¹⁷

Additionally, in contrast to the situation in *Livingstone*, recommendations made by the various CAS and graduate school committees and approved by the faculty generally require approval from the administration prior to implementation. The institution has an extensive administrative structure with several steps of administrative hierarchy above the faculty level. The administration has veto power at each step and, for most matters, independently evaluates the recommendations of the faculty. The administration does not hesitate to invoke its veto power, often without discussion with the faculty or its committees, when it deems that the faculty will be incompatible with the administration's goals or desires.¹⁸ It is significant that certain administrators with direct responsibility for or involvement in academic matters, such as the graduate program directors, the CAS associate dean, the assistant graduate deans, the graduate dean, and the

¹² Those areas were curriculum, degree requirements, course content and selection, graduation requirements, matriculation standards, and scholarship recipients.

¹³ However, unlike *Livingstone*, it is a subcommittee dominated by administrators, rather than the faculty, who apply such policies and determine which students will receive scholarships and financial aid.

¹⁴ Unlike the CAS faculty, the graduate school tenured and tenure-track faculty cannot be said to have the same degree of decision-making authority with respect to those academic matters reserved for the curriculum committee, such as degree requirements, graduation requirements, admissions and retention standards, and the means by which curricular changes are to be implemented, inasmuch as such faculty do not necessarily, and currently do not, constitute a majority of the voting members of the committees of the whole; as the court stated in *Loretto*, supra, effective control of policies "scarcely can be imputed to the faculty when it comprises a minority of the [committee]." The same holds true for graduate faculty authority in nonacademic matters reviewed by the faculty personnel committee, a committee of the whole, and, in light of its current composition, by the graduate review board.

¹⁵ I note that the Board cases in which faculty were deemed to be managerial employees have in common absolute or almost plenary faculty control of the curriculum and that in *Livingstone*, supra, the Board stressed that the faculty's control over the curriculum was a significant factor in its finding that the faculty were managerial.

¹⁶ And earlier, during the mission planning phase, many decisions regarding curriculum and basic academic philosophy effectively were made by the administration and by committees not controlled by the faculty.

¹⁷ It is notable that tenured and tenure-track faculty at best constitute a minority of the members on those committees charged with formulating new governance procedures and structures.

¹⁸ As, for example, was the case when many of FPAC's recommendations for vacancies for the 1986-1987 academic year were overruled or when the board revoked the reduction-in-force policies devised by the faculties.

associate provost, hold faculty rank and may even teach courses while serving as administrators. Thus, the professional expertise which the Court, in *Yeshiva*, deemed was “indispensable” to the formulation and implementation of academic policy is available within the ranks of the administration. In light of the program directors’ duties and responsibilities, it is clear that the administration relies upon them to provide such expertise on both academic and nonacademic matters in the graduate school. While no comparable position exists at this time in the CAS, the practice by which faculty recommendations independently are reviewed and recommended on at both the dean and the provost levels¹⁹ demonstrates that in this school, too, there are administrators who possess the required expertise which in fact is relied upon by management and who thus create an effective buffer between the faculty and top management. Hence, in contrast to *Yeshiva*, the Employer is not “compelled to rely upon the faculty for advice, recommendations, establishment of policies, and implementation of policies.” In the instant case, faculty are not by necessity aligned with management, a fact which management itself appears to recognize as demonstrated by its actions and directives.²⁰

Clearly, the faculties here have neither the absolute control over core academic areas which they had in *Yeshiva* nor the “almost plenary” control which they exercised in *Livingstone*. Moreover, while the nonsupervisory tenured and tenure-track faculties have significant input into hiring and, in the case of the CAS faculty, into advancement, promotion, and tenure decisions, I note that, as the holding in *Loretto* establishes, effective recommendation in such areas does not require a finding of managerial status. Accordingly, having carefully weighed the facts of this case in light of the factors relied upon in the precedent cases in this area, I conclude that the graduate faculty are not managerial employees, particularly in light of the dilution of their authority as a result of the mixed voting membership on committees deliberating upon significant academic matters and of the existence of the program directors who serve as a buffer between top management and the faculty and upon whose professional expertise the administration relies in both academic and nonacademic matters. With respect to the CAS faculty, while their authority is substantially greater than that of the graduate faculty in certain academic and nonacademic areas, on balance, and particularly in light of the extensive and professionally expert administrative hierarchy, the layers of administrative approval required prior to implementation of most decisions, and the retention by the administration of decisive power and authority to formulate and effectuate management policy in key areas, including matters involving the curriculum and

academic policy, I conclude that the CAS faculty are not managerial employees. While Employer concerns over re-accreditation, university-wide balance, and the financial situation may justify its restructuring of the decision-making process and its removal of academic matters from effective faculty consideration, such justifications do not negate the fact that the role of CAS faculty does not rise to the level of effective recommendation or control. In light of my conclusion on this issue, I find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(C)(1) and Section 2(6) and (7) of the Act.

5. Unit Scope

In addition to the information relevant to community of interest considerations which already has been presented in the discussion of the managerial issue, there are other facts germane to the unit scope question, as discussed below.

While the CAS faculty and the graduate faculty have separate immediate supervision, there is common supervision above the dean level. The CAS dean and the graduate dean regularly meet alone or with the provost to discuss personnel, budget, and other matters of mutual concern. Recently, for example, the two deans devised an informal arrangement for the compensation of faculty members of one unit who teach in the other unit on an off-load basis.²¹ Although the students of the two units are distinct in terms of level of knowledge, the skills and experience required of the faculties are similar or identical. The primary function of both the CAS and the graduate faculty is the education of students; in addition, members of both faculties conduct research. Of the five graduate programs, only the teacher education program has a direct link with an undergraduate program; in that case, the graduate faculty are responsible for developing undergraduate courses and for staffing those courses. The CAS and graduate faculties currently are exploring the possibility of a joint degree to be offered by the counseling psychology program in conjunction with the CAS psychology department. The only instance in which faculty members of one unit have transferred permanently to the other unit is in the case of the CAS teacher education faculty who were transferred to the graduate school upon the creation of that school and the elimination of the undergraduate teacher education major. Typically, however, in any given term, regular faculty members of one unit teach courses in the other unit, generally on an off-load basis. Although overseas programs usually are taken by undergraduate students, graduate faculty on occasion have led such groups. Under certain circumstances, undergraduate students may take graduate-level courses.

As noted, each school has its own committees dealing with matters of concern to that unit. On occasion, however, faculty of one school will sit in or serve on committees of the other, as was the case when a graduate school committee was developing the graduate core curriculum. Graduate faculty do not serve on search committees for tenured and tenure-track CAS faculty positions and the converse is true for graduate faculty search committees. However, the search pro-

¹⁹ The provost position is a recently-added rung on the administrative ladder. Prior to hiring the incumbent in May, 1986, this position had been vacant for several years.

²⁰ For example, the board rejected a CAS resolution calling for the president to refuse to forward to the board any TGF recommendation regarding institutional governance which does not have the support of the individual faculties; in rescinding the faculty-created reduction-in-force policies, the board directed the president to devise and present to the board a replacement policy; the composition of the administratively-created governance committees and the PRC is such that nonsupervisory tenured and tenure-track faculty do not constitute a majority of the members on any such committee; PRC decided that the matter of the form of the academic calendar should not be placed before the CAS curriculum committee—the appropriate committee under the constitution—because it feared that the committee would deadlock over this matter as it had several years ago.

²¹ A course taught on-load is taught as part of the contractually required workload and the faculty member teaching it is paid by the school with which he has the contract. A course taught off-load is one which is taught in addition to the faculty member’s contractual workload and is paid for by the school which is offering the course.

cedures utilized are the same for both units. In addition, there is both graduate and CAS faculty representation on search committees for various administrative positions, including the search committees for CAS and graduate dean. Graduate and CAS faculty members together serve on some of the recently-created joint and institutional committees. Meetings of the faculty of the whole of each school are open to the public unless an executive session has been called.

CAS and graduate faculty teach, conduct research, and have their offices on the same campus. In some cases, the same building houses both graduate and CAS classrooms and/or offices. The faculty of both units use the same cafeteria, library, recreational facilities, and parking lots and have access to the institution's support services and staff. Certain campus events, such as graduation ceremonies and the Christmas party, are held jointly.

The graduate school is on a four-term academic year while CAS currently is on a three-term year. Because graduate students tend to be part-time students, graduate faculty teach evening courses and summer courses, while CAS faculty do not. CAS faculty contracts are for September to commencement, while some graduate faculty contracts run from January through August. The contractual workload requirement for CAS faculty involves fewer credit hours than that for graduate faculty. Unlike CAS faculty, graduate faculty are expected to perform additional non-teaching duties as part of their contractual workloads. The same salary, salary structure, and fringe benefits apply to both the graduate and CAS faculties. Although the graduate school is operating under interim procedures, there are certain areas, such as sabbaticals;

promotion, tenure, and advancement; hiring; and affirmative action, in which that unit continues to adhere to the policies and procedures utilized by the CAS. The board of trustees has rescinded the separate reduction-in-force policies which the schools had developed and has directed that a uniform policy be created. The same faculty handbook applies to both faculties.

In light of the foregoing and the entire record, it is clear that a combined CAS and graduate faculty unit is an appropriate unit. Moreover, despite certain distinctions between the two groups, I conclude that the CAS faculty does not constitute an identifiable group of employees with a sufficiently separate community of interest to exist as a separate unit. Rather, their community of interest is submerged so irrevocably in the broader community of interest which they share with the graduate faculty members and the operation of the CAS is so highly integrated with that of the graduate school as to compel a finding that only an overall unit of CAS and graduate tenured and tenure-track faculty is appropriate. Accordingly, I shall direct an election in the following bargaining unit:

All tenured and tenure-track faculty of Lewis and Clark College's undergraduate College of Arts and Sciences (CAS) and graduate school, but excluding employees on administrative or staff contracts, adjunct faculty, law school faculty, and supervisors as defined in the Act.

There are approximately 105 employees in the bargaining unit.