

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

AMERICAN FEDERATION OF STATE-
COUNTY-MUNICIPAL EMPLOYEES
COUNCIL 93, AFL-CIO

Employer¹

and

FIELD STAFF EMPLOYEES UNION

Petitioner

and

AFSCME COUNCIL 93 LAWYERS UNION

Intervenor²

Case 1-RC-21569

DECISION AND DIRECTION OF ELECTION³

¹ The name of the Employer appears as amended at the hearing.

² The name of the Intervenor appears as corrected at the hearing.

³ Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) 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.

The American Federation of State-County-Municipal Employees Council 93, AFL-CIO (AFSCME) is a labor organization that represents employees for purposes of collective bargaining with their employers. The Field Staff Employees Union (FSEU) currently represents a bargaining unit composed of about 25 staff representatives,⁴ a senior staff representative, and organizers employed by AFSCME. AFSCME Council 93 Lawyers Union (Lawyers Union) currently represents a bargaining unit of four attorneys employed by AFSCME. FSEU seeks a self-determination election in which the attorneys currently represented by the Lawyers Union would be permitted to vote whether or not they wish to be included in the larger unit of staff representatives and organizers that is already represented by FSEU. The Lawyers Union supports the position of FSEU.⁵ AFSCME maintains that it is inappropriate to include the attorneys in the unit of staff representatives and organizers and that only separate units are appropriate.

The parties have stipulated, and I find, that the attorneys sought are professional employees. AFSCME maintains that the staff representatives and organizers are nonprofessional employees. FSEU and the Lawyers Union contend that it is not necessary in the context of the self-determination election sought to determine whether or not the staff representatives and organizers are professionals. In the alternative, should I find it necessary to determine their professional status, the FSEU and Lawyers Union assert that the staff representatives and organizers are professional employees.⁶

I find that the attorneys share a sufficient community of interest with the unit of staff representatives and organizers to warrant the self-determination election sought by FSEU. I also find that the staff representatives and organizers are not professional employees and shall order a Sonotone election in which the attorneys, who are professionals, shall be afforded the opportunity to vote whether or not they wish to be included in a unit of nonprofessionals.

Appropriate unit

AFSCME, which maintains its headquarters at 8 Beacon Street in Boston, Massachusetts, represents employees in Massachusetts, New Hampshire, Vermont, and Maine.⁷ The Beacon Street location also serves as AFSCME's Metro region, which services employees in Boston and the surrounding suburbs. In Massachusetts, AFSCME maintains a North Shore regional office in Wakefield, a South Shore regional office in

⁴ The staff representatives are referred to in the recognition clause of the parties' collective-bargaining agreement as field staff representatives.

⁵ FSEU does not seek to represent the attorneys in a separate unit. The Lawyers Union asserts that, should I find that only separate units are appropriate, the status quo should be maintained.

⁶ Should it be determined that the staff representatives and organizers are nonprofessional employees, FSEU and the Lawyers Union will assent to a Sonotone election.

⁷ It appears that the employees represented by AFSCME are primarily public sector employees.

New Bedford, and a Western regional office in Springfield. AFSCME also has offices in Augusta, Maine, Londonderry, New Hampshire, and Rutland, Vermont.

AFSCME's executive director is Anthony Caso. He is assisted by Frank Moroney, Director of Field Services. Each field office has a coordinator, who reports to Moroney. AFSCME employs about 23 staff representatives⁸ at its various locations, who report to the coordinators.⁹ AFSCME employs two organizers who report to organizing director Elda Arellano.¹⁰ General Counsel Wayne Soini,¹¹ who reports to the executive director, supervises the four attorneys at issue:¹² Robert Van Campen, Angela Davidovich, Angela Wessels, and Daniel Cocuzzo.

Duties of the staff representatives and attorneys and interaction between them

Staff representatives are generally assigned to represent locals/bargaining units¹³ located in a particular geographic area, although some of them are designated to serve certain types of bargaining units. At least four staff representatives service bargaining units in the higher education and human services industry and report to a separate coordinator. There are also three or four representatives designated to service state employees in Massachusetts. The higher education/human services staff representatives, state employee service representatives, and Metro region staff representatives have offices on the seventh floor of the Beacon Street facility in Boston. Staff representatives may represent as many as 30 to 40 bargaining units. Staff representatives' duties include negotiating collective-bargaining agreements, enforcing collective-bargaining agreements through the grievance process, enforcing employee and union rights under state labor relations laws, and enforcing employee rights under state civil service laws.

Soini and the four attorneys have offices on the eighth floor of AFSCME's Beacon Street location. The attorneys are responsible for handling arbitrations, hearings before the various state labor relations boards, hearings at the Civil Service Commission,

⁸ One of these is a senior staff representative, who works in the North Shore office. He performs the same work as the other staff representatives but is more experienced and receives higher pay.

⁹ The parties have stipulated, and I find, that the coordinators are statutory supervisors who shall be excluded from any unit found appropriate.

¹⁰ The parties have stipulated, and I find, that Arellano is a statutory supervisor who shall be excluded from any unit found appropriate.

¹¹ The parties have stipulated, and I find, that General Counsel Soini is a statutory supervisor who shall be excluded from any unit found appropriate.

¹² The official title for the attorneys is "associate general counsel."

¹³ It appears that AFSCME is divided into "locals" that have elected leaders.

and court appearances in all four states.¹⁴ The attorneys handle about 10 to 15 cases a month, most of which are arbitrations. They prepare for and attend hearings, and write briefs and legal opinions.¹⁵ Each lawyer is also responsible for answering telephone inquiries that come in from staff representatives, coordinators, union stewards, local officers, union members, and family members.¹⁶

Staff representatives and attorneys interact with respect to negotiations for new or successor collective-bargaining agreements. Staff representatives help the locals formulate and draft proposals for their collective-bargaining agreements and typically act as the lead negotiators for the locals. Staff representative John Gordon, who represents about 20 to 25 locals, including the local for City of Boston employees, testified that he typically spends about half his time in contract negotiations. AFSCME's attorneys do not generally participate in contract negotiation sessions,¹⁷ but the staff representatives sometimes ask the attorneys to review union or management proposals or side letters of agreement before they agree to them. Gordon testified that he asks attorneys to review contract proposals on a weekly basis. Attorney Davidovich testified that she reviews written contract proposals at least twice a month and consults about proposals over the telephone at least once a week, and attorney Wessels testified that staff representatives have asked her to draft proposed contract language.

Staff representatives and attorneys are responsible for enforcing collective-bargaining agreements through the grievance and arbitration process. Local officials make the initial determination to file a grievance, although they may consult with their

¹⁴ In Vermont, Coordinator George Lovell handles some of the simpler arbitration cases. The attorneys handle the more complicated arbitration cases as well as matters before the Vermont Labor Relations Board and NLRB cases that arise in Vermont. Currently, there is no staff representative assigned to the Vermont office. The staff representatives in New Hampshire handled arbitrations until two to three years ago. New Hampshire arbitrations are now handled by the attorneys.

In Maine, AFSCME's in-house lawyers handle cases before the Maine Labor Relations Board, but attorney Steve Sonnenblick, who is on retainer with AFSCME and not a full-time employee, handles all of AFSCME's Maine arbitrations. The parties have stipulated, and I find, that Sonnenblick shall be excluded from any unit found appropriate.

¹⁵ Sometimes the staff representatives may ask the attorneys to provide a legal opinion in writing, for example, about Weingarten rights or employee discipline for off-duty conduct.

¹⁶ They are each assigned to one or two geographic areas and answer all phone calls that come in from those areas.

¹⁷ In one exception, Attorney Wessels attended six to eight impact bargaining sessions, in which the staff representative was the spokesperson for AFSCME, but she strategized with him concerning the legal issues involved and back pay. Attorney Van Campen testified that he attended one bargaining session in negotiations with the City of Salem and was the local's spokesperson. He would have attended further sessions but for scheduling conflicts.

staff representative and/or ask the representative to consult with AFSCME's legal department prior to filing. Union stewards and local officers generally handle Step 1 and 2 grievances, and the staff representatives generally handle those grievances that proceed to Step 3, which usually involve a hearing before a hearing officer from the city or state facility involved.¹⁸ Staff representatives and their opponents may examine and cross-examine witnesses, enter documents into evidence, and make a closing statement at these hearings, although the procedure is loose.¹⁹ Gordon has written a brief to a Step 3 hearing officer a couple of times.

If a local wishes to pursue a case to arbitration, the staff representative completes an arbitration request form, which must be approved by the staff representative's coordinator and by the Executive Director. Soini assigns the case to an attorney.²⁰ Upon receiving the file, the attorney contacts the staff representative to discuss the case.²¹ The staff representative usually attends the meetings with the grievants and local officials during which the attorney prepares the case and may assist the attorney in contacting witnesses. The arbitration hearings generally take place at the employers' facilities or at facilities such as the American Arbitration Association. The staff representatives are involved along with the attorneys in any mediation efforts. If the arbitration goes forward, they sit next to the attorneys at the hearings and, in many instances, they serve as witnesses themselves. Sometimes the attorneys send a draft of their post-hearing brief to the staff representatives to obtain their input before filing. When an arbitrator issues an award, the staff representatives often ask the attorney to explain the award to the staff representative, the grievant, and the local officials.²² The attorneys also attempt to settle

¹⁸ Attorneys do not generally handle Step 3 grievances but are occasionally asked to do so. This may happen, for example, when one union member has a grievance against another, and the staff representative cannot represent both of them. This happens less than five times a year. Attorney Cocuzzo testified that he has handled three Step 3 hearings, two of which he presented along with a staff representative. Attorney Wessels has participated in Step 2 and 3 grievance hearings in two cases.

¹⁹ Gordon testified that in the case of the City of Boston, which always upholds terminations at Step 3, he may decide not to present witnesses or documents, so that AFSCME's case is not revealed prior to arbitration.

²⁰ Soini, who handles cases himself in addition to his duties in overseeing the work of the four attorneys, generally just rotates through the attorneys, including himself, in assigning cases, although he may assign cases out of order if one of the attorneys is already familiar with the grievant. He testified that 80 to 90 percent of the lawyers' cases are arbitrations and 80 to 90 percent of them are in Massachusetts.

²¹ AFSCME has a five-member Grievance Review Committee that has the final word regarding the decision to arbitrate cases. Once a month, Soini sends a list of cases that he feels do not warrant arbitration to the Review Committee. Attorneys may forward cases to the Review Committee as well. Soini typically argues against arbitration, and the staff representative may bring in the grievant and local officers to try to persuade the Committee to proceed with the case.

²² AFSCME rarely appeals arbitration awards.

cases prior to arbitration, but must send all settlement proposals to the staff representative. No case may be settled without the approval of the local leadership.

Staff representatives and attorneys are also responsible for enforcing employees' rights under the state civil service laws. Those employees who are civil service employees²³ are entitled to a hearing before the "appointing authority," i.e., their employer, with respect to certain adverse actions, such as discipline. Staff representatives defend employees at those hearings,²⁴ examining and cross-examining witnesses, and summarizing their case at the end of the hearings. Employees who lose their case may choose to appeal it to the Civil Service Commission. In that event, the staff representative sends a request to his or her coordinator and the executive director, and the case is assigned to one of the attorneys, who represents the employee at a hearing before the Commission. The staff representative works with the attorney on the case in the same manner as at an arbitration, assisting in preparation, sitting with the attorney at the hearing, testifying if necessary, and participating in settlement negotiations.

A similar process takes place with respect to AFSCME's role in enforcing employee or union rights under state labor relations acts.²⁵ Staff representatives may decide on their own to file an unfair labor practice charge or may consult with one of the attorneys first. The staff representatives complete the charge forms and, in the case of charges to be filed with the Massachusetts Labor Relations Commission,²⁶ they prepare the written submission required, which may include affidavits by themselves and/or others. They forward their submission to their coordinator and executive director for approval, and the case is then assigned to an attorney. The attorney involved contacts the staff representative, revises the charge and affidavits if necessary, and prepares a written statement to be filed with the charge and affidavits.²⁷ When the attorney receives management's responses to the charge, the attorney forwards it to the staff representative, who writes comments and returns it to the attorney. If the Labor Relations Commission issues a complaint and holds a hearing, the staff representative helps the lawyer to

²³ Only a small percentage of AFSCME members are civil service employees.

²⁴ The staff representatives occasionally ask an attorney to do a hearing before the appointing authority.

²⁵ It appears that AFSCME represents primarily public sector employees, and therefore has few cases involving the NLRB, but Gordon testified that he once handled a representation case at the NLRB when none of the AFSCME attorneys was available.

²⁶ AFSCME files most such charges at the Massachusetts Labor Relations Commission, which refers to them as "charges of prohibited practice."

²⁷ In cases that are close to the Commission's six-month statute of limitations, the charge may already have been filed when the case is assigned to the attorney.

prepare the case, sits next to the lawyer at the hearing, testifies if necessary, and participates in any settlement negotiations.²⁸

Staff representatives train union stewards regarding grievance handling. Attorneys also occasionally provide training to union members. Attorney Angela Wessels has provided training at several union membership meetings regarding topics such as requests for information under various state and federal laws, transfer of work, pay for additional duties, and legal strategies in bargaining. Last year, each attorney gave a presentation to a group of bargaining unit members and staff representatives on topics such as drafting an affidavit and filing prohibited practice charges. In addition to their role as trainers, attorneys and staff representatives attend many of the same seminars and conferences as trainees, such as workshops by arbitrators and an annual conference on public sector labor law in the New England states.

Organizers' duties and interaction with attorneys

The two organizers are responsible for organizing new bargaining units. They hold meetings for potential members to explain the benefits of union membership and try to obtain the employee signatures necessary to obtain a union election. The organizers have offices at AFSCME's Boston location but are responsible for AFSCME's organizing activities in all four states. The attorneys file petitions with labor relations agencies concerning organizing drives and handle representation hearings before those agencies. Attorney Wessels testified that she has worked with two organizers on a representation cases before the Massachusetts Labor Relations Commission. Attorneys Davidovich and Van Campen testified that organizers have called them with legal questions about organizing campaigns. Van Campen was assigned in the spring of 2002 to assist an organizer who was trying to organize a new group of employees in Maine. He spoke at an employee meeting about the advantages of representation by a union with in-house legal staff and wrote a brief to the Maine Labor Relations Board in connection with AFSCME's petition.

Working conditions

Staff representatives spend most of their time away from their offices,²⁹ meeting with grievants and the leadership of the locals they represent, and attending union membership meetings, negotiation sessions, and hearings. Attorneys spend about half of their time in the office preparing cases, writing briefs, and taking telephone calls, but they also spend a substantial amount of time on the road, meeting with staff representatives, local officials, and grievants, and attending hearings. Both staff representatives and

²⁸ Although attorneys generally handle these cases, staff representative Steve Lyons has represented AFSCME locals in cases before the Public Employees Labor Relations Board in New Hampshire.

²⁹ The staff representatives who service state employees are in their Boston office only about one day a week.

attorneys attend meetings at city and town halls, offices of the locals, the homes of local officers and union members, and restaurants.

Staff representatives work at least eight hours a day, but their hours are irregular. They frequently have meetings in the evenings, when bodies such as school committees and town selectmen hold their meetings, or weekend meetings with the union membership. Contract negotiation and mediation sessions may also be held on the weekends. Soini testified that the hours of the attorneys are generally 9 a.m. to 5 p.m., although they sometimes work later or work weekends. Attorneys Angela Wessels and Angela Davidovich testified that their hours are flexible. Wessels may meet with grievants to prepare a case very early in the morning and has extended telephone conversations with grievants at her home in the evening. When she does arbitrations in Vermont, she meets with the staff representative and grievant the evening before the arbitration. She has had mediation cases and arbitration cases that started late in the afternoon and went until 10 p.m. Davidovich also meets with union members and travels after hours.

Staff representatives, organizers, and attorneys are all salaried employees. Annual starting pay is about \$43,000 for staff representatives and about \$33,000 for organizers. According to the 2001-2002 contract between AFSCME and the Lawyers Union, annual starting pay for attorneys is about \$33,500.³⁰ Benefits for the two units, such as vacation, sick leave, personal leave, holidays, insurance, and parking fees, are similar. Attorneys, staff representatives, and organizers are required to own a car and to submit a weekly expense report. Attorneys are reimbursed for travel on a mileage basis. Staff representatives and organizers are provided a car allowance payment of \$300 per month and reimbursement for certain car expenses. AFSCME pays for the attorneys' annual registration to the bar and for membership in one professional bar association. AFSCME provides lap tops for the attorneys staff representatives. AFSCME recently began to pay the attorneys' monthly cell phone fee; the record does not reveal whether a similar benefit is provided to staff representatives and organizers.

There have been no transfers between the attorney and staff representative classifications.

Bargaining history

FSEU has represented staff representatives since 1971 and recently began to represent organizers.³¹ AFSCME has voluntarily recognized the Lawyers Union as the representative of its attorneys since 1996. AFSCME also employs clerical employees

³⁰ The record does not reveal whether there have been increases since the contract was signed in August 2000.

³¹ The organizer classification is a new position. Organizing work used to be performed by the staff representatives.

who have been represented employer-wide by Local 6 of the Office of Professional Employees International Union since about 1978 or 1979.

Conclusion as to the appropriate unit

A self-determination election is a proper method by which a union may add employees to an existing unit. Globe Machine & Stamping;³² Armour & Co.³³ Such an election may be appropriate regardless of whether the employees in question may be found to be a separate appropriate unit. Great Lakes Pipe Line Co.³⁴ The appropriateness of a self-determination election depends on the extent to which the employees to be included share a community of interest with unit employees and on whether the employees to be added constitute an identifiable, distinct segment so as to constitute an appropriate voting group. Warner-Lambert Co.³⁵ In deciding whether employees share a sufficient community of interest to warrant inclusion in the same unit, the Board weighs various factors, including differences or similarities in the method of wages or compensation, hours of work, employment benefits, supervision, working conditions, job duties, qualifications, training, and skills. The Board also considers the degree of integration between the functions of employees, contact with other employees, and interchange with other employees, as well as history of bargaining. Overnite Transportation Co.³⁶

I find that, although the attorneys may constitute a separate appropriate unit, they also share a sufficient community of interest with the staff representatives and organizers to warrant their inclusion in the larger unit, should they so desire. In reaching this conclusion, I recognize that the attorneys are separately supervised from the staff representatives and organizers, that they have different qualifications³⁷ and skills, that there have been no transfers between the classifications, and that the attorneys have a history of separate bargaining. These factors are far outweighed, however, by the frequent contact between the two groups of employees, particularly between the attorneys and staff representatives, who work very closely together on the cases assigned to the attorneys and regularly consult with each other regarding contract proposals. Attorneys and staff representatives perform similar duties in that they represent grievants and AFSCME at various types of hearings, albeit with different levels of skill, and there is occasional interchange between them, as when an attorney conducts a Step 3 grievance

³² 3 NLRB 294 (1937).

³³ 40 NLRB 133 (1942).

³⁴ 92 NLRB 583, 584 (1950).

³⁵ 298 NLRB 993, 995 (1990).

³⁶ 322 NLRB 723, 724 (1996), citing Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

³⁷ See discussion below concerning the qualifications of the attorneys, staff representatives, and organizers.

hearing or appointing authority hearing that would ordinarily be handled by a staff representative. Their working conditions are similar, in that attorneys, staff representatives, and organizers all spend substantial time traveling and attending meetings out of their offices, and they all work irregular hours. Their pay and benefits are similar.

Professional status of the staff representatives and organizers³⁸

AFSCME contends that the staff representatives and organizers are nonprofessional employees, while FSEU and the Lawyers Union assert that they are professional employees. I find that the staff representatives and organizers are nonprofessional employees.

The duties of the staff representatives and organizers have been set forth above. With respect to their qualifications, staff representatives, senior staff representatives, and organizers are required to have a high school diploma or equivalent. In addition, staff representatives are required to have four years of experience in labor relations, and the senior staff representative is required to have eight years of experience in labor relations. Gordon testified that some of the staff representatives have a college degree, although he does not know how many, and that one of the organizers may have a college degree. AFSCME now offers a one-week training program for the leaders of its locals in the handling of grievances and unfair labor practices, and it chooses new staff representatives from the pool of local leaders who have completed that training. Other than that training, there is no license or certification requirement for the staff representative position.

Under Section 2(12) of the Act, in order to qualify as a professional, an employee must perform work of a predominantly intellectual and varied character, involving the consistent exercise of discretion and judgment. The work must be of such a character that the output cannot be standardized in relation to a given period of time, and it must require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital. Avco Corp.³⁹ The Act defines a professional

³⁸ As noted above, the parties have stipulated, and I find, that attorneys, who must be law school graduates and members of the bar, are professional employees. Section 9(b)(1) of the Act requires that professional employees such as the attorneys at issue here be given a choice before their positions can be included in a unit that includes nonprofessionals. FSEU asserts that, because it seeks a self-determination election in which the attorneys will be asked in any event whether they wish for their positions to be included in the larger unit, that it is not necessary to make a determination regarding the professional status of the staff representatives and organizers. I find that such an election, which would give the attorneys a Section 9(b)(1) choice only by implication, would not satisfy the requirements of the Act, and that I must make a finding with respect to the professional status of the employees currently represented by FSEU.

³⁹ 313 NLRB 1357 (1994).

employee in terms of the work performed rather than in terms of individual qualifications.⁴⁰

The Board has found that employees of labor unions who direct organizational campaigns, negotiate and sign collective-bargaining agreements, handle grievances and arbitrations, and direct strikes are nonprofessional employees. Grand Lodge International Association of Machinists.⁴¹ Assuming, without deciding, that the work of the staff representatives and organizers meets the other Section 2(12) criteria, I find, nonetheless, that the staff representatives and organizers are not professionals, because their work does not require knowledge of an advanced type that is customarily acquired by means of a college education.⁴² In arguing that staff representatives and organizers are professionals, FSEU points out that, notwithstanding the language of Section 9(b), the Board has held that possession or lack of a baccalaureate degree is not determinative of professional status. Illinois Valley Community Hospital,⁴³ Group Health Association, Inc.⁴⁴ While the Board may not require every individual in a group whose professional status is at issue to have a professional degree, I find that the Board could not have intended by such a declaration to completely negate the statutory requirement that in order to be deemed professional, the work of a classification as a whole must require knowledge of an advanced type that is customarily acquired by obtaining a college

⁴⁰ Id.

⁴¹ 159 NLRB 137, 138-141 (1966) (grand lodge assistants to vice presidents and press representatives whose qualifications and duties are similar to those of other grand lodge representatives and special representatives in the unit are not professional employees). While there are no recent reported cases in which the Board made a finding regarding the professional status of employees who perform duties similar to those of the staff representatives and organizers at issue here, the Board observed in Illinois Valley Community Hospital, 261 NLRB 1048 (1982), “that union representatives who are not statutory professionals act as counsel for their unions in Board proceedings does not put into question the professional status of attorneys who perform the same function.”

⁴² While the duties of staff representatives and concededly professional attorneys overlap to some degree, it is precisely because of their higher educational level that only the attorneys, and not the staff representatives, are generally assigned to handle arbitrations, hearings before government agencies, and court cases, which require much greater training and skill than the lower-level grievance processing generally performed by the staff representatives. The Board has found, moreover, that where two classifications of employees perform similar duties, one may be professional and the other nonprofessional, based on differing skill levels and qualifications. Illinois Valley Community Hospital, supra (medical technologists with advanced degrees are professionals, although medical laboratory technicians who concededly are not professionals are capable of performing most of the laboratory tests performed by the medical technologists, albeit with less proficiency).

⁴³ Id.

⁴⁴ 317 NLRB 238, 242 n.16 (1995).

degree. Thus, the Board held in Avco Corp.⁴⁵ that, although educational background does not control, the Board examines educational background for the purpose of deciding whether the work of the group satisfies the "knowledge of an advanced type" requirement. If a group of employees consists primarily of individuals with professional degrees, the Board may presume that the work requires "knowledge of an advanced type," even though there may be some individuals in the group who do not have a professional degree. Conversely, if few in the group possess the appropriate degree, it follows that the work does not require the use of advanced knowledge. Here, where the employees in the positions at issue are not required to have a college degree, and there is no evidence that the group consists primarily of individuals with college degrees, the positions do not meet the condition that they require knowledge of an advanced type.

Conclusion

In view of the statutory requirement that the Board may not join professional and nonprofessional employees in a single unit without the desires of the professional employees being determined in a separate vote, I shall, pursuant to the Board's decision in Sonotone Corp.,⁴⁶ direct the following election: The associate general counsels, who are professional employees, shall be asked the following questions on the ballot:

1. Do you wish to be included in a unit of nonprofessional employees and represented by the Field Staff Employees Union for purposes of collective bargaining.
2. Do you wish to be unrepresented?
3. Do you wish to be represented in a separate unit of professional employees and represented by AFSCME Council 93 Lawyers Union for purposes of collective bargaining?

The ultimate determination as to the appropriate unit or units is based upon the results of the election. However, I make the following findings with regard to the appropriate unit:

1. If the professional employees vote for inclusion in a unit with nonprofessional employees, I find that the following employees will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time field staff representatives, senior field staff representatives, organizers, and associate general counsels employed

⁴⁵ Id. I note that Avco Corp. was decided subsequent to Illinois Valley Community Hospital.

⁴⁶ 90 NLRB 1236 (1950). The appropriateness of the Sonotone procedure was reaffirmed by the Board in Pratt & Whitney, 327 NLRB 1213, 1217-18 (1999).

by the Employer, but excluding guards and supervisors as defined in the Act.

2. If the professional employees vote to be represented in a separate unit of professional employees, I find that the following employees will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time associate general counsels employed by the Employer at its Boston, Massachusetts location, but excluding guards and supervisors as defined in the Act.

If a majority of the valid ballots in the election are cast for the Field Staff Employees Union, the associate general counsels will be deemed to have indicated their desire to be included in the existing unit represented by the Field Staff Employees Union, and it may bargain for those employees as part of that unit. If a majority of valid ballots in the election are cast for AFSCME Council 93 Lawyers Union, the associate general counsels will be deemed to have indicated their desire for separate representation, and AFSCME Council 93 Lawyers Union may bargain for them separately. If a majority of valid ballots are not cast for representation, the associate general counsels will be deemed to have indicated their desire to be unrepresented, and I will issue a certification of results of election to that effect.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the voting group found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting group who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by the Field Staff Employees Union or by AFSCME Council 93 Lawyers Union.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before December 12, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by December 19, 2002.

/s/ Ronald S. Cohen
Ronald S. Cohen, Acting Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 5th day of December 2002.

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