

The [Un]usual Suspects

**Yale's Anti-union Campaign Against
Graduate Teachers and Researchers**

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Introduction: Anti-Union Campaigns

A manager pulls a worker aside and tells her that if she joins the union, their working relationship will be destroyed. A manager holds a large meeting and only allows anti-union statements to be made, silencing pro-union speakers. A manager changes an evaluation based on union activity. A manager threatens to fire a worker if he goes on strike. Union members are arrested and threatened with prison time for handing out union literature at the entrance of their workplace.

Behaviors like the above are commonly articulated in unfair labor practice charges to the National Labor Relations Board, usually reported by low-wage workers in service and manufacturing industries. However, Yale faculty members all allegedly committed these actions, and the targets were graduate teachers and researchers seeking to form a union like their colleagues at New York University. The graduate students, who were arrested and charged with criminal trespassing carrying a sentence of up to a year in prison, are named Fran Balamuth and Rosa Anna De Filippis. They were arrested in September 2002, and although the State later dropped the charges, the message was clear: the price of graduate student organizing could be high.

Starting with the GESO election last spring, this report articulates the active role of the Yale faculty and the Yale Administration in running an anti-union campaign against GESO. This report will also list some recommendations to ensure that graduate student employees have an environment to decide freely if they want union representation and a process to hear possible unfair labor practices by university management.

Part I: Election Day

On April 30, 2003, the Graduate Employees and Students Organization at Yale (GESO) sponsored an election. GESO called the election after asking the university to sit down for more than a year to negotiate a process by which to ascertain whether a majority of graduate students supported unionization. Despite having a majority of graduate students signed up as union members, GESO lost the election.

The final tally was 651 yes votes; 694 no votes 27 ballots marked: “yes union/no GESO,” 4 spoiled ballots and 80 challenged ballots that were never counted, as their status was too difficult to determine without the assistance of the university administration.

Here is what happened: The administration’s declaration that the vote was futile suppressed turnout across the University, except in the Life Sciences, where faculty-led captive audience meetings and emails actively encouraged graduate students in these select departments to turn out and vote.

As a general rule, unlike general electoral politics, union elections have high voter turnout. Recognition elections usually top 90% turnout. In the Hotel Employees and Restaurant Employees Union Local 34 (clerical workers at Yale) recognition election in 1984, 98% of eligible voters cast a ballot. In the more recent 2000 New York University graduate employees’ recognition election, over 80% voted. However, only 63% of eligible voters participated in the GESO election.

When Levin was asked by a graduate student at an alumni event at the New Haven Lawn Club, "If a majority of graduate students voted in an election to unionize, would you be willing to sit down and begin negotiations, without dragging it through endless appeals?" Levin replied, "I would not necessarily negotiate with you after an election, no."¹

When GESO suggested that the Administration jointly sponsor the community election, Yale President Richard C. Levin replied that graduate students should rely on the NLRB process, which would provide an avenue for Yale to challenge the right of graduate students to unionize and could have delayed the counting of the ballots for months, perhaps years.² The administration mocked the election, with Yale spokesperson Helaine Klasky, saying “This is just like if you got a group of friends together and said 'Hey, we should have an election'.”³ The message was clear to many members that their vote would not matter because Levin and the Administration would not take it seriously.

¹ Richard C. Levin, Speech to Yale Alumni, New Haven Lawn Club, November 12, 2002; Declaration by Lisabeth Pimentel, signed August 27, 2003

² Letter from Richard C. Levin to Anita Seth, 2003, available at http://www.yale.edu/opa/gradschool/response_20030421.html

³ Yale Daily News, April 22, 2003, available at <http://www.yaledailynews.com/article.asp?AID=22704>

Who Voted No?

By far the largest number of “NO” votes came from the life sciences division of the graduate school. While only 21% of non-members in Professional Schools voted and 46% of non-members in Social Sciences voted, fully 68% of those in the Life Sciences voted (see Figure 1). The percentage of non-members who turned out to vote in the Life Sciences was higher than in the other divisions in which there were also large numbers of non-members eligible to vote (such as the Social Sciences or Physical Sciences). Fully 38% of the voting non-members (people who had not signed union cards in advance of the election) came from the life sciences (see Figure 2), even though the life sciences represents only 21% of total eligible voters (see Figure 3).

The relative density of GESO members was freely available to the administration, since earlier in April over a thousand GESO members had signed a poster that was displayed throughout campus expressing their support for the union.

Figure 1

Percentage of Non-members Voting

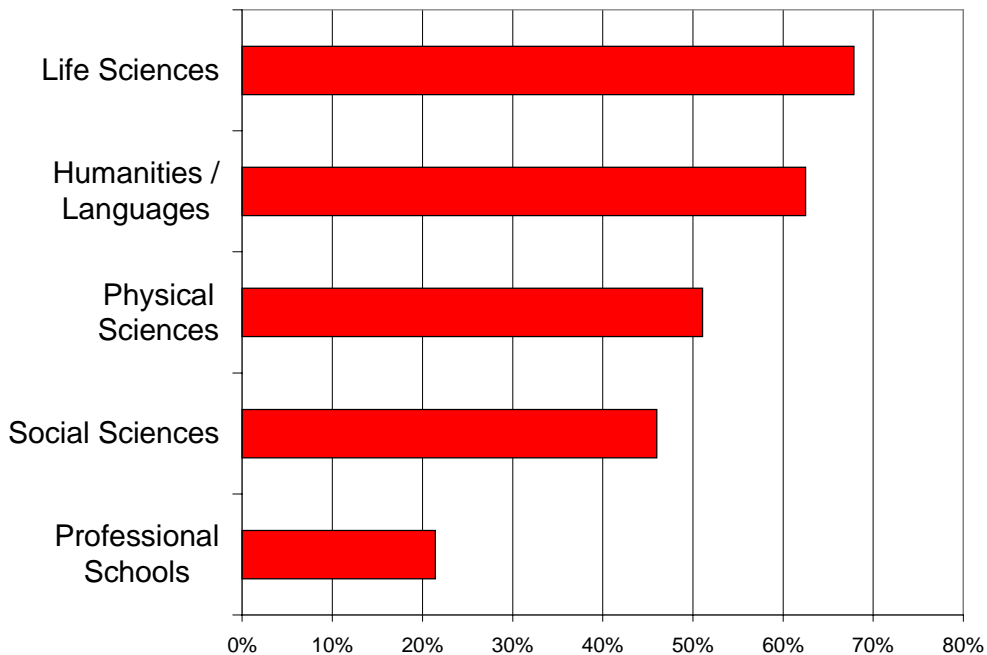


Figure 2

Where did the Non-member Vote Come From?

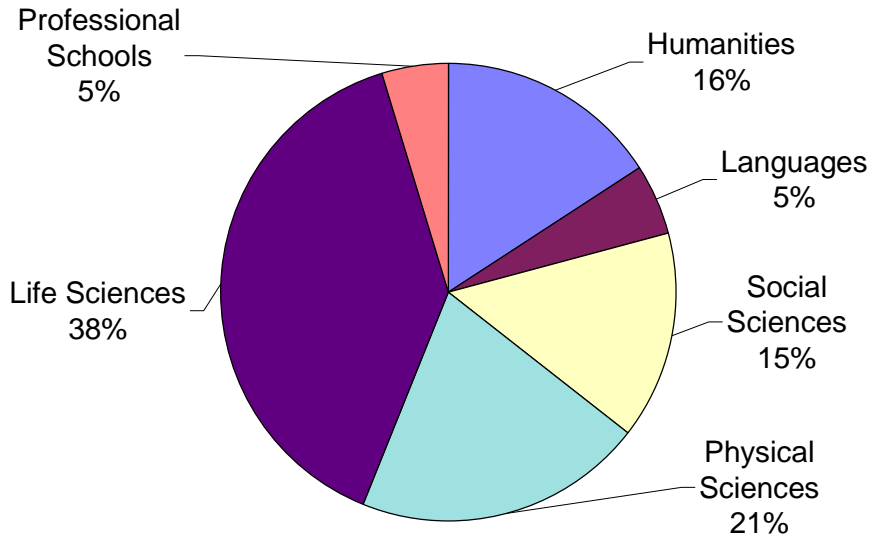
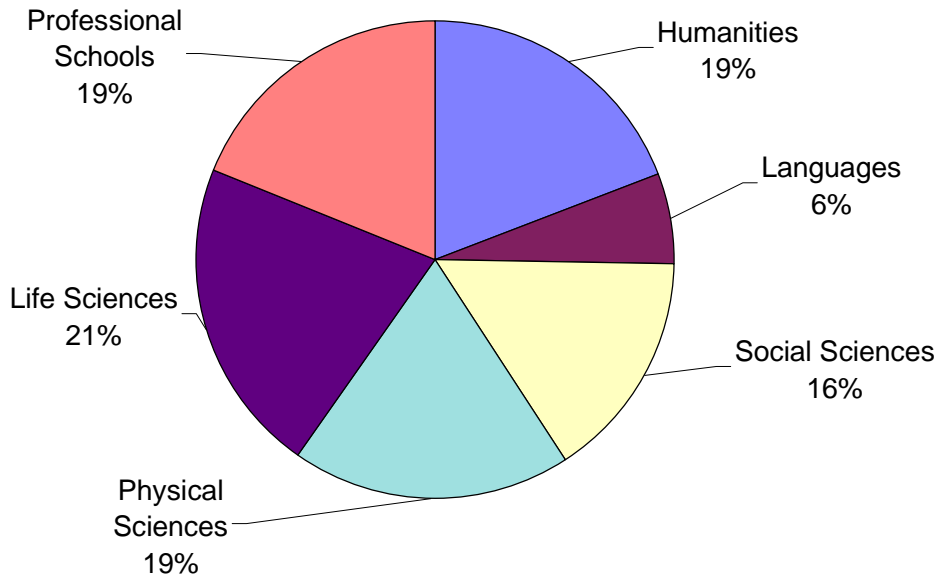


Figure 3

Eligible Voters



Why So Many No's?

After the Yale election, both the *New York Times* and the *New Haven Advocate* credited a grassroots movement of anti-union graduate students along with the aggressive practices of GESO organizers in their explanation of the loss by the union. The *Times* wrote that “Many graduate students said GESO's organizers were too aggressive and its leadership too undemocratic.”⁴

Where the non-members vote came from and the percentages of non-member departmental vote suggest that this does not explain the result at Yale. GESO organizers organize across the campus in all divisions. In the ten days before the vote, members of the “At What Cost?” anti-union group postered all of the departments in every division. On their own, these “grassroots efforts” being touted by administrators and the press were clearly *not* enough to mobilize the 'no' votes in departments where union members were in the majority. *Something different happened in the life sciences*. Why did the efforts of “At What Cost?” achieve such different levels of success in turning out the 'no' vote there?

There are two key differences between the experience of graduate students in the life sciences and graduates students elsewhere on campus that suggest faculty interference may explain the differential effect of the strikingly similar anti-union campaign in those divisions. First, life science faculty spend much more time face to face with their students. They occupy the same lab space and are thus able to monitor their students' activities to a much greater degree than humanities faculty.

Secondly, faculty in the sciences control the funding of graduate students to a much greater extent than in other divisions. Graduate researchers are paid directly from the Principal Investigator's (PI) grant funds, and their research work is intimately tied to the work going on in a specific lab. This funding and research structure means that the PI's active support is necessary to ensure a graduate student's immediate paycheck, the continuation of their academic work at Yale, and the successful beginning of their future career.

There are allegations that faculty subjected students in all divisions to an intense anti-union campaign, but science faculty were in a better position to bring the message home. The next section provides examples of faculty conduct that reportedly occurred in Life Science and other divisions.

⁴ Stephen Greenhouse, “Graduate Students Reject Union in Yale Vote,” *New York Times*, May 2, 2003, available at <http://www.nytimes.com/2003/05/02/education/02YALE.html>

Part II – Alleged Faculty Conduct

On September 4, 2002, Enrique M. De La Cruz – a junior professor in the Department of Molecular Biochemistry and Biophysics – warned a student in his lab as witnessed by a GESO organizer:

‘If you or anybody else in this lab goes on strike, I’ll kick you out of this lab!’ De La Cruz then turned to (the student) and myself and said, ‘What do you think of that?’ He was red in the face and shaking at this point. I answered, ‘Well, I think what you are saying is illegal.’ De La Cruz yelled, ‘I don’t care about the law, this is personal!’ He then looked at (the student) and said, ‘We’ll take this outside, just you and me’.⁵

The faculty in the sciences in particular have been publicly hostile to GESO at least since 2000, when the NLRB decided that federal law protects the organizing efforts of graduate employees.⁶

Mark Mooseker, a professor in MCDB (biology), expelled two visiting students from his lab. They were organizing for GESO, talking to a member of the union. Mooseker’s policy forbade union conversations in his lab.⁷ Nearly every graduate student in his lab has at one point or another been a member of GESO, but all eventually quit their membership and refuse to discuss the union.

Departments in the life sciences, particularly on Science Hill, where more than two hundred graduate students work in Biological and Biomedical Sciences (BBS) labs, held captive audience meetings in the days before the election. Union organizers were not permitted to attend, and faculty members attacked the union and the idea of unionization.

During the strike, the anti-union campaign had at times even included personal attacks. Maris Zivarts, a seventh year in Molecular, Cellular and Developmental Biology (MCDB), explained how Professor Paul Forescher reacted to the picket line during the March 2003 one-week strike.

“For a few minutes he went off about how angry he was and how damaging it was to our department and to funding. And the last thing he said, before he turned away, was ‘good luck with your career, buddy.’”⁸

The same faculty member has told other students and post-docs that the Biological and Biomedical Sciences at Yale could fall apart if graduate students unionize and that Yale could lose the hundreds of millions of dollars it receives from the NIH every year.⁹ He

⁵ Affidavit of David Sanders for NLRB, December 19, 2002.

⁶ See 332 NLRB No. 111 (2000).

⁷ Affidavit of Kristie Starr for NLRB, December 19, 2002.

⁸ Videotaped interview of Maris Zivarts with Kate Clancy, July 30, 2003.

⁹ Declaration of Maris Zivarts, August 27, 2003.

also publicly told an organizer visiting his lab that he would have a problem with anyone in his lab going on strike.¹⁰

This kind of faculty behavior is effective, as effective as the threats of “plant closings” that it so closely imitates. That week, one of his students resigned from GESO.

The faculty also publicly attacked GESO organizers. The DGS of MB&B, Nigel Grindley, allegedly threatened a GESO organizer in the Bass Building on March 5, 2003. Kristie Starr was talking to a GESO member during the strike, when Grindley reportedly interrupted them and told Starr she was not allowed to be there and had to leave immediately. He said, “How dare you come into this building and try to force more people in the union, and try to force more of my grad students on strike . . . you have no business being here . . . I’m going to call security and I’m going to make you leave.”¹¹

In at least one instance the threat of violence was carried out by a sort of proxy act against GESO literature. GESO organizer, Naomi Huang, posted public petitions signed by over 1100 GESO members before the election. She later found two of these posters partially burned and reposted on the MB&B departmental bulletin board.¹² Implicit violence of this type ensures that union membership appears difficult and that opposition is encouraged.

GESO has filed five Unfair Labor Practices charges arising out of incidents in the Life Sciences’ departments.

While faculty attacks on the union are most common in the life sciences, unacceptable conduct also allegedly occurs in other departments.

Carlos Aramayo describes a conversation in which the Dean of Architecture, Robert Stern, explained how he would refer to union activists:

In terms of letters of recommendation, if Ned here went on strike, I’d have to write, ‘Ned should have spent more time in the studio, and less time on the picket line.’ Although in truth, I don’t usually write letters of recommendation, I instead receive phone calls, in which case I’d have to be honest about my opinion of Ned’s activity.¹³

In the Department of Chemistry, for example, Professor Alanna Schepartz prevented conversations about the union in her lab without forbidding them outright. While stating in a group meeting that her students were free to talk about the union, she warned: “I expect my students to be in lab to work. And you should know, just the mention of GESO

¹⁰ Declaration of Carson Miller, signed August 27, 2003.

¹¹ Videotaped interview of Kristie Starr with Kate Clancy, July 30, 2003, and Interview with Kristie Starr, August 11, 2003.

¹² PDF of the burnt poster can be found at, http://www.yaleunions.org/geso/documents/burnedgesoposter_small.pdf

¹³ Declaration of Carlos Aramayo, August 25, 2003.

makes my blood boil.”¹⁴ Selectively enforcing rules against people trying to organize is usually a violation of federal labor law.

In the weeks leading up to the strike, Viktor Zamfir, a senior research scientist in the Physics department, asked numerous students if they were intending to strike.¹⁵ He needed someone to run an experiment with him that week. In the end, one of his students did not strike despite her previous support for the union. She resigned her membership shortly afterward.

When necessary, threats were carried out. Graduate students who stood firmly to their convictions and were not deterred by faculty behavior were punished for doing so. Former Yale Graduate School Dean Thomas Applequist, a Professor in Physics, held a mid-term examination during the one-week strike last semester. Two of his students, who were striking their teaching, refused to cross the picket line to take the exam. Although they attempted to make other arrangements, asking him to reschedule the exam, schedule a make-up exam, or not count it, he refused. He then gave them a failing grade on the examination.¹⁶

¹⁴ Affidavit of Justin Hall for NLRB, March 25, 2003.

¹⁵ Affidavit of Christopher Morling for NLRB, March 25, 2003.

¹⁶ Affidavit of Christopher Morling for NLRB, March 25, 2003.

Part III – Other Reported Incidents

Over the next month, with the help of the Workers’ Rights Project at the Yale Law School, we hope to investigate other incidents, including those listed herein. We will then issue addenda to this report detailing how these and other faculty members have, wittingly or unwittingly, allegedly worked with the university administration to create an environment in which it is difficult for Yale’s graduate students to exercise our right to organize.

The following behaviors have been pervasive across departments and divisions:

- Faculty repeatedly asked students if they were planning to strike.
- Chairs and DGSs refused to make statements before the strike that indicated they would not retaliate against students exercising their legal rights to concerted activity.
- Faculty tried to force organizers to choose between their academic work and their union activity.
- Faculty told students in one-on-one meetings in their offices that the union would “destroy the faculty-student relationship.”
- The chairs and other faculty told incoming students that they disagree with graduate student unionization and that it would have adverse effects on the university.
- Faculty asked organizers to leave labs when they say they are there to talk about the union.
- Faculty said unions reflect a lack of individualism and will hurt academic work.
- Union leaders were discriminated against for positions on department and other academic committees.

Part IV: The Administration's Position

As the authoritative body of the University, the administration explicitly declares their anti-union position: "Yale does not believe graduate student unionization is in the best interest of graduate students or of graduate and undergraduate education at Yale."¹⁷ Faculty are instructed how to legally fend off union disturbances. The administration raises the specter of what can negatively happen if the union interferes with the academy. The administration ideologically fights off the union drive by appropriating free speech discourse and asserting that the union will subvert the sacred relationship between teacher and student.

The Yale administration's anti-union campaign tactics are parallel to anti-union campaign tactics used elsewhere. One tactic is to create an atmosphere of tension in an attempt to scare workers away from the union. A second tactic is to disguise the employer-employee relationships in an attempt to escape responsibility for collective bargaining.

Yale's administration has created tension in the workplace by training supervisors how to make threats and actively involving faculty to carry out the anti-union campaign. Tension is created primarily by threats from management and supervisors. Anti-union lawyers train supervisors to go to the limit of the law in making threats. As documented by Human Rights Watch in a survey of workers' rights in the United States:

Consultants have refined methods of legally 'predicting' – as distinct from unlawfully threatening – workplace closures, firings, wage and benefits cuts, and other dire consequences if workers form and join a trade union.¹⁸

A letter by Yale General Counsel, Dorothy Robinson, follows the script explaining that predictions not based on fact are illegal, but then instructing faculty:

It could be lawfully said by a faculty member for example that 'unionization of graduate students *could* lead to changes in the way that teaching fellows are used, that negotiation of a collective bargaining agreement *would* likely result in rules and restrictions on teaching fellow usage, that departmental and individual decisions on these issues *could* be limited by across-the-board collectively bargained rules, and that, given such restrictions, many faculty *might* find it necessary to re-evaluate their use of teaching fellows.'¹⁹

These "near threats" are present in the writing of the Yale administration. Provost Alison Richard has written:

¹⁷ http://www.yale.edu/opa/gradschool/faq_richard.html

¹⁸ *UNFAIR ADVANTAGE: Workers' Freedom of Association in the United States under International Human Rights Standards*, Human Rights Watch, August 2000 (<http://www.hrw.org/reports/2000/usalabor>).

¹⁹ Vice President and General Counsel, Dorothy K. Robinson, Memo to Provost Alison Richard, December 1, 2000. Also found at: <http://www.yale.edu/opa/gradschool/robinson.html>. Italics added for emphasis.

There are strong grounds for believing that the restrictions contained in a collective bargaining agreement reached under the NLRA would reshape academic life here dramatically and destructively ... I anticipate that eventually it might become difficult for Yale to retain or attract faculty in such an environment, or to recruit students.²⁰

The Administration's tactic of creating an atmosphere of tension can taint the working environment as illustrated in the aforementioned "Faculty Conduct" section. The second tactic of disguising the employer – employee relationship is more of an ideological tactic. The Administration frames the relationship as special, outside of the conventional employer relations. Provost Richard writes on how unions can jeopardize the relationship:

The processes through which students acquire the scholarly and teaching skills of the Ph.D. depend crucially on their individual relationships with faculty. These relationships are pivotal to the training of the next generation of college and university scholars and teachers -- and the next, and the next. These formative educational relationships differ fundamentally from the legally and economically based relationship between supervisor and employee. If students were to be treated as employees -- and faculty members as their supervisors -- under the jurisdiction of the National Labor Relations Act, a universe of pervasive and intrusive external regulation and regulatory process would apply, burdening and restricting the essentially dynamic and flexible relationships of an educational system that has long been in place.²¹

Subsequent letters by Yale administrators reinforce the role of mentoring and pedagogical training in the faculty – student relationship and that being a graduate student instructor is all part of the educational experience and thus not real work.²² These tactics are strategic measures by Yale to both subtly and overtly underline their anti-union position.

²⁰ Provost Alison Richard, Letter to Dean Susan Hockfield, August 19, 1998. Also found at: http://www.yale.edu/opa/gradschool/ar_letter.html.

²¹ Provost Alison Richard, Letter to Dean Susan Hockfield, August 19, 1998. Also found at: http://www.yale.edu/opa/gradschool/ar_letter.html.

²² Yale University Office of Public Affairs, "Frequently asked questions," Found at: <http://www.yale.edu/opa/gradschool/faq.html> and Provost Alison Richard, Letter to Graduate Students and faculty, April 14, 1999. Also found at: http://www.yale.edu/opa/gradschool/fs_letter.html

Part V – Recommendations

- 1) Yale and GESO should agree to a process where graduate employees have the right to decide, without harassment or intimidation, if they want union representation.
- 2) This process should include an agreement between the administration and GESO that would set a code of conduct, laying out the rights and responsibilities of faculty, administrators and graduate employees.
- 3) Yale should make a proclamation that graduate employees' decision to organize, picket or strike is their decision alone and that their right to organize will not have any repercussions to their current or future academic relationships.
- 4) Union activity should not be mentioned inappropriately in letters of recommendation.
- 5) Yale should allow open communication and freedom of speech among graduate employees, students, faculty and staff. Yale should stop restricting access to organizers and Yale should not discriminate by union affiliation.
- 6) Yale or any college campus should not impede free speech by hiring union-busting firms. If they do, they must announce any contracting or hire at the time of hire.
- 7) A process is necessary for graduate employees at Yale and on every college campus to submit unfair labor practice charges to a legally binding body that will hear the charges in a timely manner.
- 8) Because the right to organize specifically, and academic freedom more generally, have been threatened at many universities, professional associations and other academic institutions should come together to establish a code of conduct specific to universities that would seek to guarantee an academic culture that values the free expression of ideas and dissent free from fear of reprisals. Further, professional associations should include fair labor practices in their assessment of programs.
- 9) The NIH and other funding organizations should make fair labor practices a precondition for receiving grants, as they already do with considerations of diversity.