

# The New Face of Science

## Yale's International Scientists' Right to have a Union

As scientific progress becomes increasingly important to the American economy, international scientists and engineers have also become more important. However, many scientists —especially internationals —must endure substandard working conditions, and must face challenges that have worsened since September 11, 2001. As the presidents of the National Academy of Sciences, National Academy of Engineering, and the Institute of Medicine said recently in a joint statement:

Over half a century ago, Albert Einstein, Enrico Fermi, and many others from Western Europe laid the foundations for our global leadership in modern science. More recently, immigrants from other parts of the world — most notably China, India, and Southeast Asia — have joined our research institutions and are now the leaders of universities and technology-based industries.... The U.S. scientific, engineering, and health communities cannot hope to maintain their present position of international leadership if they become isolated from the rest of the world.<sup>1</sup>

Scientists and engineers must themselves take responsibility for fixing problems in the current system. No one else is going to do it for them. Organized collective action offers the most effective vehicle for improvement, because it allows those directly affected to work together to forge innovative, constructive solutions.

Universities sometimes oppose organized collective action, and this opposition can be especially difficult for foreigners. Their recent arrival in the country often makes them uncertain of their rights and of what is or is not legally protected. Their position in the U.S. can feel more tenuous than a citizen's. And their working conditions are often worse than their American colleagues', making it more difficult to risk a lost paycheck as a result of a strike or other job action.

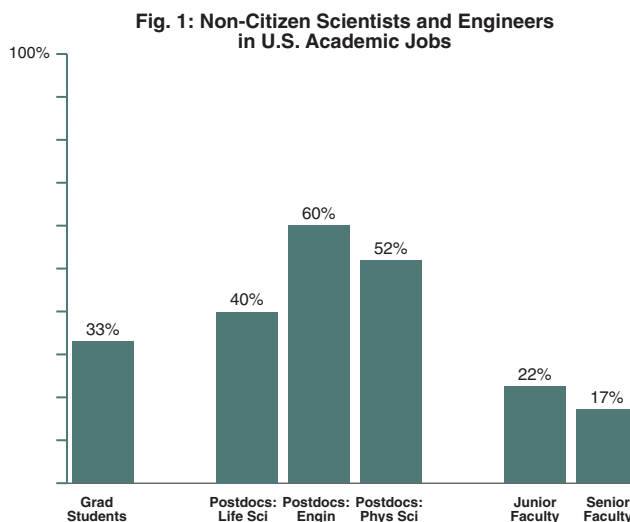
Here are a few simple facts that everyone should know:

- International scientists and engineers are among those who most need the changes offered by a union contract.
- It is **illegal** for the University to suspend, fire, threaten, or discipline any graduate teacher or researcher for participating in union activity such as a strike.
- Participating in a strike **cannot be used** to jeopardize one's immigration status.
- The terms of F-1 and other non-immigrant visas assume that visa-holders will not work during a strike, providing international scientists and engineers with at least as much protection as their American counterparts.
- GESO's international union affiliate—HERE—has negotiated many contracts with excellent benefits to assist immigrant workers and is leading the labor movement and the nation in efforts to improve life for immigrant workers.

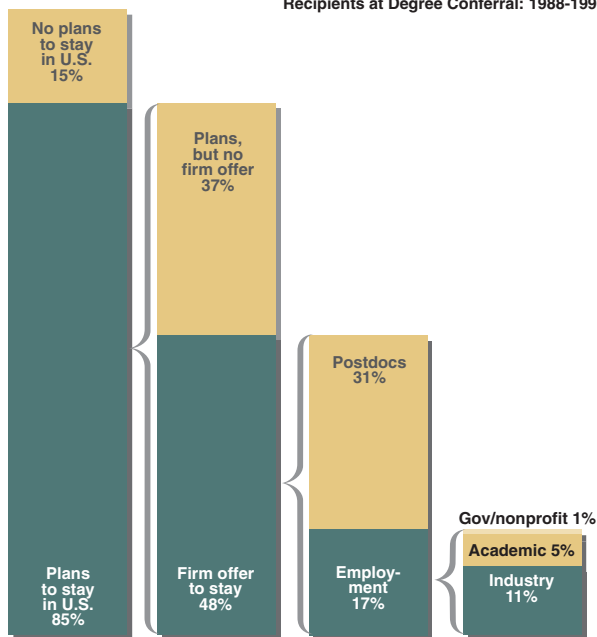
Together, Yale’s graduate teachers and researchers—whether American or foreign, humanities, scientists, or engineers—can demand Yale’s respect and make Yale the best that it can be.

## The Role of International Scientists and Engineers

U.S. academic research and development (R&D) budgets grew from \$10 billion in 1980 to \$25 billion in 1998, in constant dollars.<sup>2</sup> The number of patents issued to universities has increased about ten-fold, from around 300 annually in the 1970s to over 3000 in 1998.<sup>3</sup> In 1999, university income from patents and licensing reached \$640 million, double what it was in 1995. Since 1973, academic institutions have doubled the number of scientists and engineers they employ. Postdoc positions have more than quadrupled in just 20 years, from about 10,000 to about 45,000 postdocs today.



**Fig. 2: Plans of Chinese S&E Doctoral Recipients at Degree Conferal: 1988-1996**



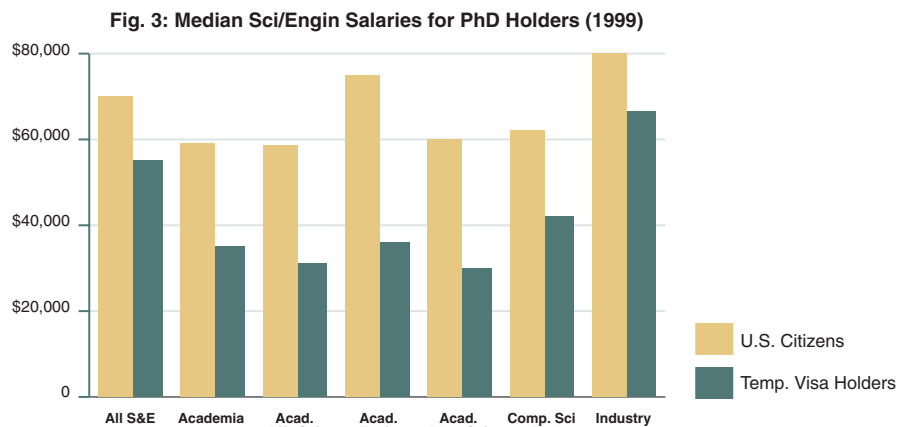
Source: National Science Foundation, Division of Science Resources Studies, *Statistical Profile of Foreign Doctoral Recipients in Science and Engineering: Plans to Stay in the United States*, NSF 99-304 (Arlington, VA, 1998).

International scientists and engineers predominantly occupy these newer postdoctoral positions, rather than the more attractive faculty positions, as seen in Figure 1. Only one-sixth of all senior faculty are non-citizens, compared to one-third of graduate students and over half of all engineering or physical science postdocs.

In January 2001, the National Science Foundation compiled a flow-chart showing where Chinese science and engineering PhDs went after graduation (see Figure 2).

While the nation’s total investment, the number of hires, and the infrastructure of lab space have all been expanding during the past few decades, salaries for scientists have

stagnated or dropped. Between 1974 and 1995, scientists and engineers saw their median real salaries drop 18% (adjusted for inflation). Salaries have since recovered a third of this loss, but still stand about even with the 1985 median (at 12% below the 1974 median).<sup>4</sup>



These stagnant or dropping salaries have affected all scientists, American and international alike. However, international scientists, especially those on temporary visas, are paid significantly less on average than their American counterparts—an average of \$15,000 less, as seen in Figure 3.<sup>5</sup> Academic jobs suffer the worst disparities. In academic engineering or physical science departments, those on temporary visas are paid on average half the salary of their American counterparts.

## Organizing a Union

The problems are clear. However, unless scientists and engineers demand changes, government and academic institutions will continue to pay substandard wages and not provide for the needs of immigrant professionals. Without such changes, science will suffer the loss of the best talent. To retain the best scientists (and hence the best science), scientists should stand up and organize a union.

The United States has been in a similar situation before. During the Great Depression of the 1930s, industrial wages spiraled downwards. Some blamed a recent wave of immigrants and called for tighter restrictions to keep foreigners out and Americans employed. Others recognized the important contribution that immigrant workers were making to the American economy. The immigrants themselves joined together with their American co-workers to organize unions. The U.S. government passed laws to protect the right to organize, as part of a concerted effort to raise wages across the nation. It worked. Millions of workers joined unions, wages increased, the middle class was strengthened, and the U.S. enjoyed decades of economic prosperity and productivity.

Organizing a union helps on many fronts:

- Together, everyone achieves better salaries, benefits, and working conditions.
- Union representatives can serve as guides through the bureaucracy and as advocates whenever something goes wrong.
- As more graduate teachers and researchers organize, they create a higher

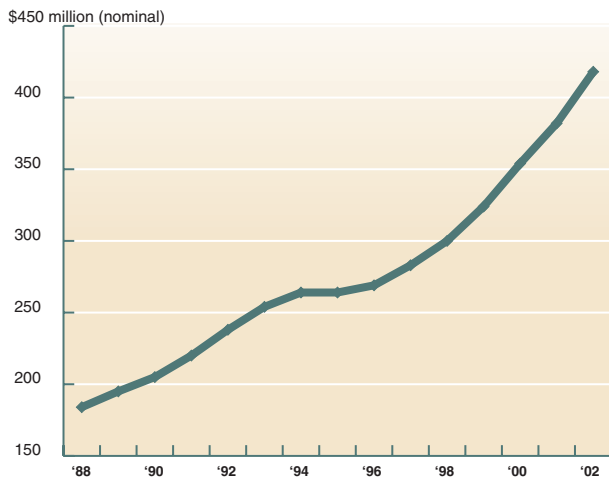
standard for everyone, including the government, to follow.

- The collective voice of a union is heard not only in the workplace, but also in the political realm, making real immigration reform possible.

## Organizing a Union at Yale

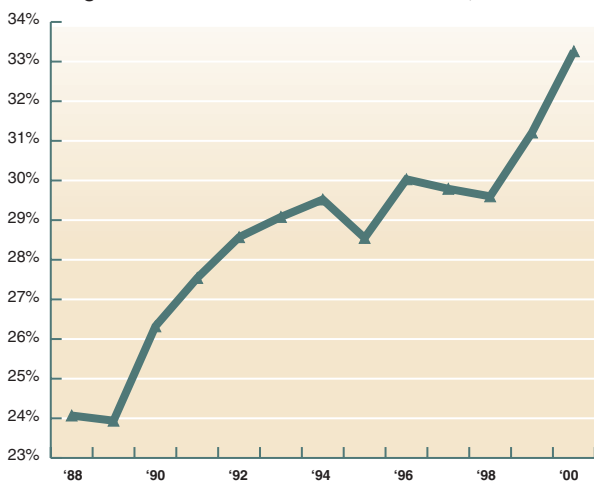
Over the past few decades, Yale University has become increasingly reliant upon the revenue from research grants and contracts (see Figure 4a). This revenue stream depends upon the work of Yale's international sci-

Fig.4a: Yale Grants & Contracts Revenue, 1988-2002



entists and engineers, whose presence at Yale has also increased. In 1955, Yale received less than \$3 million of revenue from grants and contracts. In fiscal year 2002, Yale received \$417 million, more than any other source of operating revenue for Yale. Since 1988, the graduate student body has gone from being one-quarter international to being one-third international (see Figure 4b). The work that Yale's international scientists and engineers do for this university is increasingly valuable.

Fig.4b: International Grad Students at Yale, 1988-2000



Yale does not adequately support its international scientists, however:

- Many international researchers have families and have spouses who are prohibited from working. Like their U.S. counterparts, they deserve and very much need better-subsidized family health care, dental care, childcare, and university housing.
- International researchers should have access to a more effective program for English as a Second Language (ESL). Stronger editorial assistance would allow international scholars to publish their research more easily. The SPEAK test should be administered using a

more flexible and accurate in-person format rather than the current computer-format.

For these, as well as many other reasons, GESO is organizing a union at Yale to allow all graduate teachers and researchers to have a voice in shaping their working conditions.

## The Obstacles to Unionization

These sorts of improvements are not easy. They require difficult choices. GESO has tried every avenue to talk with the Yale administration and settle on a fair process for graduate teachers and researchers to unionize. The Yale administration has refused to meet. As a result, graduate teachers and researchers at Yale may be forced to call a strike to demonstrate the value of their work to the rest of the university.

Nevertheless, in union drives across the country, opponents of unionization have raised the specter of immigration problems to try to persuade immigrant workers to “just stay out of it.” These sorts of tactics are used not only against low-wage service sector immigrant laborers, but can also be used against graduate teachers and researchers. In fact, at the University of Minnesota, some anti-union students published baseless threats suggesting that joining the union could lead to deportation.<sup>6</sup> No such threats have ever materialized, however, on any of the more than 60 campuses nationwide with graduate student unions.

Because there is often a close connection between a graduate student’s work and her academic program, there is a great temptation for universities or faculty members to pressure or threaten foreign academics. Unfortunately, universities are not above making empty threats.

At Yale, during the 1984 Local 34 strike for their first contract, the then-director of the University’s Office of Foreign Students threatened two graduate students who had part-time Local 34 positions managing a graduate student dormitory with termination of their F-1 status. When challenged by the union, this threat was quickly retracted.

## U.S. immigration and labor law protects non-citizens who participate in union activities.

Some international GESO members have asked whether participating in a strike could jeopardize their immigration status. The answer is “no.”

United States labor law protects legal<sup>7</sup> non-citizen workers to the same extent as U.S. citizen workers. The National Labor Relations Act, federal antidiscrimination laws, fair pay and minimum wage laws, and workers compensation laws all apply equally to legal non-citizen and U.S. citizen workers. Thus every non-citizen GESO worker enjoys the same rights to organize, to strike, and to not suffer discrimination for union activity as her U.S. citizen co-workers.

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For F-1, J-1 and H-1B visas, “an individual who is on strike or in a labor dispute” is considered to be “continuing in his or her employment.”

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What about immigration law? Can a GESO member who normally teaches or does research lose her immigration status for participating in a job action? **Emphatically, no.** The Immigration and Nationality Act provides

strong protections for all kinds of striking non-citizen workers. While non-citizens on temporary visas like an F-1 student visa, J-1 exchange visitor visa or H-1B professional visa normally lose status if they are laid off or quit working, a strike is different: “An individual who is on strike or in a labor dispute” is considered to be “continuing in his or her employment.”<sup>8</sup>

Most GESO members who are not U.S. citizens or permanent residents hold F-1 student visas. The F-1 regulations provide unequivocal protections for F-1 students participating in a job action. The regulations state that anyone holding an F-1 visa should not work during a “strike or other labor dispute.” The key regulation reads:

(14) Effect of strike or other labor dispute. Any employment authorization, whether or not part of an academic program, is automatically suspended upon certification by the Secretary of Labor or the Secretary’s designee to the Commissioner of the Immigration and Naturalization Service or the Commissioner’s designee, that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place of employment.<sup>9</sup>

This regulation suspends employment authorization during a strike, because the federal government explicitly permits work to cease during a strike. The power of this language is even more striking because the regulation’s definition of employment includes not only employment for which an F-1 visa holder receives a paycheck, but also “scholarship, fellowship, or assistantship”<sup>10</sup> employment that is part of the student’s academic program. Simply put, F-1 visa holders not only have the right to participate in a job action, the terms of their visa assume that they will not work during a strike.<sup>11</sup> The F-1 regulatory language protects F-1 students and their American colleagues from the possibility that their employer will try to pressure foreign students to work through a strike.

## **GESO, HERE and immigrant workers**

GESO’s parent union—the Hotel Employees and Restaurant Employees international union (HERE)—has been at the forefront of the immigrants’ rights movement in the United States. HERE’s President, John Wilhelm, is the chair of the AFL-CIO’s Special Committee on Immigration Policy and has brought about real changes in the attitudes—and actions—of American unions toward immigrants. In August 2001 he told the *Washington Post*, “There are immigrants now everywhere where people work. The labor movement has embraced that reality and returned to its roots to become a labor movement that is being rebuilt by immigrants.”<sup>12</sup> Throughout the United States and Canada, HERE unions are organizing immigrant workers, winning contract language that is responsive to their needs, and joining broader coalitions to advocate for legal changes that would improve life for immigrant workers.

In Local 34 at Yale, for example, some union members lost their work authorization (and their job) when their spouse had to switch from a J-1 to

an H-1B visa. Most of the affected union members were themselves qualified for H-1B status, but Yale had refused to sponsor their applications in the past. Local 34 proposed changes during contract negotiations, Yale agreed, and several union members have been able to preserve their employment through Yale's sponsorship.

Many HERE locals, including Local 217, which represents workers at the Omni Hotel at Yale, have negotiated contracts that allow a leave of absence for immigration purposes like resolving status or social security problems, accompanying family members to consular interviews, etc. Several locals have prepaid legal services plans that include paying for immigration lawyers for members and their families. Other contract provisions grant workers who are applying for U.S. citizenship a paid holiday to attend their naturalization ceremony.

HERE has also moved quickly where employers try to intimidate or threaten immigrant workers. Local 2 in San Francisco won an unprecedented decision overturning the discriminatory firing of immigrant workers based on the receipt of Social Security "no-match" letters. HERE successfully defended undocumented Minneapolis hotel workers whose boss called the INS to deport them when they tried to organize a union. Despite the fact that the workers were out of status and not legally entitled to remain in the United States, the union and Minnesota community groups convinced the INS to grant the workers a rarely-invoked status called deferred action that allowed them to remain in the United States with work authorization.

HERE also plays a major role in trying to improve the broader legal, political and economic climate for immigrant workers. From HERE-sponsored citizenship campaigns to John Wilhelm's meeting with the President and Foreign Minister of Mexico, GESO's parent union is among the most pro-immigrant unions in the country.

Now, GESO's own work on behalf of non-citizen academics and researchers will expand the union's advocacy on behalf of all types of immigrant workers in this country.

The American economic boom depends in no small part upon the work of immigrants, who have a long and distinguished history of organizing unions to demand the respect that they deserve. By organizing a union at Yale, graduate teachers and researchers can insist upon the respect that they have earned, and can set an example for the rest of the country to follow.

## Notes

1 Statement by Bruce Alberts (President, National Academy of Sciences), Wm. A. Wulf (President, National Academy of Engineering), and Harvey Fineburg (President, Institute of Medicine). *Current Visa Restrictions Interfere with U.S. Science and Engineering Contributions to Important National Needs*. December 13, 2002. Available: <http://www4.nationalacademies.org/news.nsf/isbn/s12132002>.

2 See “Academic Research and Development” in National Science Board, *Science and Engineering Indicators 2000*, NSB-00-1 (National Science Foundation: Arlington, VA, 2000).

3 The 1980 Bayh-Dole act allowed universities to patent research developed using federal grants.

4 National Science Foundation, Division of Science Resources Statistics, *Doctoral Scientists and Engineers: 1999 Profiles*, NSF 03-302, Project Officer, Kelly H. Kang (Arlington, VA 2002).

5 *Scientists and Engineers Statistical Data System*, available at [http://srsstats.sbe.nsf.gov/dataaccess\\_nonjava.html](http://srsstats.sbe.nsf.gov/dataaccess_nonjava.html).

6 See Question #10 at <http://www.tc.umn.edu/~gsau/rebut2.htm>

7 Because there are no (or virtually no) undocumented workers at Yale, we will not discuss the rights of illegal non-citizen workers.

8 8 CFR § 274a.2(b)(1)(viii)(A). See also 8 CFR § 214.2(f)(14); 8 CFR § 214.2(h)(17). Many other nonimmigrant visa classifications have similar language.

9 8 CFR § 214.2(f)(14).

10 8 CFR § 214.2(f)(6)(iii).

11 See INA § 248 and § 245(c). Adjustment of status based on marriage to a United States citizen is the principal exception to this rule.

12 Thomas B. Edsall and Cheryl W. Thompson, “Alliance Forms on Immigrant Policies: Business, Church, Labor Groups Unite On Liberalization,” *Washington Post*, August 7, 2001; Page A1.