5-1-1980

Newsletter Vol.8 No.2 1980

National Center for the Study of Collective Bargaining in Higher Education and the Professions

NEWSLETTER

NATIONAL CENTER FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUCATION

Published at Baruch College City University of New York

Contents

VOL. 8, NO. 2 MAY-JUNE 1980

YESHIVA AFTERMATH

With typical academic prudence, most of the 86 private universities and colleges that deal with faculty unions have refused to rush for cover under the newly created umbrella of the *Yeshiva* decision. Only a handful, with the University of New Haven and Stevens Institute of Technology in the forefront, have asserted that they meet the criteria of a "mature" institution with the requisite faculty governance, as laid down by the Supreme Court.

Nevertheless, it is quite clear that as contracts expire, virtually all of the campuses now engaged in collective bargaining will have to review their policies. In the interim, it is not likely that the courts will move rapidly to clarify the areas of uncertainty left by *Yeshiva.* The National Labor Relations Board can be expected to move cautiously and will respond to the High Court's 5-4 decision with a more determined effort in each case to document the facts about the extent of genuine faculty control over policies and personnel administration.

This is suggested by the Board's response to the Supreme Court's remand of the Boston University case to the First Circuit. There the issue is whether department chairpersons are properly within the unit. It should be noted that the University, after a strike, had signed a contract with the faculty union, and the only issue brought to the High Court was the status of chairpersons. NLRB has now asked the Court of Appeals to remand to it. Presumably it will seek more specific documentation on the points raised by the majority in the *Yeshiva* case.

The Court had rebuked the NLRB in these words: "The absence of factual analysis apparently reflects the Board's view that the managerial status of particular faculties may be decided on the basis of conclusory rationales rather than examination of the facts of each case." Generalizations about how universities tend to operate will not be acceptable. Ironically, the minority accused the majority of the same vice, claiming that the prevailing decision "is bottomed on an idealized model of collegial decisionmaking that is a vestige of the great medieval university."

Later Court Decisions

Following the Supreme Court's decision in February, the lower appellate courts have had occasion to rule on at least five cases, and have stayed close to the *Yeshiva* doctrine. The Second Circuit, which had itself laid the groundwork for the new ruling, has applied it to Ithaca College. So too the District of Columbia Court of Appeals has denied the protection of the National Labor Relations Act to law school professors at Catholic University. But in two other cases, NLRB's view that the faculty was entitled to bargaining under the Act was upheld on the ground that the test of managerial status was not met by the institutions -- Mt. Vernon College in the District of Columbia, and Stephens Institute in San Francisco where the issue was decided by the Ninth Circuit.

The last two cases may well serve as a warning that the *Yeshiva* decision does not automatically exclude higher education institutions from the strictures of the NLRA. It is particularly noteworthy that the District of Columbia Circuit Court ruled one way in the case of the Catholic University law school, and another in the case of Mount Vernon College.

Labor lawyers are debating some of the "fallout questions" that have been left unresolved by the *Yeshiva* decision but that are likely to arise in the next few years, if not months. It may be well to keep them in mind. Most of them relate to whether faculty unions which have been denied the protection of the Act nevertheless retain a legal status which permits them to use economic pressure -- for example, the strike -- now that they have been stripped of the legal weapon of mandatory bargaining.

Here are some of the questions.

Protection Against Injunctions?

If an "unprotected" union were to strike, would it be able to claim the protection contained in the Norris-LaGuardia Act of 1932? Since the anti-injunction law was

passed before the National Labor Relations Act, it contains no language suggesting that a union must comply with NLRA criteria in order to enjoy immunity from injunctive process in the federal courts. Indeed the term *labor dispute* as defined in Sec. 13(c) was deliberately made as broad as possible in order to avoid the judicial interpretations that virtually nullified the Clayton Act's effort to exclude unions from the operations of the Sherman Anti-Trust Law. Norris-LaGuardia defines *labor dispute* as follows:

> . . . any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

Nevertheless, there is room for argument as to whether Norris-LaGuardia would apply to the strike of an uncertified faculty union or whether the Taft-Hartley amendments to the National Labor Relations Act would make it an unfair labor practice for such a union to attempt to organize and then strike for recognition. The language of Sec. 8(b)(7) forbids a union

> to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified [by the NLRB] as the representative of such employees:
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> * * * *
>
> (C) where such picketing has been conducted without a petition under Section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing. . . .

A union that is denied the protection of the Act would have no right, of course, to file such a petition and therefore, under a strict interpretation of the Act, might be found guilty of an unfair labor practice and subject to injunctive proceedings under Sections 10(h) *et seq.* It is noteworthy that under Sec. 10(l) violations of Section 8(b)(7) are to be given priority in the courts.

NLRB itself has been quite firm in condemning recognition picketing where the union has not filed a petition for an election. The leading case here is *Hod Carriers Local 840 (Blinne Construction Co.),* 135 NLRB 1153 (1962). Even though the picketing had been provoked by the employer's unfair labor practices, the Board supported the position of its General Counsel that

> a violation of Section 8(b)(7)(C) has occurred within the literal terms of that provision because (1) the union's picketing was concededly for an object of obtaining recognition; (2) the Union was not currently certified as the representative of the employees involved; and (3) no petition for representation was filed within 30 days of the commencement of the picketing.

If and when this issue arises in connection with unions that are denied the protection of the NLRA, it is quite likely that they will argue that Congress never intended to make the statute an instrument for prohibiting organization; that at most, Congress intended merely to withhold government *sanction* for collective bargaining by certain categories of employees but did not mean to impose *sanctions* on them for attempting to unionize. Courts of equity, asked to issue injunctions, would be urged to adopt the view that it is inequitable to deny employees the right to file a petition for an election, which they would like to do, and then punish them for not having filed.

Administration Unfair Practices?

The converse of the situation just described may arise, and university management may find itself impaled on the same horn of the dilemma created by the *Yeshiva* decision. Even though they are dealing with personnel who are not legally defined as protected employees, unions may yet try to charge unfair labor practices. This was permitted in a case brought on behalf of a supervisor who was discharged for refusing to spy on the rank-and-file employees. Even though supervisors are excluded from coverage under the Act, NLRB noted that the discharge interfered with the rights of other employees who were indeed protected by the Act. The Court of Appeals, in *NLRB v. Talladega Cotton Factory, Inc.,* 213 F.2d 209 (5th Circ., 1954), used this logic to sustain the Board:

> Where, as here, the discharges followed immediately on the heels of the Union's victory in the Board-conducted election, the discharges plainly demonstrated to rank and file employees that this action was part of its plan to thwart their self-organizational activities and evidenced a fixed determination not to be frustrated in its efforts by any half-hearted or perfunctory obedience from its supervisors. In our opinion, the net effect of this conduct was to cause non-supervisory employees reasonably to fear that the Respondent would take similar action against them if they continued to support the Union.

A comparable situation might be deemed to occur where, as is likely, future Board decisions are based on the Supreme Court's recognition that certain sections of the faculty – non-tenured full-timers, part-timers, and even some tenured full-timers who have little managerial authority – are entitled to achieve certification. If such faculty members were to receive help from their seniors who are excluded from the unit, and the latter were penalized for providing assistance, actions taken against them might fall within the ban on unfair labor practices. The outcome, however, is uncertain, for in *NLRB v. Inter-City Advertising Co.* (4th Circ., 1951), it was held that an employer could discharge a supervisor for joining a union of supervisors or rank-and-file employees. On the other hand, Sec. 14(a) of the Taft-Hartley amendments says expressly:

> Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem indivi-

duals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

The status of faculty may now make it necessary for the Board and the courts to explore the implications of this provision in greater detail.

Revoking the Contract?

At the Yeshiva symposium of the National Center for the Study of Collective Bargaining in Higher Education and the Professions, Arthur Eisenberg, Regional Director of the National Labor Relations Board, in Newark, N.J., raised the question of what would happen if a university decided to withdraw recognition in mid-contract. Without attempting to predict the outcome, he called attention to the question of whether a union would have the right to sue for breach of contract under Sec. 301 of the Act. Congress authorized the bringing of such suits in the federal district courts, but, as Mr. Eisenberg points out, Sec. 301(a) reads:

> Suits for violation of contracts between an employer and a *labor organization representing employees in an industry affecting commerce as defined in this Act,* or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Does a faculty union which would be denied certification on the basis of *Yeshiva* lose its right to enforce a contract that an employer signed on the assumption that he had to obey an NLRB certification issued before the Supreme Court decision?

At best, it would be a risky proposition for an administration to tear up its union contract under such circumstances. It is not likely that the Supreme Court would approve such a retroactive application of its decision. The court could find that the contract had been negotiated and agreed to by the parties, and that its terms did not hinge on the issue of certification. Logic and stability in labor relations would suggest that the courts would let the contract run its term since the employer would be free to refuse to negotiate a new contract.

On the other hand, the argument of a defendant university in such a case might well be that the plaintiff union had no standing since Sec. 301 provides a cause of action only to unions that meet the requirements of Sec. 9(a) – that is, they are "representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes." Proponents of this position would then argue that the *Yeshiva* decision strips the plaintiff union of the requisite status.

A number of procedural obstacles might be encountered in pressing this argument. *Yeshiva,* of course, was limited to the facts and the parties before the Court. The union would contend that its certification still stands until formally revoked. There would appear to be no obstacle to a petition by a university administration asking the Board to revoke a certification on *Yeshiva* grounds, which if granted might conceivably justify a withdrawal of recognition and would certainly justify a refusal to negotiate a new contract.

Furthermore, the question of whether a current contract remains in force might be examined in the light of traditional principles of contract law – for example, whether the mistake of the employer in believing he had to grant recognition was of such a nature as to have prevented a true meeting of the minds so that the current contract is void.

Tactical Questions

It seems clear that most college administrations are proceeding circumspectly lest they get caught in this legal thicket. The prudent naturally prefer to wait and see, while letting others carry the ball. Fundamentally, these seem to be the basic approaches that are favored:

1. Where a union has been certified but no contract has been signed, some universities are simply refusing to negotiate. This puts the burden on the union to seek enforcement of the certification by the Board which, in turn, will have to apply to a Circuit Court of Appeals if it believes that *Yeshiva* does not apply.

2. Where the parties are in mid-contract, the universities for the most part are simply complying with its terms, reserving for the future a decision on what they will do at its expiration. Off the record, some of them are saying that they will not renew. Others who feel that stable relations have been achieved and who do not want to upset the applecart are going ahead on the assumption that they will renegotiate at the proper time, rather than go through expensive litigation that might still result in a negative determination. It might be held that they are not "mature" universities or that faculty governance, as it operates on campus, does not really give the faculty "effective" managerial control.

Some contemplate the strategy of going to the bargaining table with additional armament in their arsenal – the ability to say to the union, "Remember, unless you are reasonable, we have the right to withdraw completely from these negotiations." But that of course may provoke the response, "We'll strike."

DUTY OF FAIR REPRESENTATION

Campus bargaining, with its unique characteristics that distinguish it from the traditional industrial model, has begun to face the issues involved in what the courts have come to call the Duty of Fair Representation (DFR). It originates in the concept that unions certified as "the sole and exclusive bargaining agent" owe the same measure of protection to all members of the unit, whether they are union members or not.

A significant ruling in this area was handed down by the New York Public Employment Relations Board when it found the United University Professions (UUP) at the State University of New York guilty both of coercive practices

towards non-member faculty and failure to observe the requirements of DFR.

The facts are clear-cut. UUP has an agency shop under which members of the bargaining unit who have not joined the union must pay the dues equivalent. This provision had been legitimated by the state legislature. Using its general treasury into which agency fees are paid, the union had funded insurance benefits for its dues-paying members but not for faculty who merely pay the agency fee. The net effect, in PERB's view, was to coerce non-members into joining, thus violating the employees' right granted in the Public Employment Relations Act (also known as the Taylor Law) "to refrain from forming, joining, or participating in any employee organization. . . ." This language parallels that of Section 7 in the National Labor Relations Act.

Serving All in the Unit

In addition PERB elaborated on the union's violation of DFR as follows:

> Furthermore, the duties of an employee organization which is the exclusive representative of a negotiating unit of employees . . . "extend beyond the mere representation of the interest of its own group members. By its selection as bargaining representative, it has become the agent of all of the employees, charged with the responsibility of representing their interests fairly and impartially."
>
> A union may breach this duty of fair representation "by arbitrary or irrational conduct even in the absence of bad faith or hostility. . . ." We have long held that this duty exists under the Taylor Law and a violation of that duty is an improper practice within the meaning of Sec. 209-a2(a) of the act.
>
> We conclude that a parallel duty exists under the Taylor Law to protect the agency fee payer from discriminatory use of his funds by his collective bargaining representative. (*United University Professions, Inc., and Morris Eson,* New York State Public Employment Relations Board, Case No. U-3740, Dec. 13, 1979)

Questions of this kind are likely to arise more frequently in the future because of the nature of the possible conflict of interest among the various faculty ranks, the rivalries among the disciplines and schools, the competition between classroom and research, etc., accentuated by the new economic stringency. Within the faculty hierarchy itself, economic interests may vary. A union representing tenured and non-tenured, full-timers and part-timers, sometimes even graduate students, may well find that in an effort to serve the majority or the more influential, it is underrepresenting the minority or the less influential. A common problem of faculty unions is that protecting the job security of full-timers may limit the opportunities of adjuncts.

Increasingly the National Labor Relations Board, the various state PERBs, and the courts are holding the unions to a strict standard of non-discrimination among members of the bargaining unit, regardless of their union affiliation. Under no circumstances may the union deny to any member of the unit the full protection of the contract.

Historical Background

Originally the issue had arisen in 1944 in the case of black railway workers in whose behalf a union had failed to enforce beneficial contract provisions. This kind of "second class citizenship" was condemned by the Supreme Court under the Railway Labor Act, and was applied by the same logic to the National Labor Relations Act. (*Steele v. Louisville and Nashville R. Co.,* 323 U.S. 192) The Court's line of reasoning was as follows:

> We think that the Railway Labor Act imposes upon the statutory representative of a craft at least as exacting a duty to protect equally the interests of those for whom it legislates. Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents [citing authority], but it has also imposed on the representative a corresponding duty. We hold that the language of the Act to which we have referred, read in the light of the purposes of the Act, expresses the aim of Congress to impose on the bargaining representative of a craft or class of employees the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them.

Lest this conclusion make it impossible for a union to bargain differently on behalf of groups with special claims to consideration or special needs, congruent with the general purpose of collective bargaining, the Court added:

> This does not mean that the statutory representative of a craft is barred from making contracts which may have unfavorable effects on some of the members of the craft represented. Variations in the terms of the contract based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied, such as differences in seniority, the type of work to be performed, the competence and skill with which it is performed, are within the scope of the bargaining representation of a craft, all of whose members are not identical in their interest or merit.

Discriminatory treatment not based on such legitimate differences but originating in racial prejudice, for example, is "obviously irrelevant and invidious," said the Court. In a later case, the Court held that the test is whether the different treatment is "within the reasonable bounds of relevancy." (*Ford Motor Co. v. Huffman,* 345 U.S. 330 (1953))

Since then, discriminatory behavior by unions has been penalized by revocation of certification or as an unfair labor practice flowing from a refusal to bargain on behalf of those so victimized.

In more recent years, the issue has come to the fore most frequently as a result of allegations that the union has failed to advance the grievance of a given individual in the unit or even of a union member. *In Vaca v. Sipes,* 386 U.S. 171 (1967), the Supreme Court held that the union had fulfilled its duty of fair representation even though it did not take the grievant's case to arbitration. The evidence showed that the union had pursued the issue vigorously in

all the previous steps of the grievance procedure. So long as its handling of the case was not "perfunctory" and the union had decided not to go to arbitration because of a judgment on the "merits," it had not failed in its DFR.

But a later case, *Hines v. Anchor Motor Freight,* 424 U.S. 554 (1976), caused serious concern among both management and labor. Here the Court in effect reviewed the union's performance in an arbitration case in which the union unsuccessfully claimed that the grievants had been wrongfully discharged. Despite the principles of arbitral invulnerability established in the *Steelworkers Trilogy,* 363 U.S. 564 (1960), the Supreme Court held that the courts could properly examine the union's breach of DFR because its "minimum of investigation" had led to an untenable arbitration award. The Court said flatly that "an arbitrator's decision is reviewable and vulnerable if tainted by a breach of duty on the part of a labor union."

Impact on the Campus

Since collective bargaining is a relative newcomer in higher education, there has not been much opportunity for higher education cases of this kind to reach the courts. In general, though, the effect of such decisions as *Hines v. Anchor Motor Freight* has been to resolve faculty union doubts in favor of prosecuting grievances even when they seem fairly certain to fail.

Some of the Circuit Courts have attempted to draw a line between simple incompetence and bad faith on the part of the bargaining agent. Nevertheless, the volume of grievance and arbitration work is bound to go up. NLRB's General Counsel, in attempting to guide the Regional Directors through the shoals, took the position that "the mere fact that the union is inept, negligent, unwise, insensitive, or ineffectual, will not, standing alone, establish a breach of the duty." By itself, however, such a statement has not encouraged unions to keep down the number of cases which it, and management, must litigate through the grievance machinery.

In any event, both parties have a mutual interest in making sure that rules of fairness and procedural effectiveness are observed. In a paper on this subject at the April 1980 Conference of the National Center, Ildiko Knott, of Macomb County Community College, Michigan, offered a series of recommendations that should be of interest to both sides. The major burden, of course, rests on the unions, but management must be aware of the pressures that inform union behavior. The full text of Professor Knott's paper will be published in the forthcoming annual Proceedings, but meanwhile the following recommendations may be of immediate use:

Substantive Issues

1. Grievances should be decided on the merits. The judgments made should be on wholly relevant considerations based on careful and diligent investigation. A cursory inquiry is tantamount to no inquiry. Legitimate considerations include: origin of claim – is it clear-cut, contractual? Is it ambiguous? Is it trivial? Would testing the claim serve only a narrow range of interest? What are the interests of the individual as against the interests of the whole? What would be the effects of losing in arbitration? Is an overall group strategy at stake?

2. Settlements should aim at these results: Similar grievances should be resolved along the same general lines lest allegations of favoritism be generated. Indiscriminate horse-trading in grievances – abandoning one individual's meritorious claim in order to benefit another – is certain to raise questions of fairness. In addition, settlements should not renegotiate the contract.

3. Ambiguous provisions in the contract, which both sides have clarified by subsequent agreement, must be applied consistently to all unit members.

4. In case of conflicting claims as among unit members, the union is not required to observe strict neutrality so long as it has given due consideration to all claimants before deciding. (Often such competing interests are involved in seniority questions, hiring issues, and internal bidding on jobs – e.g., in promotions.)

5. Particularly in grievances involving allegations of discrimination in employment under Title VII, it is important to assure equal treatment. To exclude such disputes from the established grievance machinery solely on the ground that the issue is or might be pursued by the individual himself or herself in other forums is a potential breach of DFR.

6. In the industrial model, discharge and discipline cases have to be treated with special care because an interpretation of the "just cause" provision in the contract is likely to be of vital concern to the whole membership. In campus bargaining, the problem is likely to be even more delicate because of faculty involvement in governance procedures, peer review and similar concepts of collegiality, often giving rise to allegations of internal departmental or school-wide politics.

7. Unions are well advised to rely on grievance committees and executive committees for decisions on whether to prosecute a grievance, rather than on the judgment of a single grievance officer. Records of votes should be kept, though not for public scrutiny except where necessary for defense in an appropriate forum.

8. Detailed information on how to file and pursue a grievance though the grievance machinery should be widely promulgated among the unit members as well as the union members. This should include the text of the contract, the union's constitution and bylaws, and special bulletins on new developments that may affect the rights and well being of individuals.

9. Throughout the decision making process, the individual should be given full opportunity to present his case. He or she should be promptly informed of all developments as they occur. No negotiated settlement should be made without consultation with the individual.

10. To forestall charges of collusive behavior, a joint union-administration committee as the final forum may not be enough. This is why arbitration is gaining general acceptance.

Procedural Matters

In procedural matters the bargaining agent is required to act not only as a diligent advocate for the grievant but also as a prudent representative of the interests of the union membership as a whole and the union as a legal entity The following guidelines are suggested by Professor Knott:

1. Utmost care must be exercised in providing notice, assuring timeliness and in making waivers.

2. Detailed notes should be kept on all contacts with the grievant. Separate files should be maintained for each case with carefully dated logging of all conversations. Written follow-up summaries of all meetings and phone calls are advisable.

3. Detailed notes should be kept on all contacts between union representatives and administration about the grievance.

4. Every case should be approached as if it were on its way to arbitration. That means meticulous attention to all the details.

5. The grievance officer should avoid giving unsolicited advice to the grievant – for example, in a case of non-reappointment or discharge, advising the individual to retire or take a medical leave. This may later become evidence establishing that the grievance was handled perfunctorily or with insufficient zeal.

6. The arbitration process should be carefully explained to the grievant if the case goes that far. This should include method of selecting the arbitrator, the techniques used in the hearing, the binding nature of the decision, etc. The grievant should participate fully in the preparation of the case, and should have an opportunity to air his or her views.

OUR NEW COMMITMENT

The name of the National Center, never noted for its brevity, has now been amended to add the words *and the Professions.* In voting to make this change, the Board of Trustees of the City University of New York, under whose aegis we function, noted that Baruch College where the Center is based is the site of the University's School of Business and Public Administration. The latter includes a Health Care Administration Department sponsored jointly with the Mt. Sinai School of Medicine, also a branch of the City University.

Because of the increase in collective bargaining among professionals, it is logical that a new division be created within the National Center. Its mission will be to provide parallel services to such professional fields as health care, professional management in public employment, etc. The immediate focus, on which initial planning is under way, will be hospitals and associated agencies.

Meawhile, the National Center will continue to expand its work in the field of higher education by increasing its publications, workshops, conferences, and computer and library resources.

NATIONAL CENTER NEWS AND NOTES

New Publications. Of special interest in the *Proceedings* of the Seventh Annual Conference of the National Center is the debate between the two attorneys who subsequently argued the *Yeshiva* case before the Supreme Court Also noteworthy is the three-cornered symposium on alternatives to collective bargaining that featured Sidney Hook, David Newton and Albert Shanker.

Latest publication of the National Center is the 364-page manual, *Contract Development in Higher Education Faculty Collective Bargaining* by Joel M. Douglas and Molly Garfin, subtitled "A Guide to Provisions, Clauses, Terms and Counterproposals." The material, embodying specific contract language, is organized to provide a practical tool for negotiators and those concerned with contract administration.

The 1980 edition of the National Center's annual *Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education* will be available in late July. It will detail new elections, contracts and settlements, legislation as well as statistical summaries for the year 1979.

The National Center's Monograph No. 3, *Workload and Productivity Bargaining in Higher Education* by Joel M. Douglas, Loren A. Krause and Leonard Winogora has gone to press and will be available within the next few weeks.

Yeshiva Conference. On May 27, representatives of college administrations and unions in higher education met to examine the implications of the Supreme Court decision. One result of the interest expressed by the participants is the decision of the National Center to serve as a "Yeshiva watch" to monitor further developments. The Center is therefore asking its members and readers of the *Newsletter* to keep us informed of any events on their campuses that relate to Yeshiva-like questions. These will be reported in future issues of the *Newsletter* or in a special Monograph if developments warrant.

The 1981 Annual Conference. The date for the Ninth Annual Conference has been set – April 27-28, 1981. The formal invitation to submit papers will be released when the overall topic is decided. In the meantime, the National Center welcomes suggestions for submissions in the economic and legal areas of collective bargaining in higher education.

NEWSWORTHY EVENTS

Arbitration Awards

"Fair share" deduction requiring all employees to pay their share of costs of representation is to be included in contract between *Northeast Wisconsin Vocation, Technical, and Adult Education District* and its faculty association. *Gov't. Employee Relations Report,* 862: 24, May 19, 1980.

Rhode Island Junior College administration has right to withhold pay from faculty strikers, arbitrator rules. *Gov't. Employee Relations Report,* 857: 25, Apr. 14, 1980.

Contracts and Settlements

Union approves 8.2 percent salary increase for *City College of Chicago* faculty members. *Gov't. Employee Relations Report,* 854: 25, Mar. 24, 1980.

First collective bargaining agreement at *Rhode Island School of Design* provides for 5-year probationary period for new faculty members during which they have no right to appeal decision of non-renewal of contract. *The Chronicle of Higher Education,* 2, Feb. 11, 1980.

Court Cases

Boston University agrees to halt disciplinary proceedings against five professors who refused to cross picket lines set up by striking clerical workers. *The Chronicle of Higher Education,* 2, Mar. 24, 1980.

Community College of Philadelphia illegally retaliated against two employees who filed reverse discrimination complaint against institution, rules U.S. District Court. *The Chronicle of Higher Education,* 2, Mar. 3, 1980.

U.S. Supreme Court denies review to *El Camino Community College v. U.S.,* which called for limitation of HEW's authority to probe for discrimination, to education programs directly receiving federal funds. *Higher Education Daily,* 1, Jan. 8, 1980.

Federal trial court erred in holding that faculty member's sex discrimination charge failed because she couldn't demonstrate that *Florida State University* discriminated against her in failing to promote her. In reversing court's decision, judge says courts should not accord special deference to universities under Title VII *(Jepsen v. Florida Bd. of Regents CA 5, No. 77-2969, Feb. 6, 1980.) Gov't. Employee Relations Report,* 854: 14-15, Mar. 24, 1980.

New Hampshire Supreme Court affirms Public Employee Labor Relations Board's decision that elimination of some faculty functions is managerial prerogative. *(Keene State College Education Association, NHEA/NEA v. State of New Hampshire and Public Employee Labor Relations Board, Supreme Court of New Hampshire, No. 78-294, Jan. 31, 1980.) Gov't. Employee Relations Report,* 851: 17-19, Mar. 3, 1980.

U.S. Supreme Court let stand decision that Keene State College is guilty of sex discrimination against woman professor, ending more than five years of litigation against institution. *(Board of Trustees of Keene State College v. Sweeney; U.S. Sup. Ct.) Gov't. Employee Relations Report,* 850: 24-25, Feb. 25, 1980.

Federal appeals court upholds lower court's decision ordering Muhlenberg College (Pa.) to award tenure to former physical education teacher on completion of educational requirements. . . first case in which federal court has ordered that an institution grant tenure to faculty member found to have been discriminated against in violation of Title VII. *The Chronicle of Higher Education,* 9, Mar. 3, 1980. *(Kunda v. Muhlenberg College, CA 3, No. 79-1135, Feb. 19, 1980.)*

Federal Court overrules arbitrator who ordered board of trustees to grant tenure to faculty member, finding that arbitrator exceeded authority under the collective bargaining agreement. *(Pratt Institute v. United Federation of College Teachers, Local 1460, AFT, AFL-CIO, No. 79C2034, Mar. 17, 1980.) Labor Relations Reporter. Decisions of the Courts,* 103 LRRM 3027-3033, Apr. 21, 1980. (Also *The Chronicle of Higher Education,* 2, Apr. 21, 1980.)

Connecticut Supreme Court finds state law requires full-time faculty at State Technical Colleges are entitled to 12.5 sick leave days rather than the 15 days ruled by an arbitrator. . . arbitrator's award found to be in conflict with state regulations. *(Board of Trustees for State Technical Colleges v. Federation of Technical College Teachers; Conn. Supreme Court June Term, 1979, Sept. 18, 1979.) Gov't. Employee Relations Report,* 844: 17-18, Jan. 14, 1980.

Iowa Supreme Court rules that *University of Iowa* was guilty of breach of contract in unilaterally reducing tenured professor's salary in mid-year. *The Chronicle of Higher Education,* 2, Feb. 11, 1980.

AAUP does not have any constitutional right to participate in selection process of university president, rules court. *(Gordon Junior College Chapter of the AAUP v. Board of Regents of the University System of Georgia, U.S. District Court for the Northern District of Georgia, Atlanta Division, Civil Action No. CV 79-1485A, Feb. 21, 1980.) Gov't. Employee Relations Report,* 863: 19-20, May 26, 1980.

Eight *University of Texas* professors lose case against former president who, they allege, cut their paychecks because of political activism. *Gov't. Employee Relations Report,* 857: 15, Apr. 14, 1980.

Court finds procedural shortcomings had no significant effect on decision to terminate faculty member. *(Nzomo v. Vermont State Colleges, No. 51-79, Feb. 5, 1980.) Labor Relations Reporter. Decision of the Courts,* 104 LRRM 2364-6, June 2, 1980.

Full-time faculty members of private university are "managerial employees" excluded from NLRA coverage. *(NLRB v. Yeshiva University; Yeshiva University Faculty Association v. same; U.S. Sup Ct. Nos. 78-857 and 78-997, Feb. 20, 1980.) Labor Relations Reporter. Decisions of the Courts,* 103: LRRM 2526-2539, Mar. 3, 1980.

Watkins, Beverly T. "Fallout" from the Yeshiva ruling. . . in 3-1/2 months since Supreme Court decision more than a dozen private colleges have broken off negotiations and at least one union election has been postponed. *The Chronicle of Higher Education,* 3, June 9, 1980.

Kuechle, David. After the Yeshiva Case. *The New York Times,* 21, Mar. 8, 1980.

"Yeshiva" impact slowly developing. . . *University of New Haven* was first to cease recognition of its faculty union following Yeshiva decision. Appellate Courts have ruled with mixed results in 5 cases since Yeshiva: *Ithaca College* faculty may not unionize; *Catholic University Law School* faculty are not entitled to NLRA protection; *Boston University* case remanded to lower court for clarification of status of department chairmen; faculty at *Mt. Vernon College* and *Stephens Institute* are entitled to bargain. *Higher Education Daily,* 3, May 29, 1980.

Discrimination

The United Faculty of Florida has charged the *State University System of Florida* with discrimination against women on all 9 campuses. *The Chronicle of Higher Education,* 2, May 12, 1980.

Seven-year discrimination suit brought against *University of Minnesota* by woman chemist who was denied tenure resolved by award that gives her $100,000. *The Chronicle of Higher Education,* 1, 10, Apr. 28, 1980.

U.S. Court of Appeals rules that in suing university for sex bias, faculty members need not meet any stricter standards of proof than other types of employers. *The Chronicle of Higher Education,* 8, Mar. 24, 1980.

Elections

Faculty members at *Antioch University* select NEA affiliate to represent them in bargaining. *NEA Advocate,* Jan./Feb. 1980.

California Federation of Teachers (AFT) won collective bargaining rights for 437-member unit of *Santa Cruz College;* no representation was choice at *Imperial Valley College* over NEA affiliate. *Gov't. Employee Relations Report,* 857: 25, Apr. 14, 1980.

For the third time in 6 years, faculty members at *Grand Valley State Colleges* have rejected unionization, voting 113 to 101 against representation by NEA affiliate. *The Chronicle of Higher Education,* 6, May 19, 1980.

Faculty members at *Montgomery College* vote 145 for AAUP chapter, 130 for NEA affiliate, and 64 for "no agent"; runoff election now required. *The Chronicle of Higher Education,* 2, Feb. 25, 1980.

Faculty at *University of California at Berkeley* narrowly defeat move to unionize; vote is first election falling under 1979 California law allowing faculty at public 4-year colleges and universities to form unions. Vote between "no agent" and AAUP affiliate was 532 to 477. *Higher Education Daily,* 5, June 6, 1980.

Graduate teaching assistants at *University of Florida* and *University of South Florida* vote to join United Faculty of Florida... teaching assistants at *Florida State University* reject collective bargaining. *The Chronicle of Higher Education,* 2, June 9, 1980.

NEA affiliate weathers decertification attempt at *University of Massachusetts Amherst* campus. *Gov't. Employee Relations Report,* 856: 25, Apr. 7, 1980.

Six years after they petitioned for union election, faculty members at *University of Minnesota Law School* vote against collective bargaining. *The Chronicle of Higher Education,* 14, Feb. 11, 1980.

Faculty members at *University of Minnesota at Duluth* give AAUP 44-1/2 percent of vote – less than majority required to win – in recent collective bargaining election; vote was 145 for AAUP, 134 for NEA and 34 for "no agent." Run-off election date not set. *The Chronicle of Higher Education,* 2, June 9, 1980.

University of Northern Iowa faculty union severs ties with AAUP while retaining affiliation with NEA; had been represented by joint AAUP/NEA since 1976. *The Chronicle of Higher Education,* 6, May 19, 1980.

Legislation

California Supreme Court reverses lower court's endorsement of 1975 state law that would have required *University of California* to consider "prevailing wages" in setting pay of non-academic employees... first time a California statute has been nullified on grounds that it infringed on governing authority of university's board of regents. *The Chronicle of Higher Education,* 10, Apr. 28, 1980.

Wisconsin Senate defeats bill that would have granted right to unionize to *University of Wisconsin* faculty members. *The Chronicle of Higher Education,* 2, Mar. 24, 1980.

Retirement

Retirement incentives offered at *California State University and Colleges System;* intended to minimize need for layoffs *The Chronicle of Higher Education,* 2, Apr. 21, 1980.

Students and Teaching Assistants

Minimum wage law does not apply to student assistants, rules court in *Regis College* case. *The Chronicle of Higher Education,* 4, June 9, 1980.

Trustees of *California State University and Colleges System* vote not to include students as members of faculty personnel committees. *The Chronicle of Higher Education,* 2, Mar. 10, 1980.

Teaching and graduate assistants at *University of Wisconsin-Madison* return to work May 5 without a new contract after striking April 1 over lack of new agreement. *Gov't. Employee Relations Report,* 862: 30, May 19, 1980.

University of Wisconsin at Madison starts procedures to reduce pay of faculty members who honored strike called in April by teaching assistants. *The Chronicle of Higher Education,* 2, June 2, 1980.

Workload

Wesleyan University plans to increase student-faculty ratio. *The Chronicle of Higher Education,* 2, Mar. 10, 1980.

NATIONAL CENTER NEWSLETTER

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