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5-1-1979

Newsletter Vol.7 No.2 1979

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Recommended Citation
National Center for the Study of Collective Bargaining in Higher Education and the Professions, "Newsletter Vol.7 No.2 1979" (1979). *National Center Newsletters*. 84.
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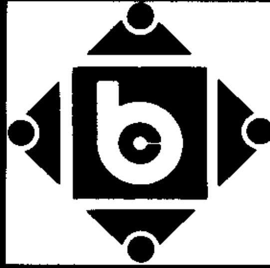
NEWSLETTER

NATIONAL CENTER
FOR THE STUDY OF
COLLECTIVE BARGAINING
IN HIGHER EDUCATION



Published at Baruch College City University of New York

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VOL. 7, NO. 2, MAY-JUNE 1979

ARE THEY "PROTECTED EMPLOYEES"?

As university administrators and faculty unions in the private sector await the Supreme Court's eventual decision in the Yeshiva case (see *Newsletter*, Sept.-Oct. 1978, Vol. 6, No. 4), cognate questions are occupying the federal courts of appeal. Two issues make the recent case of Housestaff Association v. Murphy, No. 78-1209, April 2, 1979, relevant to higher educational institutions:

1. The powers of the National Labor Relations Board in determining who is an employee entitled to the protection of the Act.

2. The reviewability of Board decisions in matters affecting the certification of unions, particularly those involving professionals and, by implication, faculty.

In Housestaff, the Court of Appeals of the District of Columbia, with one dissent, overruled the National Labor Relations Board's refusal to certify an association of hospital interns and residents as the collective bargaining agent. The Board's position, like that of the Second Circuit Court in the Yeshiva case, 582 F. 2d 686 (1978), hinged on the conclusion that the petitioners were not employees as that term was intended in the statute.

In Yeshiva, the Board ruled that faculty were employees; the Second Circuit held they were managerial and supervisory personnel, hence excluded from the protection of the Act. In Housestaff, however, the Board had itself excluded medical interns, residents and fellows, usually described as housestaff, on the ground that they were primarily "students" rather than employees.

Defining Employees

Since Yeshiva has thrown a cloud over the definition of who, in a university staff, is to be deemed an employee, the discussion of the Board's power to define the term in dealing with hospital housestaff has important implications. NLRB had concluded that the medical personnel seeking collective bargaining rights were not employees but participants in programs "designed not for the purpose of meeting the hospital's staffing requirements, but rather to allow the student to develop, in a hospital setting, the clinical judgment and the proficiency in clinical skills necessary to the practice of medicine in the area of his choice." (Cedars-Sinai Medical Center, 223 NLRB 253, 91 LRRM 1398 (1976))

On the factual base for this view, the Court of Appeals took no stand; instead, it concentrated solely on the question of Congressional intent. Examining the legislative history of the original Taft-Hartley Act and the 1974 amendment that brought non-profit hospitals under the statute, it concluded from the statements of legislators and the reports of the legislative committees that Congress had meant to include them. In addition the Court cited the language of Sec. 2(3): "The term 'employee' shall include any employee . . . unless this subchapter explicitly states otherwise . . ." It noted also that the term "professional employee" is defined in Sec. 2(12) as

> (a) any employee engaged in work . . . (iv) requiring 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 . . .; or
>
> (b) any employee, who (i) has completed the course of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

Thus the Court of Appeals held that the Board, in denying collective bargaining rights to housestaff, was violating the explicit provisions of the statute.

It is interesting that the Court makes no reference in its opinion to the Yeshiva case which had been decided by a sister court, the Second Circuit, some nine months before. But it does cite NLRB v. Catholic Bishop of Chicago, in which the Supreme Court, by a 5-4 vote, struck down the effort of NLRB to provide the protecion of the statute to teachers in church-operated schools. There too the High Court had reviewed legislative history, finding in that case that there was no Congressional intent to include parochial school teachers. First Amendment considerations, however, played a major role, since the Court is particularly zealous in maintaining unbreached the wall that separates church and state. (NLRB v. Catholic Bishop of Chicago, U.S. Sup. Ct., decided March 21, 1979, 100 LRRM 2913)

The dissenters disagreed with the majority's view that Congress had not intended to include parochial school teachers. They asserted that to require a "clearly expressed" intention to cover the employees was a new doctrine, specially contrived by the majority to avoid a result that Congress had indeed intended, as revealed by the legislative history. Quoting the language of Justice Cardozo, they argued that the majority was pressing "avoidance of a difficulty . . . to the point of disingenuous evasion."

In general, the policy of the NLRB has been to favor the inclusion of personnel as employees and thus to encourage collective bargaining. The courts have been sympathetic to this purpose on two grounds: (1) the assumption that collective bargaining will mean more stability and less interference with commerce—a premise that is still hotly debated but that is written into the law; and (2) the assumption that the Board is in the best position to determine the realities of employment relationships, and that its judgments should therefore be permitted to stand.

The picture, however, is now beclouded by the fact that the Board in some cases, as in Housestaff, has itself turned its back on the petitioners, and by the action of the courts in overruling favorable Board rulings, as in the case of the church teachers in Chicago and in Yeshiva University. The District of Columbia Court of Appeals quite clearly opts for the view that doubts should be resolved in favor of granting employee status and the resulting protection of the Act. In a footnote it advances this reasoning:

> The Board argues that because legislation has been introduced in Congress but not enacted, that would explicitly cover housestaff under the NLRA, we should conclude that Congress does not wish housestaff to be covered. We do not find this contention compelling. One would expect congressional reluctance to abandon the NLRA's wise policy of reaching *all* workers with a *few* exceptions, in favor of listing all groups to be covered by the Act, an exercise that would inevitably be incomplete, would require constant review to keep up with new industries, and would pose difficult interpretational questions for the Board and the courts. Moreover, courts should be wary of reading meaning into congressional inaction. (Emphasis in the original)

Ironically, the Court here is pressing upon the Board larger authority than the Board was willing to assume.

Review of Representation Decisions

The core of the case, however, was the contention of the Board that the courts had no authority to review its decisions in matters involving certification, as described in Sec. 9 of the statute. In general, the Supreme Court has held that court review is permissible only on issues that derive from unfair labor practice proceedings, as described in Sec. 8. The reason for this distinction was Congress's fear that judicial review of representational issues would become an instrument for delaying the start of collective bargaining. Instead, the law intended to allow review of certifications only after an unfair labor practice order had been handed down—for example, where a refusal to bargain was based on the employer's contention that the certification of the union as bargaining agent was improper.

But the Supreme Court had found it necessary in the past to deviate from the general rule. In Leedom v. Kyne, 358 U.S. 184, 43 LRRM 2222 (1958), the Board had refused to let professionals vote on whether they wanted to be included in the same bargaining unit as non-professionals —a clear violation of the explicit language of Sec. 9(b)(1). The logic of the Court was expressed in these words:

> This suit is not one to "review," in the sense of that term as used in the Act, a decision of the Board made within its jurisdiction. Rather it is one to strike down an order of the Board made in excess of its delegated powers and contrary to a specific prohibition in the Act. Section 9(b)(1) is clear and mandatory. . . . [The Board] deprived the professional employees of a "right" assured to them by Congress. Surely, in these circumstances, a Federal District Court has jurisdiction of an original suit to prevent deprivation of a right so given. (358 U.S. at 188-9)

But the Supreme Court has been sparing in allowing exceptions to the general rule. Though the usually authoritative Archibald Cox concluded at that time that the Leedom case "places all NLRB certifications in the category of reviewable orders," this has not proved to be the fact. Before the courts will intervene to upset the Board's determination of a question concerning representation, there must be "the type of gross transgression for which we invoke the label 'jurisdictional' or 'clear errors of law' "—language reiterated by the Court of Appeals in the Housestaff case. Whether those labels can be properly applied, says the Court, will depend on the answers to these questions:

1. Does the alleged error of the Board involve a question of statutory interpretation or merely an issue of fact? In the latter case, the courts will accept the special expertise of the Board and will remain aloof from the controversy.

2. Is the statutory language "clear and mandatory" in creating rights for those subject to the NLRA?

3. Would the party challenging the Board's decision have a "realistic hope of eventual court review following an unfair labor practice order"? For housestaff members, there was no possibility that they could precipitate an unfair labor practice situation that would lead to such review.

4. Would judicial review thwart the Congressional objective of avoiding undue delays and other interferences with the efficient enforcement of the Act?

It was not until 1963–five years after Leedom–that the Supreme Court again found a representation case where the Board, in the judges' view, had clearly gone beyond its authority. The Board had attempted to take jurisdiction over foreign seamen working on foreign flag vessels, a sensitive matter affecting international relations. Without a "clear expression of an affirmative intention of Congress," the Court would not permit the Board to arrogate to itself authority over the employer and the employees. (McCulloch v. Sociedad Nacional de Marineros de Honduras, 372 U.S. 10, 52 LRRM 2425 (1963))

Next Steps

Yet the issue remains debatable, and once again the Supreme Court will have to speak before an authoritative conclusion is possible. Institutions of higher education in the public sector, of course, take their guidance in matters of collective bargaining representation from their state legislatures and courts. Those in the private sector, however, are still operating in a gray area.

If the Supreme Court sustains the District of Columbia Court of Appeals, then a series of NLRB decisions will be scrapped. The Cedars-Sinai ruling which initiated the Housestaff case, was followed without discussion or opinions by the Board in a number of 1976 cases covering many hospitals, including those of the University of Chicago and Wayne State University. New York, last November, had already notified its Public Employment Relations Board that it will not challenge the employee status of the several hundred interns and residents, affiliated with the Committee of Interns and Residents, who are students of the State University of New York. But it has reserved the right to raise other representational issues.

On the assumption that the Supreme Court will uphold the bargaining rights of interns and residents, the 13,000-member Physicians Housestaff Association is pushing ahead with a heavy organizing campaign. But the attorney who successfully argued its case has warned the association that its victory will find it "back at square one" where a host of other questions will have to be examined by the Board: which of the residents and interns are supervisory employees, which are permanent, temporary, part-time or casual; what constitutes the appropriate bargaining unit; who is the employer, in view of the intricacies of health care funding which may determine whether a public employer is involved?

While such questions do not have precise answers, those who formulate institutional policy, whether on campuses or in hospitals, must assume that the ultimate decision will attempt to satisfy the statement of policy contained in the Act:

> It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DUE PROCESS ON THE CAMPUS

In the academic community the concept of "due process" is addressed primarily to achieving fair play in procedural matters, and rarely touches what the law has called "substantive due process." In the interest of achieving excellence through freedom of decision by faculty and administrative bodies, the courts have been loath to intervene on behalf of untenured college professors who allege that they have been unjustly denied reappointment or, for that matter, tenure.

This approach may be up for re-examination as a result of a Federal District Court jury trial in which a former faculty member at Brooklyn College, City University of New York, was awarded a judgment of $580,000 against the Board of Higher Education and individuals directly involved in the denial of tenure.

A "Freedom of Association" Issue

In the course of the nine-week trial, the plaintiff, Dr. Michael Selzer, an assistant professor of political science, asserted that he had been denied promotion and tenure, the latter resulting in non-reappointment. A specialist in the study of terrorist movements, Dr. Selzer had sought information from the Central Intelligence Agency before going abroad to carry out his research; on his return, he had gone through a "debriefing" by the C.I.A. in a 15-minute telephone conversation during which he provided no technical information but merely general impressions.

When word of this activity reached his colleagues, some of them charged him with engaging in "covert intelligence gathering," thus causing damage to the reputation for objectivity of the academic community and its opportunity for free inquiry. Thereafter, efforts were made to bring him up on charges, but the College president concluded that "there were not sufficient grounds" for his dismissal, but then recommended that he be denied tenure.

The Tenure Issue

While the Court accepted the jury's award of $330,000 for lost wages and fringe benefits, plus $250,000 for damage to his reputation as a scholar and the consequent loss of research grants, it postponed a decision on whether to order reinstatement with tenure.

State courts and arbitrators who have faced the issue have been reluctant to take such a step. In New York, following the Perlin case the remedy has been reappointment without tenure but with instructions that the question of tenure is to be re-examined at a future date. The

attitude of the New York Court of Appeals is based directly on the view that such decisions should be made within the academic institution itself. (Legislative Conference v. Board of Higher Education, 38 A.D. 2d 478, aff'd 31 N.Y. 2d 926)

As noted before in these pages, the Second Circuit Court of Appeals, based in New York, has said explicitly: "Of all the fields which the federal courts should hesitate to invade and take over, education and faculty appointments at a University level are probably the least suited for federal court supervision." (Faro v. New York University, 502 F. 2d 1229, at 1231-2 (1974)

Nevertheless, the trend to policing institutional behavior in the hiring, promotion and retention of ethnic minorities and women may well diminish the reluctance of the judiciary to intervene. All who are concerned with issues of peer judgment, governance and academic judgment, whether on unionized or unorganized campuses, will watch the Selzer case as it moves up to the appellate courts.

CONFRONTATIONS OVER "PERMISSIVE ISSUES"

In two negotiations that were completed only after strikes, novel stumbling blocks have been encountered. In the New Jersey state college system and at Boston University, the fourth largest private institution in the country, the administration and the unions confronted issues that stemmed from the always difficult distinction between *mandatory* and *permissive* bargaining subjects.

Ironically, the substance of the issues involved no actual disagreement between administration and faculty. The questions were whether the collective bargaining agreement should include a provision granting teachers the right to choose their own textbooks as well as the quite familiar language endorsing "academic freedom." In these matters the dispute was due to the fact that they do not fall under "wages, hours and other terms and conditions of employment" which comprise the mandatory bargaining issues.

Conflict Without Disagreement

The strikes provide an illustration of how laws and regulations intended to avoid labor difficulties may prove to be counterproductive. In the one case, the administration had gone into the negotiations on the heels of a New Jersey Supreme Court decision declaring that these items were not subject to mandatory bargaining. The administration therefore felt compelled to insist on their deletion from the contract. The issue was finally resolved when Governor Brendan Byrne released a formal statement as follows:

> The state position regarding the controversial issues of academic freedom and course textbooks (is) being misunderstood or misrepresented by the union.
>
> There has never been a question about whether a professor could choose his own textbooks. It is just a question of whether these issues should be a matter of negotiation or a matter of basic principle. Though the issues appear to be non-negotiable, to avoid any confusion it has been determined to leave these two issues in the contract.

At Boston, the issue of academic freedom was resolved by a separate statement reaffirming the principle.

The clash over such provisions might very well have been avoided were it not for the intense emotion raised by other issues such as pay increases. There are many situations, however, in which the conflict is indeed a matter of substance. If a party presses a purely permissive subject of bargaining to the point of impasse, he may be guilty of a refusal to bargain under the National Labor Relations Act and under many state labor laws.

Origin of the Concept

Well into the 1950's the National Labor Relations Board had been quite liberal in allowing unions to raise all kinds of issues as part of "wages, hours and other terms and conditions of employment." But in NLRB v. Wooster Division of Borg-Warner Corp., 356 U.S. 342 (1958), the Supreme Court began the process of of making distinctions among subjects that might be brought to the bargaining table.

The employer in that case had insisted that he would not sign a contract with the union unless it bound itself to a procedure for a secret ballot on the company's last offer and unless it excluded the international union as a signatory to the contract. Since neither of these provisions could be brought under the statute's scope-of-bargaining terminology quoted above, the Board and the courts held that bargaining on such subject matter was therefore *not mandatory*. The language used by the Supreme Court explains the logic as follows:

> The company's good faith has met the requirements of the statute as to the subjects of mandatory bargaining. But that good faith does not license the employer to refuse to enter into agreements on the ground that they do not include some proposal which is not a mandatory subject of bargaining. We agree with the Board that such conduct is, in substance, a refusal to bargain about the subjects that are within the scope of mandatory bargaining. This does not mean that bargaining is to be confined to the statutory subject. Each of the two controversial clauses is lawful in itself. Each would be enforceable *if* agreed to by the unions. But it does not follow that, because the company may propose these clauses, it can lawfully insist upon them as a condition to any agreement.

Note that in Borg-Warner the Court found that the non-mandatory subjects were not illegal; they were of such a nature that they could have been written into the contract if both sides agreed. A clearly impermissible, illegal subject would be involved, for example, if a union insisted on a closed-shop provision, which is forbidden by the Taft-Hartley Act.

Though the original finding of an unfair labor practice was made against the employer in the Borg-Warner case because of his pushing a non-mandatory subject to the point of impasse, the repercussions of this decision have been felt increasingly by the unions, especially in higher education bargaining. Here the lines have been sharply drawn to fence off the traditional concepts of faculty governance, collegiality and peer review from union negotiation. Most jurisdictions have tried to preserve the domain of faculty senates against encroachment by collective bargaining agencies. But there is considerable confusion in the decisions reached under the federal law and the various state enactments.

NLRB Rulings

Thus the National Labor Relations Board has entertained a complaint for refusal to bargain against a university that dealt with a faculty senate on mandatory subjects of bargaining instead of dealing with the faculty union. Issues such as tenure and promotion have been held to be clearly mandatory. So too administration has been told to deal with the union on items like the academic calendar and a faculty policy manual.

But where the faculty union insists that the collective bargaining agreement incorporate governance items that fall under the heading of managerial rights or collegial decision-making procedures, it may be found guilty of a refusal to bargain.

State Rulings

In cases involving public institutions, the various state Public Employment Relations Boards have been preoccupied with attempts to achieve a more clear-cut dichotomy. Some of the legislatures have laid a foundation by specifying the items that fall under the heading of managerial prerogatives retained by the administration. But even in these cases there has been a difficult problem of overlap: some items which are labeled management prerogatives clearly affect "conditions of employment" if not wages and hours. As one writer has pointed out, "A classic example of such overlap is class size, which is both a working condition and an important element of educational policy." (V. H. Schneider, "Public-Sector Labor Legislation – An Evolutionary Analysis," in *Public Sector Bargaining,* edited by Benjamin Aaron, Joseph R. Grodin, and James L. Stern, Industrial Relations Research Association Series, Bureau of National Affairs, Washington, D.C., 1979, pp. 212-3) He summarizes the difficulties in these terms:

> Two standards have been adopted by various state PERBs and courts to resolve this conflict. Several courts have settled the overlap problem by classifying a subject as mandatory if it is *significantly related* to wages, hours and other terms and conditions of employment. By this standard, class size and welfare caseloads have been determined to be mandatory subjects. Clark sees this standard as inadequate because it does not properly recognize the competing interests at stake; undue weight is given to conditions of employment. However a *balancing* test is rapidly emerging that acknowledges the overlap problem and involves a consideration of competing political interests. (Emphasis in the original)

He indicates that several states appear to be adopting the balancing standard enunciated by the Kansas Supreme Court in National Education Association of Shawnee Mission, Inc. v. Board of Education, 212 Kan. 741, 84 LRRM 2230 (1973):

> It does little good, we think, to speak of negotiability in terms of "policy" versus something which is not "policy." Salaries are a matter of policy, and so are vacations and sick leaves. Yet we cannot doubt the authority of the board to negotiate and bind itself on these questions. The key, as we see it, is how direct the impact of an issue is on the well being of the individual teachers, as opposed to its effect on the operation of the school system as a whole. The line may be hard to draw, but *in the absence of more assistance from the legislature the courts must do the best they can.* (Emphasis added)

Impact of Permissive Issues

A number of states attempt to resolve the problem by holding that the issue is permissive but the union may insist on negotiating the *impact* that the management decision will have on the terms and conditions of employment. The New Jersey PERC so ruled in the matter of the amount of student contact hours, which was considered permissive as an issue of educational judgment, but since it affected terms and conditions of employment the consequences could be negotiated as mandatory. (Stockton State College, PERC No. SN-16-CO-76-11 (Jan. 1977), G.E.R.R. 698:18)

On the other hand, Michigan permitted the Board of Trustees to adopt a policy unilaterally on teacher evaluation procedures because they had been dealt with traditionally as a part of governance. (Central Michigan University, MERC Case No. CO74-A-19 (Jan. 30, 1976), G.E.R.R. 646:B-15)

(For further illustrations of state rulings, see June M. Weisberger, "Notes on Recent Legislative, Administrative and Judicial Developments," in *Collective Bargaining and the Future of Higher Education,* Proceedings, Fifth Annual Conference, National Center for the Study of Collective Bargaining in Higher Education, April 1977, pp. 98-9. See also R. Theodore Clark, Jr., "The Scope of the Duty to Bargain in Public Employment," in *Labor Relations and the Law,* edited by Andria S. Knapp, American Bar Association (1977).

The Psychological Factor

Perhaps as important as the legal problem itself is the question, Why do issues like choice of textbooks and academic freedom become obstacles to achieving settlements without the hardship of a strike?

Obviously, there was no substantive difference between the parties in New Jersey and Boston over the desirability of having the faculty select the books from which they would teach and their right to enjoy academic freedom in the classroom. Unfortunately, the psychology of the adversary relationship, once brought into play, tends to make for rigid legalism and equally rigid responses. What are intended to be expendable chips for use in the bargaining process must not become indispensable prerogatives that are demanded or defended to the death.

BARGAINING WITH STUDENT PERSONNEL PROFESSIONALS

The National Center has recently completed a research project analyzing the impact of collective bargaining on Student Personnel Professionals (SPPs). The findings were presented at the Annual Conference of the National Association of Student Personnel Administrators (NASPA), and are available from either the National Center or the ERIC Clearinghouse on Higher Education. A summary of the major findings is presented below:

1) SPPs are included in less than one-third of the collective bargaining agreements currently in force as part of the main faculty bargaining unit.

2) Separate bargaining units composed of SPPs and/or allied groups number less than ten.

3) Over 90 percent of the units in which SPPs are included in the teaching faculty unit are found in community colleges. The major reasons advanced for this phenomenon include:

a) Community college faculty often have their roots in secondary schools in which the collective bargaining process has a longer history.

b) The fact that community college missions deal with providing occupational education has brought the faculties into greater contact with trade union models, thus creating a spillover effect.

c) The rapid growth of community colleges came at a time when the unionized campus experienced its period of greatest memberships; thus the two developed proportionately.

4) Tables I and II describe the number of collective bargaining agreements which include SPPs, presenting a breakdown by type of institution and bargaining agent.

5) Table III provides the number of institutions that confer academic rank on SPPs and schedule them for the same academic year as the rest of the faculty. Approximately two-thirds of the institutions identified as including SPPs in teaching faculty units do stipulate the same academic year and utilize negotiated teaching faculty evaluation procedures for SPPs while only one-third confer academic rank on SPPs.

6) Table IV shows the work week range specified for SPPs.

Conclusion

The student personnel profession is at a crossroads with respect to the collective bargaining process. So far as organizing is concerned, statistics indicate that SPPs have not kept up with their professional colleagues on the university campus. Less than one-third of the organized campuses include SPPs in the teaching unit, while only a handful of SPP units have been established on their own.

As declining enrollments and retrenchment continue on the nation's campuses and union organizing efforts increase, greater pressures will be generated upon SPPs to organize and bargain collectively for their own professional growth and job security.

TABLE I
UNIT DETERMINATION/INCLUSION OF SPPs IN COLLECTIVE BARGAINING AGREEMENTS

Collective bargaining agreements in force	301
Campuses covered by collective bargaining agreements	650
Number of collective bargaining agreements which include student personnel workers in unit	100
Number of separate bargaining units in which student personnel workers are the primary group	7

TABLE II
COLLECTIVE BARGAINING AGENTS FOR STUDENT PERSONNEL WORKERS INCLUDED IN TEACHING FACULTY UNIT

N=100	NEA	AFT	AAUP	INDEP.	TOTAL
Public 2-Yr.	53	27	1	6	87
Private 2-Yr.	1	0	0	0	1
Public 4-Yr.	1	0	3	2	6
Private 4-Yr.	2	3	1	0	6
TOTALS:	57	30	5	8	100

TABLE III
COLLECTIVE BARGAINING AND STUDENT PERSONNEL WORKERS

N=100	Evaluation Procedure	Academic Rank Conferred	Academic Year
2-Yr. Institutions	56	27	55
4-Yr. Institutions	10	4	5
TOTALS:	66	31	60

TABLE IV
CONTRACTUAL WORK WEEK FOR STUDENT PERSONNEL WORKERS

N=100	30 Hrs.	35 Hrs.	36 Hrs.	37.5 Hrs.	40 Hrs.	No Mention
2-Yr. Institutions	3	34	2	9	15	25
4-Yr. Institutions	0	6	0	1	1	4
TOTALS:	3	40	2	10	16	29

NATIONAL CENTER NEWS AND NOTES

Annual Conference

The Seventh Annual Conference which was held in New York City on April 23-24, 1979, had the largest turnout thus far. The analysis of the *Yeshiva* decision by the rival attorneys who will argue the case before the United States Supreme Court, along with the Symposium featuring Sidney Hook, David Newton and Albert Shanker, were among the Conference high points. *Proceedings* of the Conference will be sent free of charge to all those who registered, while others may order them from NCSCBHE. The next Annual Conference is scheduled for April 28-29, 1980.

Workshops

The 1979-80 Workshop Schedule has been tentatively set as follows:

November	Philadelphia, PA	Grievance and Arbitration
November	Boston, MA	Conflict Resolution
December	Florida	Grievance and Arbitration
February	San Francisco, CA	Collective Bargaining
March	San Francisco, CA	Grievance and Arbitration
March	Chicago, IL	Collective Bargaining

A more detailed description of the workshops with the specific dates will be sent to those on our mailing lists. For the first time, National Center Members will have the choice of attending either the Annual Conference or a regional workshop without charge. For further information, call Ms. Evan Mitchell at the National Center.

Arbitration Depository

More than 300 cases are now on file in the Center's Library and are available for reference and research. We are still interested in obtaining copies of awards in both the faculty and non-faculty areas and would appreciate receiving them from you. For further information, contact Ms. Molly Garfin at the National Center.

Publications

"Living with Collective Bargaining: A Case Study of the City University of New York" by Mr. Bernard Mintz has been published by the National Center. Mr. Mintz served as Vice Chancellor of CUNY and Acting President of Baruch College and played a major role in negotiating the first collective bargaining agreement at CUNY. The price of the book is $7.95.

The July issue of *Labor Law Journal* carries an article by Dr. Joel M. Douglas, Director of the National Center, on "Injunctive Relief in Public Sector Work Stoppages."

The June issue of *NACUBO Business Officer* reprints an article by Molly Garfin, Associate Editor of the National Center *Newsletter,* entitled "Unionization Among Faculty - 1978." For copies, contact the Center.

Condolences

Dean Sidney Herman of Northeastern University, a long time friend of the Center, passed away in June. Dean Herman had served as our host for National Center workshops in Boston and was universally esteemed for his warmth, his knowledge of campus problems, and his administrative skills. He chaired the Plenary Session at the Seventh Annual Conference in April and did it in his quiet, non-pretentious, professional manner. He will be missed.

NEWSWORTHY EVENTS

Contracts and Settlements

Edison Community College (Fla.), faculty and graduate faculty at *Goddard College* (Vt.) ratified first contracts. *ACBIS Fact Sheet* No.58, Apr. 1979.

Faculty and professional employees at nine campuses of *Florida State University System* voted to ratify contract between United Faculty of Florida (AFT) and Board of Regents. *Gov't. Employee Relations Report,* 808: 21, Apr. 30, 1979.

Contract dispute settled at *Olympia Technical Community College* and *Centralia College* in Washington. *Gov't. Employee Relations Report,* 804: 26, Apr. 9, 1979.

Two-year contract, 18.8 percent pay hike, ended *Minnesota's 18 community colleges'* strike. *Gov't. Employee Relations Report,* 806: 19, Apr. 16, 1979.

First union-negotiated contract for *South Dakota Board of Regents' System* approved for 1,200 faculty. *Gov't. Employee Relations Report,* 810: 23, May 14, 1979.

Impasse in negotiations between United Faculty at *University of Northern Iowa at* Cedar Rapids and Iowa State Board of Regents resolved by compulsory arbitration imposed by statute. *Gov't. Employee Relations Report,* 805: 22-3, Apr. 9, 1979.

Court Cases

$580,000 awarded former *Brooklyn College* faculty member by Federal District Court that found he had been wrongfully denied tenure and promotion because of alleged CIA connections. *New York Times,* May 19, 1979 .

State Supreme Court ruled that evaluation is mandatory subject for bargaining in *Central Michigan University* case. *NEA Advocate* 6, Feb. 1979.

Former professor at *East Carolina University* who was denied tenure in 1972 after criticizing policies of department chairman, awarded $81,000 back pay. *ACBIS Fact Sheet* 57, Mar. 1979.

In *United Faculty of Florida v. Florida Board of Regents* last word on contracts rests with state legislature which must appropriate money to fund agreement, Florida court ruled. *Gov't. Employee Relations Report,* 802: 12-13, Mar. 19, 1979.

In denial of tenure case, *Cohen v. Illinois Institute of Technology,* U.S. Supreme Court let stand federal court decision that private college is not necessarily obligated to guarantee equal protection under the law as is a federal or state institution, simply because it receives state or federal money. *Higher Education Daily,* 4, Jan. 30, 1979.

Court rejected contention that legislature is empowered to alter wage provisions set by binding arbitration and ordered state to pay $1,500,000 in back salary to faculty members in *Minnesota Community College System. Gov't Employee Relations Report,* 804: 17, Apr. 2, 1979.

In *Regents of University of California v. California Office of Information Practices,* California Superior Court judge refused to open confidential files on faculty reviews as required by new state law. *Higher Education Daily,* 3, Feb. 27, 1979.

Circuit court in Wisconsin rejected claim by *University of Wisconsin* at Madison that public inspection of reports on faculty members' outside income would constitute infringement of their academic freedom. *The Chronicle of Higher Education,* 2, Jan. 29, 1979.

U.S. Supreme Court agreed to hear *Yeshiva University* case but refused to rule on constitutionality of *State University of New York* collective bargaining agreement that allows tenured faculty members to be fired if school faces severe economic problems. *Higher Education Daily,* 1-2, Feb. 23, 1979.

Church-operated schools are not required to bargain collectively with their employees under the National Labor Relations Act, ruled Supreme Court in *National Labor Relations Board v. Catholic Bishop of Chicago. Labor Relations Reporter,* 100 LRRM: 2913-2424.

Physicians National Housestaff Assn. v. Murphy (No. 78-1209, Apr. 2, 1979)(U.S. Court of Appeals, District Court of Columbia). *Labor Relations Reporter. Decision of rthe Courts.* 100 LRRM 3055-3063, Apr. 16, 1979. Legislative histories of LMRA and 1974 health care amendments to Act, affirmatively demonstrate congressional intent to consider housestaff of non-profit hospitals as employees within meaning of Act.

Elections and Bargaining Units

Faculty at *Bowling Green State University,* Ohio rejected collective bargaining by narrow margin. *The Chronicle of Higher Education,* 2, Feb. 5, 1979.

Faculty members in Colorado's nine statewide community colleges voted for NEA affiliate. *The Chronicle of Higher Education,* 2, Feb. 26, 1979.

Faculty members at *Kent State University* voted in recent election to sever ties with NEA while continuing affiliation with AAUP. *The Chronicle of Higher Education,* 2, Mar. 19, 1979.

Montgomery County Community College, (Pa.) faculty members selected AAUP as their bargaining agent over AFT. *The Chronicle of Higher Education,* 2, May 14, 1979.

Members of the Association of *Pennsylvania State College and University Faculty* representing faculty at 14 institutions, have approved dual affiliation with AAUP, AFT. *The Chronicle of Higher Education,* 2, May 21, 1979.

Faculty members at *University of Colorado's* 2 campuses chose AFT ... effect of election uncertain in face of no state law on faculty bargaining rights. *The Chronicle of Higher Education,* 2, Apr. 9, 1979.

Faculty Organizations

National Education Association agreed to register as labor union and disclose its financial records as required under federal law. Decision means it will not drop members who teach in private colleges and universities, an action that might have avoided coverage by Landrum-Griffin Act. *The Chronicle of Higher Education,* 12, Mar. 5, 1979.

Legislation

Legislation that would allow bargaining at 4-year institutions in State of Washington has passed state senate but stalled in lower house committee. *ACBIS Fact Sheet* No. 58, April 1979.

Legislation to create single governing board for California's higher education system including 9 campuses of University of California, 19 campuses of California State University and Colleges, and 106 community colleges has been introduced in state senate. *The Chronicle of Higher Education,* 2, Mar. 19, 1979.

Legislation to permit or prohibit collective bargaining at public colleges and universities is being considered in at least a dozen states, with only two - Illinois and Wisconsin - given a chance of passing. *The Chronicle of Higher Education,* 6, May 7, 1979.

Students

Board of Regents of State of Florida v. Public Employees Relations Commission, State of Florida and United Faculty of Florida (Fla. 1st District Court of Appeals, Case No. EE-413, Mar. 20, 1979). *Gov't. Employee Relations Report, 810:10-11, May 14, 1979.* Court affirms PERC's order determining that graduate assistants are "public employees" and not barred from collective bargaining.

Graduate assistants are students not employees and are not entitled to bargain collectively, the Massachusetts Labor Relations Commission ruled in case involving *University of Massachusetts* at Amherst. *The Chronicle of Higher Education,* 2, May 21, 1979.

Tenure

Granting of tenure by court of law is "inappropriate remedy", three higher education associations have told U.S. Court of Appeals for Third Circuit in case that awarded tenure to faculty member who accused *Muhlenberg College,* Pa. of sex discrimination. *The Chronicle of Higher Education,* 2, Apr. 30, 1979.

NATIONAL CENTER NEWSLETTER

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