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

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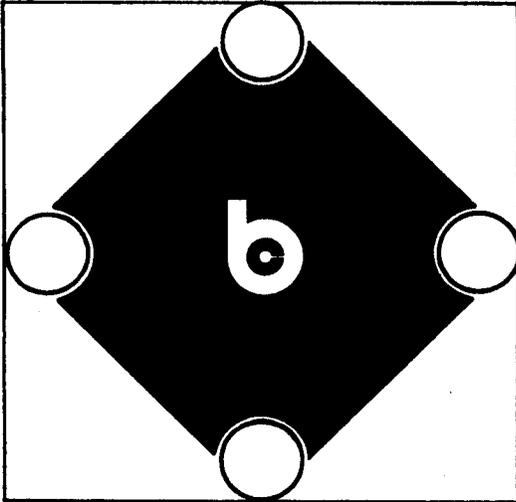
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# NEWSLETTER

Volume 6, No. 5 - November/December 1978

THE NATIONAL CENTER FOR THE STUDY OF  
COLLECTIVE BARGAINING IN HIGHER EDUCATION



PUBLISHED FIVE TIMES A YEAR AT BARUCH COLLEGE,  
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## Highlights of This Issue

Grievances: Negotiate or Arbitrate?

Rivalry Among the Unions

Newsworthy Events

Up-date of Collective Bargaining Directory

## GRIEVANCES: NEGOTIATE OR ARBITRATE?

A recurring question for both administration and union hinges on whether to seek settlement of a grievance in the early steps or push through to arbitration where provided. This is particularly troublesome on campuses where collective bargaining is relatively new. The process is costly, both in money and morale, and only the strongest considerations warrant going to the end of the line.

Yet it is notorious that inexperienced parties may act as if every grievance is the be-all and end-all of the relationship. The reasons are many: administration and the union may still be smarting from the blows exchanged during the organization campaign; each side may try to demonstrate to its constituency and its adversary that it means to be tough -- union leaders may have to demonstrate that the contract has made a real difference to the faculty; absent past experience in contract interpretation, ambiguities seem to demand definitive

adjudication; and there is a concern about creating precedents.

The fact that settlements at lower grievance levels do not create binding precedents, especially where the contract so states, may need underscoring. Also there is need to recognize the distinction between grievances that may be heard in the lower steps and those that may be pushed to arbitration. Thus, Harold W. Davey writes in Contemporary Collective Bargaining (Prentice-Hall, Inc., Englewood Cliffs, N.Y., 3rd Edition, 1972, pages 143-4):

"Intelligent contract administration should encompass consideration of any grievance relating in any fashion to the employment relationship in the early steps of the grievance procedure. The contract should be clear, however, that only grievances raising an issue of contract interpretation and application can be appealed to the arbitration step....

"Taking (the) broad view of their respective functions, all employers and

unions should endorse the psychological proposition that a grievance exists whenever an employee feels aggrieved, whether or not the source of his grievance is contractual. If an employee or some employees feel, rightly or wrongly, that they are being unjustly treated, a human relations problem exists that merits the attention of both management and the union.

"The goal of intelligent and orderly administration of contracts, however, requires that a distinction be made and clearly understood by all parties between those grievances which raise a question of contract interpretation or application and those grievances that, no matter how intrinsically sincere or meritorious they may be, are outside the scope of the collective agreement." (Emphasis in the original.)

Criteria Even in the category of grievances that involve contract interpretation the parties must often choose whether they will go to arbitration or will make an effort to arrive at a negotiated settlement. In many cases, common sense and an intuitive feel for the situation will lead either or both sides to attempt a quick, informal resolution of the difficulty. This happens often in the academic world.

But there are many situations in which poor judgment in resolving the issue of negotiate-or-arbitrate may undermine the good faith on which the traditional concepts of collegiality and academic values must rest. In the last analysis, the choice depends on the ability of both sides to accept certain basic criteria.

The National Center, in its Grievance and Arbitration Workshops, has been testing a model developed by its director, Dr. Theodore H. Lang. An Analysis Chart provides space for the following headings:

1. Brief description of the case.
2. Analysis of the cause of the grievance.
3. Probable winner in arbitration (union, management, or shared award).
4. Policy danger to management, to the union.
5. Importance of the issue to management; to the union.
6. Possibility of a compromise settlement in the circumstances.

The chart concludes with space in which the analyst can indicate how each side is likely to view the alternatives of negotiation or arbitration.

Grievance Causes Item No. 2 in the above list is, of course, the critical point of departure. Here Dr. Lang suggests a number of alternatives that should be thoroughly explored:

1. The grievance arises because there is no direct contractual provision and a "past practice" or implied term or condition of employment is being alleged.
2. The contract is ambiguous, and more than one interpretation is possible.
3. There is an alleged failure to implement the clear language of the contract.
4. There is an alleged failure to follow a prescribed process.
5. There is an allegation of unreasonable, arbitrary or capricious action.
6. Other?

Each side must address these questions not only in terms of its own perceptions of the problem but with a view to understanding how its opposite number will see it.

Importance In assessing the importance of the issue raised by the grievance, the parties should examine these questions:

1. Does it have any economic significance -- involving cost to management or financial loss to the employee or the union?
2. Does it have political significance, affecting the power concerns of administration and/or the union structure?
3. Does the issue reflect general labor relations concerns -- trends in the trade union movement; current bargaining patterns and practises; pressures due to new developments in the university environment?
4. What is the substantive impact on the mission of the institution and/or the union organization?
5. Does the grievance raise the specter of a grave injustice or the violation of prevailing values in society?
6. Would winning be counter-productive, leading to consequences that are more destructive than any conceivable settlement?
7. Other?

Theoretically, the importance of the issue, as explored in these questions, would determine the vigor with which the grievance is pursued. An additional factor, however, must be taken into account -- the feelings that people attach to the problem. Logic may say the matter is trivial, but fear, pride, sympathy and similar emotions may push the parties down the long, hard furrow.

Possible Compromise Settlement comes easier when there are possible alternatives within alternatives; it is much more difficult when the only answer is Yes or No -- for example, in a case involving reappointment. Dr. Lang indicates that ingenuity has room to operate in these circumstances:

1. When multiple factors or issues are raised (you give one and take one).

2. When the issue involves a qualitative element, such as dollar amounts, vacation days, work load, etc. In such cases, one can often "split the difference" or work out another compromise.

3. When the case is relatively unimportant to one side or the other. It can then be used to facilitate give-and-take in cleaning up a batch of pending grievances.

4. When one side is fairly certain it will lose if the issue goes to arbitration.

No Precedent The desirability of achieving settlements at the lower levels of the grievance procedure is generally acknowledged. As long ago as 1945, President Truman's National Labor-

Management Conference, in its recommendations on grievance handling, urged the following: "Management and Union should encourage their representatives to settle at the lower steps grievances which do not involve broad questions of policy or of contract interpretation and should delegate sufficient authority to them to accomplish this end."

Such a policy is practical if the parties are agreed that no binding precedents result from lower-level settlements. Neither management nor the union can afford to abdicate its responsibility: the administration does not want to authorize encroachments on its management rights, nor does the union want to be charged later with a waiver of any employee rights, on the basis of settlements made informally or by subordinate personnel.

One way of avoiding this is by so stating in any record of settlement. A more effective and time-saving method is to include explicit language in the contract to this effect: "Any settlement, withdrawal or disposition of a grievance in Steps (as enumerated) shall not constitute a binding precedent in the settlement of similar grievances."

The fact that a collective bargaining agreement sets up formal machinery to resolve disputes does not mean that the ordinary human relations practices of adjusting minor conflicts must be abandoned. Indeed, the knowledge that a long and tortuous process has been provided should serve as an incentive for the parties to settle issues informally whenever possible.

#### RIVALRY AMONG THE UNIONS

As the economic clouds hover over higher education, the struggle between the competing faculty associations can be expected to intensify. This is particularly true in the public institutions. During the past year a few strikes helped to dramatize the reality of faculty unionization, but the major fact of campus life was the shrinkage in university budgets and the tacit recognition by most faculty union leaders that significant salary increases are remote.

Theoretically such a situation would seem to call for "closing ranks," but the reality in union history has always been that recession does not unify employees. Instead, the resulting frustrations tend to multiply frictions and sharpen points of difference. Thus, during 1978, faculty bargaining organizations stepped up their competition with each other.

Battle Scenes On the East Coast, the National Education Association challenged the right of the American Federation of

Teachers, AFL-CIO, to continue to bargain for the faculty at the 32-campus State University of New York. The vote, after a hard-fought campaign, sustained the AFT affiliate, the United University Professions.

On the West Coast a coalition of the American Association of University Professors, the National Education Association and the California State Employees Association threw down the gauntlet to the United Professors of California, the result of a merger of the Association of California State College Professors with the AFT unit.

Thus the two largest systems of public higher education became the battleground between unions. The New York situation was influenced, in part, by the possibility that the City University of New York, whose faculty is represented by the AFT, might be merged or attached in some novel arrangement to SUNY because of the financial plight of the City. The California rivalry was intensified by the new legislation authorizing collective bargaining on the public campuses. (See "California's New Law," National Center Newsletter, September-October 1978, Vol. 6, No. 4, pp. 6-7.)

Issues What kinds of issues are raised in the organizing and election campaigns involving rival faculty unions?

Obviously, each group contends that it is better equipped to serve the interests of the people in the bargaining unit. But part of the fervor with which the contest is conducted depends also on the past rivalry between the organizations. Even where local chapters have had no history of their own, the organizers sent in by the national body are well aware of the long-range pattern and reflect the bitterness of past wars.

In the exchanges that constitute the campaign propaganda, these tend to be the divisive issues most frequently raised:

1. Professional emphasis vs. union orientation. Some faculty groups stress that they are primarily professional associations concerned with the standards of the profession. Others see themselves

as comparable in most respects to trade union organizations that address themselves largely to economic interests. Of course, all of the competitors assert a concern in both areas; the issue is primarily a matter of emphasis.

2. The bargaining unit. While most organizations favor the largest possible bargaining unit because of their desire for members, there may be a difference in the type of personnel considered most desirable. Some groups think predominantly in terms of the full-timers and have less concern about part-timers, instructors in non-tenurable ranks or support personnel like librarians, technicians, graduate fellows, registrarial personnel, etc.

3. Independence. While all organizations are interested in a national affiliation, relationship with the general labor movement has been hotly disputed. In public institutions, especially, identification with the AFL-CIO has aroused much argument.

4. Tactics. The issue here is the relative militancy of the organizations. Historically, some groups started as a lobbying agency, others as unions planning to use the whole arsenal of labor pressure -- picket lines, strikes, job actions, etc. In recent years, however, virtually every teachers' organization, regardless of its origins, has accepted the possibility of strike activity. But the question of militancy is still raised.

5. Attitude towards administration. Some organizations, again because of past history, have shown a greater community of interest in dealing with administrators who, in most cases, came out of the ranks themselves. Other organizations take the view that administrators must be kept at arm's length and treated as agents of the employer.

6. Personalities. The campaigns frequently involve characterizations of the leadership. It is in the nature of academic bargaining that it should propel highly articulate and forceful individuals to the fore. They themselves become issues.

## THE STRIKE PICTURE

No strikes were reported in effect as the 1978 year came to a close. The seven strikes in the State of Michigan were all settled, although several issues are still involved in litigation arising out of the strike at Lansing Community College.

A tri-partite mediation panel was successful in bringing the strike at the

University of Bridgeport to a conclusion. Governance and shared authority, two major issues involved in the strike, were resolved by the inclusion of the AAUP Statement of Government of Colleges and Universities, in the contract, but issues arising from these provisions will not be subject to the grievance procedure.

## NEWSWORTHY EVENTS

### Contracts and Settlements

Adelphi University, N.Y. faculty and administrators settle 3-year contract... first within jurisdiction of 2nd Circuit Court of Appeals since it ruled July 31 that labor laws do not cover Yeshiva faculty. Higher Education Daily, 3-4, Sept. 7, 1978.

Eastern Michigan University faculty ratify contract that gives 600 faculty members who participated in week-long strike at Ypsilanti campus amnesty from reprisals by administration. Higher Education Daily, 3-4, Sept. 26, 1978.

Faculty and staff at Florida's nine state universities have approved new 3-year collective bargaining agreement. The Chronicle of Higher Education, 2, Aug. 14, 1978.

Co-ordinated bargaining is set up for faculty of University of Massachusetts, Massachusetts state college system, Community College System, and University of Lowell, whereby economic matters are bargained by Office of Employee Relations and non-economic matters by individual boards of trustees. Government Employee Relations Report, 771: 20-21, Aug. 7, 1978.

Graduate assistants gain first pact at University of Oregon after a year of negotiations. Government Employee Relations Report, 787: 20, Nov. 27, 1978.

### Court Cases

Yeshiva University Faculty Association file for writ of certiorari. The Supreme Court is not expected to rule on this until Spring of 1979.

### Discrimination Issues

Two male professors sue Northern Illinois University claiming discrimination in salaries. Higher Education Daily, 3, Aug. 31, 1978.

### Elections and Bargaining Units

Trustees of Boston University (1-RC-15469; 236 NLRB No. 199), Boston, Mass., July 14. Weekly Summary of NLRB Cases, W-1608, July 19, 1978. Unit of professional librarians at Mugar Memorial Library constitute group with sufficient community of interest to warrant unit which excludes librarians at other libraries in Boston University.

Adjunct faculty at C.W. Post Center on Long Island form union ... NEA affiliate certified as bargaining agent. Higher Education Daily, 5, Oct. 18, 1978.

Unions representing faculty members at 13 New York community colleges vote to affiliate with NEA, one affiliates with AFT, following dissolution of Association of Community Colleges Faculties. The Chronicle of Higher Education, 2, Oct. 30, 1978.

State of New York, at PERB hearing, questions whether interns and residents at state university should belong to union, an issue related to the SUNY representation campaign. Higher Education Daily, Sept. 1, 8, 1978.

State University of New York staffs at 32 campuses vote to keep AFT's United University Professions as against the New York Educators Association. New York Times, Dec. 26, 1978.

University of Colorado faculty members reject collective bargaining in 4-campus referendum sponsored by faculty council...rejected in election in 1975. The Chronicle of Higher Education, 2, Dec. 18, 1978.

#### Faculty Organizations

Federal judge rules University of Missouri cannot deny faculty union use of campus facilities for meetings...in case where university allowed AAUP to meet on campus, as professional organization, but denied same to NEA. Higher Education Daily, 1, Sept. 27, 1978. (Also in Labor Relations Reporter, Decisions of the Courts, 99 LRRM, 2570-78, Oct. 9, 1978.)

NEA's check-off to fund its Political Action Committee ruled illegal by U.S. District Court (D.C.)...used on campuses in 16 states. Higher Education Daily, 5, July 27, 1978. NEA directed by court to refund political contributions. Government Employee Relations Report, 787: 8-9, Nov. 27, 1978.

#### Legislation

Bill extending collective bargaining rights to 90,000 academic and non-academic members of California's public 4-year colleges and universities was signed by Governor. New law takes effect next July 1. The Chronicle of Higher Education, Sept. 11, 1978.

University of Colorado's Board of Regents rescinds 4-year commitment to "encourage collective bargaining by faculty." Since Colorado has no legislation on granting bargaining rights to faculty, the Regents' decision is

important. The Chronicle of Higher Education, 2, Sept. 18, 1978.

#### Research in Progress

Case study of impact of centralization and collective bargaining on campus autonomy, at University of Hawaii.

Higher Education Research Institute to study impact of faculty collective bargaining on higher education personnel policies, particularly tenure and retirement (Ford Foundation).

Research on academic organization and governance at Yale University (Ford Foundation).

#### Scope of Bargaining

Central Michigan University Faculty Association, affiliate of NEA, awaits state Supreme Court ruling on appeal of decision that evaluation process is not proper subject of collective bargaining. Union appealed to overturn decision of Michigan Employment Relations Commission. Higher Education Daily, 4, Sept. 12, 1978.

New York PERB reiterates view that collegiality is non-mandatory subject of negotiations in case in which Onondaga Community College faculty sought to establish governance procedures as mandatory bargaining subject. ACBIS Fact Sheet, #24, Aug. 1978.

#### Strikes

Michigan court orders striking faculty at Ferris State College back to class. Faculty at Kellogg Community College, Michigan, return to class after similar court order forced them back to bargaining table. Higher Education Daily, 3-4, Sept. 14, 1978.

University of Bridgeport, Conn., striking faculty return to class after 16-day strike, with unresolved issues submitted to nonbinding mediation panel. Higher Education Daily, 4, Oct. 12, 1978.

Strikes settled on four campuses (City Colleges of Chicago, Eastern Michigan University, Henry Ford Community College, Wayne State University)...Lansing Community and Schoolcraft College faculty on strike. The Chronicle of Higher Education, 14, Oct. 2, 1978.

Tenure

Faculty censures president at Rockland Community College, N.Y., for "unethical" firings of eight faculty members, seven of whom were tenured. The Chronicle of Higher Education, 2, Nov. 10, 1978.

Board of Trustees of the University of the District of Columbia adopts tenure policy opposed by faculty. The Chronicle of Higher Education, 2, Oct. 30, 1978.

Workload

Texas State Coordinating Board for Higher Education orders 31 public colleges and universities to report faculty workload as required by higher education appropriations act. The Chronicle of Higher Education, 2, Aug. 7, 1978.

UPDATE OF COLLECTIVE BARGAINING DIRECTORY

The following data provide the latest addenda to the National Center's Directory of Faculty Contracts and Bargaining Agents issued in February 1978 and updated in each Newsletter.

New Bargaining Agents:

<u>Institution</u>	<u>Affiliation</u>	<u>2/4 Year Institution</u>
<u>Connecticut</u>		
Connecticut Community College System	Indep.(AFSCME)	2
<u>District of Columbia</u>		
University of the District of Columbia	NEA	4
<u>New York</u>		
*Ithaca College	NYSUT	4
*Long Island University-Brooklyn Center		
College of Pharmacy	AAUP	4
State University of New York	UUP/AFT(Re-elected)	2/4

New Contracts Received at National Center:

<u>California</u>			<u>Expiration Date</u>
San Diego Community Colleges	NEA	2	6/30/80
San Jose Community College District	NEA	2	6/30/79**
<u>Connecticut</u>			
*University of Bridgeport	AAUP	4	8/31/81

\*Private institution

\*\*First contract between parties

New Contracts Received at National Center (continued):

Expiration  
Date

Florida

Florida State University System	AFT	4	6/30/81
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Illinois

College of Lake County	AFT	2	8/10/80
Triton College	Indep.	2	6/30/81
William Rainey Harper College	AFT	2	6/30/79

Iowa

*College of Osteopathic Medicine and Surgery	AFT	4	6/30/81
Iowa Lakes Community College	NEA	2	6/30/80

Maryland

Community College of Baltimore	AFT	2	6/30/80
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Massachusetts

*Endicott College	NEA	2	9/1/80
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Michigan

Wayne County Community College	AFT	2	8/31/81
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New Jersey

Atlantic Community College	NEA	2	6/30/80
Bergen Community College	NEA	2	6/30/80

New York

*Adelphi University	AAUP	4	8/31/81
Cayuga County Community College	NEA	2	8/31/82
City University of New York	PSC/AFT	2/4	8/31/80
Orange County Community College	NEA	2	1979
*Utica College of Syracuse University	AAUP	4	8/31/81

Oregon

University of Oregon Teaching Assts.	AFT	4	(Have new Contract not received at National Center yet)
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Vermont

*Goddard College	AFT	4	9/1/80
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\*Private institution

\*\*First contract between parties

New Contracts Received at National Center (continued):

Expiration  
Date

Virginia

*Marymount College of Virginia	NEA	4	8/31/79
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Washington

Shoreline Community College	AFT	2	6/15/81
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\*Private institution

\*\*First contract between parties

NATIONAL CENTER NOTES

The National Center's Workshop on Grievance and Arbitration will be held on February 14, 15, 16 in San Francisco. Hands-on experience with contract administration will be featured. The workshop will analyze optional grievance-arbitration processes and contract clauses; grievance investigation; determination of efforts at settlement; and how to prepare and present a case.

Joel M. Douglas has assumed the Directorship of the National Center, effective January 1, 1978. Dr. Douglas, formerly Associate Director, replaces Dr. Theodore H. Lang who served as Director from 1976-1978 and who is returning to his duties in the classroom at Baruch College.

Dr. Douglas, on assuming office, pledged to continue the past program of workshops and conferences and to launch new projects emphasizing research in hitherto unexplored areas of university bargaining.

**REGISTRATION FORM**

MAIL TO: Dr. Joel M. Douglas, Director, The National Center for the Study of Collective Bargaining in Higher Education, Baruch College-CUNY, Box 322, 17 Lexington Avenue, New York, N.Y. 10010, (212) 725-3390

**Registration Fee**

The registration fee for members of the Center is \$170, and \$195 (U.S. currency) for non-members, and includes tuition, course materials and lunches. Sleeping accommodations, breakfasts and dinners are not included. Checks should be made payable to: NCSCBHE-Baruch College.

Information and assistance with hotel accommodations will be sent upon receipt of registration.

Registrants whose applications have been confirmed and who fail to attend are subject to a \$25 service fee unless cancellation is received at least one week prior to Workshop.

Check enclosed.       Bill me.

Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Institution \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_

If more than one reservation, attach list of other persons, including similar data to that requested above. Fee for second non-member from same organization is \$170.

CHE/1/15/79

NATIONAL CENTER NEWSLETTER

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