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

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The National Center for the Study of Collective Bargaining in Higher Education

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Newsletter

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ROLE OF THE TRUSTEES IN 4-YEAR COLLEGES

Whether all would agree that the college board of trustees is "the high official of the conscience of the culture," as one writer has put it, the fact remains that ultimately it must accept responsibility as the policy-maker for the institution. The advent of collective bargaining in higher education has not only complicated the board's tasks but has imposed restrictions on its freedom of action.

How deeply involved the trustees become in the actual negotiations is a matter for individual decision, based usually on such factors as the availability of specialists, their own feeling of competence in labor relations, confidence in the administrators, etc. Frequently, the board confines its collective bargaining activities to designating a bargaining team and laying out general guidelines for the negotiators; it may receive progress reports and confer from time to time with its negotiators; it may involve itself in public relations as deemed appropriate; and it may enter into more direct participation in the event of an impasse.

Contract administration is no less important than the negotiation of the contract, but here boards of trustees tend to play a much less significant role. Yet most faculty contracts, in one way or another, impose limitations on the board's authority.

To evaluate the impact of collective bargaining on the board of trustees' powers and activities, the National Center has reviewed references to the board in 124 contracts.

Private Universities Among the contracts governing private colleges and universities, sixteen contain references to the board of trustees. The details vary from the mere reference to the board of trustees in the definition clause (e.g., in the Wagner College contract), to a more elaborate specification of the tasks of the trustees (e.g., the Columbia University and Jamestown University contracts). These references do not lend themselves to tabulations and charts, but two major areas can be discerned as the domain of the board of trustees in decision making:

1. Personnel Decisions Most of the contracts give the board final decision in faculty appointment, reappointment, promotion and tenure. Even where the concurrence of the faculty is called for (e.g., the St. John's University contract), the final determination is still the board's prerogative. There are some indications, however, that this prerogative may be eroding.

At Hofstra University, the contract provides machinery for overriding board decisions on appointment, reappointment, promotion and tenure. The University Faculty Personnel Board forwards to the university provost its own evaluation and recommendations in these matters. If the president or the board of trustees rejects the recommendations of the University Faculty Personnel Board, the issues are submitted to the University Appeal Board which renders the final and binding decision.

At Rider College the tenure granting power is vested in a tenure committee rather than in the board of trustees. Denial of tenure may be appealed to the Trustees Appeal Committee, established and manned by three to five members of the board, which renders a final decision. Faculty promotions are handled by a college wide promotion committee. Appeals for promotion may be submitted to a Promotion Appeal Board, and a majority vote of four is required to overrule a denial of promotion.

2. Retrenchment The board is usually the body that makes the hard decisions to retrench. Most contracts require that the administration demonstrate the need for retrenchment. The contract at Long Island University, Brooklyn Campus, stipulates: "The financial exigency must be demonstrable, bona fide, and reaching the proportion of a compelling crisis threatening the immediate survival of (the University) as a whole."

At Hofstra the union, by virtue of the contract, is given a right to be heard in the retrenchment decisions. The contract provides: "Any proposal by the Administration to reduce the size of the faculty ... shall be submitted in writing to the (union) as soon as possible after the proposal is

formulated. The (union) shall have the authority to inquire into the entire matter and within reasonable time make recommendations to the President and the Board of Trustees. The President and the Board of Trustees shall give great weight to the recommendations of the (union), and in no event, shall they reach a decision which is arbitrary and capricious."

Classroom Visitation While the main function of the board of trustees is to formulate policies and make decisions, the "open classroom" concept at Rider College has led the board members to seek the right to visit classrooms, providing an opportunity to make at least informal observations. The contract says: "Persons holding academic rank at Rider College or members of the Board of Trustees shall be welcome to visit classes and such visitors shall deserve the professional courtesies and amenities of the academic environment and shall always honor the integrity of the classroom."

While classroom visitations and observations are accepted as routine for evaluation purposes, the concept of the "open classroom" appears to be unique to this college. No data are available to the Center as to the results in actual practice.

Public Universities Fourteen contracts at four-year public universities are found to contain references to the board of trustees. In contrast to the contracts of private universities, these present a mix of different requirements imposed upon the board.

Providing Information Eight of the contracts deal briefly with the board's functions. Most require the board to advise the union of its meeting or furnish it with pertinent information, such as the agendas of the meetings, approved minutes, or other information that may be required for the negotiations or the implementation of agreements.

The exchange of information clause in the Oakland University contract states: "(The board of trustees) shall make available to the (Union), within a reasonable time after receiving a request, all information which is reasonably required or legally necessary for

the negotiation and implementation of a collective bargaining agreement."

Board Control Other contracts recognize the power and authority of the board to establish, change or eliminate policies. Thus, the Delaware University contract recognizes that the board of trustees has "undiminished power and authority to establish, change or eliminate policies."

In contrast to the eight contracts described above, the remaining six go into considerable detail on the functions of the board. In addition to the appointment of faculty or granting of tenure, there is referral to exceptional decisions, such as approval of cross-campus transfer without loss of rights; sabbatical leave;

leave without pay; and sick leave beyond the normal accumulation.

An unusual provision is included in the contract of Southeastern Massachusetts University limiting the power of the board of trustees to make appointments on its own initiative. All recommendations for reappointments must be brought to the board by the President, but the contract provides: "The board shall enjoy its full right to reject such recommendation but may not make appointments without a recommendation from the President." The clause may be interpreted as a gesture aimed at providing a more harmonious working relationship between the board and the union, with the President as a middleman.

NLRB'S CAMPUS JURISDICTION CHALLENGED

University administrations and faculty collective bargaining agencies are watching with unusual interest the battle that is shaping up between Boston University and the National Labor Relations Board. The outcome is certain to clarify the authority of the Board in enforcing mandatory collective bargaining in private colleges.

According to the Chronicle of Higher Education, Boston University is challenging the Board's right to determine the following questions: the inclusion of part-time faculty in the same unit as full-timers; inclusion of department chairmen; rules governing the conduct of the representation election; whether the bargaining unit must include professional along with nonprofessional schools; whether Congress intended that the Act should cover private colleges.

NLRB's Functions The National Labor Relations Act assigns two basic functions to the Board: (1) to resolve issues of "unfair labor practices" as defined in Sec. 8; and (2) to determine questions concerning representation as described in

Sec. 9. Ordinarily the courts refuse to review the Board's judgment in representation cases.

The assumption is that Congress created the Board in the belief that such issues could best be resolved, and strikes affecting interstate commerce avoided, if a body of experts applied their special knowledge to the infinite variety of circumstances that prevail in employer-employee relationships.

The General Rule The general principle involved in representation cases is summarized in Labor Relations and the Law, (2d Edition, edited by Donald H. Wollett and Benjamin Aaron, Little, Brown and Co., pp. 124-5) as follows: "In general, Board actions in representation proceedings have been considered not subject to direct judicial review. Sections 9(d) and 10(c), (e), and (f) have been interpreted as providing for such review by the Court of Appeals only when enforcement is subsequently sought of an order by the Board in an unfair labor practice case (usually refusal to bargain) developing from the representation proceeding in question. The courts have, on the whole, accepted this position,

considering the statutory method of review exclusive (rejecting the claims of direct reviewability under Section 24(8) of the Judicial Code), and recognizing that judicial 'interference' in representation proceedings would tend to delay and disrupt the processes of collective bargaining. Occasionally, however, injunctions have been granted by federal district courts against Board representation actions where adversely affected unions or employee groups have sought such relief -- with the distinction that such groups, unlike employers, will not have a subsequent opportunity for judicial review of a Board 'refusal to bargain' order.

"This matter of direct judicial review of representation actions by the Board was thrown into new uncertainty by the Supreme Court's decision in *Leedom v. Kyne*, 358 U.S. 184 (1958). In this case the Board had certified a unit consisting of both professional and nonprofessional employees, and in so doing had rejected the claim of the professional employees that they were entitled under Section 9(b)(1) of the Act to exclude themselves by their own majority vote from a unit which also included nonprofessional employees. The professional employees successfully challenged the Board's action...."

The Exceptions In that case, with two of the justices dissenting, the Supreme Court held (at p. 188) that the NLRB's order was "in excess of its delegated powers and contrary to a specific prohibition in the Act." In a subsequent case, *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963), the Court ruled that the Board had improperly attempted to take jurisdiction over seamen on vessels flying

foreign flags. It said (at p. 15): "While here the Board has violated no specific prohibition in the Act, the overriding consideration is that the Board's assertion of power to determine the representation of foreign seamen aboard vessels under foreign flags has aroused vigorous protests from foreign governments and created international problems for our Government. But the presence of public questions particularly high in the scale of our national interest because of their international complexion is a uniquely compelling justification for prompt judicial resolution of the controversy over the Board's power. No question of remotely comparable urgency was involved in *Kyne*, which was a purely domestic adversary situation. The exception recognized today is therefore not to be taken as an enlargement of the exception in *Kyne*."

The Odds Boston University will face the burden of having to demonstrate that a private college either comes within the exceptions, or that it does not fall within the category of enterprises deemed to "affect commerce."

Wollett and Aaron's general conclusion on the difficulty of judicial review is summed up (p. 399 n.) as follows: "It should be noted that, since the statute commits to the Board's discretion the job of determining unit questions by weighing and evaluating facts against broad and nebulous standards, optimism over the possibility of obtaining a reversal of a Board determination of a unit question on the merits is seldom justified."

PART-TIME FACULTY IN 2-YEAR COLLEGES

The National Center's survey of contract clauses dealing with part-time faculty in four-year colleges showed considerable variation in the definition of part-time faculty; the numerical restrictions of part-time faculty through the use of part-time/full-time faculty

ratios; and concern over job security. (See Newsletter, Jan.-Feb. 1977.) This follow-up survey of contracts in two-year colleges had two objectives:

(1) To determine the extent to which part-time faculty is included in the bargaining unit; and (2) To examine the

contract references to part-time faculty, thus providing a basis for comparison with the four-year colleges.

The data were obtained principally from the recognition clauses in contracts available in the National Center library; the print-outs from our computerized contract data bank provided the comparative material. Contracts received by the Center since September 1976 are not included in the comparative study.

Bargaining Unit Recognition clauses in 139 contracts governing two-year colleges were examined. Contracts of university systems that include both two and four-year colleges (e.g., City University of New York and Fairleigh Dickinson University) are omitted here since these clauses were included in the previous survey. The number of contracts covered in this survey comes to approximately 87% of all (158) negotiated contracts, using the latest tabulation in the National Center's Directory of Contracts, April 1977.

Table 1 shows the number of contracts that include and exclude faculty in the bargaining unit as specified by the recognition clauses. Approximately one half of the contracts in this survey (71 out of 139) do not consider part-time faculty as members of the bargaining unit. The exclusion is achieved either explicitly or by means of the definition of the coverage. (See page 6.)

In the former case, the recognition clauses specifically state that the part-time or adjunct faculty are excluded from the bargaining unit. In the latter case, the contracts typically recognize the faculty association to be the exclusive bargaining representative for "all full-time faculty."

That the part-time faculty is left out of the recognition clause does not mean that the presence of part-time faculty is ignored. A contract which excludes the part-time faculty may nevertheless deal in detail with related issues concerning the part-time faculty such as the hiring and salary schedule of part-timers (e.g., the Macomb County Community College contract).

About 43% (59 of 139) of the contracts surveyed expressly include part-time faculty in the bargaining unit. The recognition clauses can be classified into three broad categories: (1) those specifying that part-time faculty are included in the unit; (2) those that merely refer to "all" faculty members; and (3) those that indicate inclusion in the bargaining unit is contingent upon the load they carry.

Most of the contracts in the third category require that the part-time faculty member carry a load of at least one half -- sometimes 60% -- of the normal teaching schedule. Others specify the minimum number of credits, for example, eight equated hours in the Alpena Community College contract. The Kellogg Community College contract requires perhaps the least load, excluding only faculty with less than a one-third load.

Attached to the privilege of belonging to the bargaining unit may be a duty to pay union dues or representation fees, with delinquency resulting in termination of employment. Most contracts do not contain anything more stringent than asking the faculty members in the unit to pay the dues or representation fees. The contract at Charles Stewart Mott College provides that the union is to remind delinquent faculty members to pay their dues, and non-complying part-timers are not to be rehired in the following semester, unless they pay up fifteen days before the end of classes in any given semester.

For the most part, contracts in two-year colleges are similar to those in four-year colleges. The diversity in definitions of part-time faculty, the restrictions on the number of part-time faculty members and the concern for job security, which were found among the four-year college contracts, are also present among the two-year college contracts.

Definitions The following are examples of how part-time faculty members in two-year colleges are defined: less than eight contact hours (Henry Ford Community College); two-thirds or less of normal work load (Seattle Community College); not greater than two courses or equivalent (Westchester Community College).

Table 1

Exclusion/Inclusion of Part-Time Faculty in
Bargaining Units of Two-Year Colleges

	<u>Exclusion</u>		<u>Inclusion</u>			<u>Total</u>
	<u>Explicit</u>	<u>By Coverage</u>	<u>Explicit</u>	<u>By Coverage</u>	<u>Contingent</u>	
NEA	9	25	11	11	4	60
AFT	6	20	3	14	5	48
ACCF	1	5	3	3	0	12
Ind.	1	2	1	2	1	7
AAUP	0	2	0	1	0	3
	<u>17</u>	<u>54</u>	<u>18</u>	<u>31</u>	<u>10</u>	<u>130</u>

Total exclusion 71; total inclusion 59. Nine contracts do not contain recognition clauses, or the recognition clauses are vague as to whether part-time faculty are included in the unit.

Restrictions on Hiring Limitations are imposed either on a college-wide or departmental basis.

Thus, the Oakland Community College contract specifies that the number of part-time faculty "on the campuses in any session shall not exceed thirty-five (35%) percent of the full-time faculty head count of the college."

Using a departmental basis, the Middlesex Community College contract states that "adjunct personnel shall not be employed to teach in the first semester more than twenty four (24) contact hours in any department, nor shall adjunct personnel be employed to teach in the second semester more than eighteen (18) hours in any department...."

Job Security Part-timers obviously have lesser status. The contracts tend to give assurance of employment and continuity of service to full-time faculty in the event of retrenchment as against part-timers.

Thus, the Williamsport Area Community College and Milwaukee Community College contracts give priority to retrenched full-timers in the hiring of part-timers. In the case of Williamsport Area Community College, the retrenched full-timers are considered part-timers so long as they teach less than 80% of the maximum load.

Sometimes, the effort is made to assure service continuity to full-timers who are reduced to part-time loads. The Minnesota Community College contract provides that "an unlimited (continuous service) full-time employee who is placed in a temporary part-time status shall not be considered to have had a break in service during the period of part-time status."

Salaries and Benefits An additional type of contract clause is worthy of consideration in that it seems to be included in two-year college contracts to a greater extent than among four-year college contracts. These clauses relate to salaries and fringe benefits for the part-timers. Among the benefits that may be provided for part-timers are the following:

Faculty members carrying a load of three-fifths to five-fifths at Belleville Community College are eligible for "(1) prorated sick leave, (2) full hospitalization and disability, and (3) placement on the salary schedule on a prorated basis." Similar provisions can be found in the Minnesota Community College.

The Wenatchee Community College contract makes a distinction between three categories of part-time faculty members: those who are contracted for a full load for one quarter, those who are annually contracted for less than a full load, and all other part-time employees. The part-time faculty members in the first two categories receive their salary from the annual salary schedule on the prorated basis, while those in the second category receive their salary from the part-time salary schedule.

Among the clauses protecting the interests of full-time faculty are those that fix the salaries and benefits of full-timers above the levels for the part-time faculty. Many contracts prohibit paying for a full workload at part-time rates. Thus, the Somerset Community College contract states that "a faculty member shall not be assigned a full-time teaching load to be compensated on the basis of a part-time salary schedule."

The Macomb County College contract states, "Salary for part-time teaching shall be set high enough to constitute employment competition but not so high as to constitute discrimination against teachers in the bargaining unit."

The Triton College contract extends the coverage further to compensation for overload and summer teaching by specifying that "at no time will a full-time instructor be issued a contract at a rate less than that paid to a part-time instructor." In the area of fringe benefits, the Joliet Junior College contract states that "no part-time instructors shall receive benefits greater than those granted to full-time faculty.

Issues for the Future About one-half of the two-year college contracts do not cover the part-time faculty. For the most part

the two-year college contracts do not show any pattern different from the four-year college contracts, except for certain clauses that may be interpreted as favoring the full-time faculty in matters related to salary and fringe benefits.

An implicit understanding which pervades both two-year and four-year college contracts is the lesser status of the part-time faculty. In the event of retrenchment the part-time faculty members are the first to go. A regular part-timer who has been teaching for a number of years is sometimes given preference over part-timers with fewer years of service. The Westchester County Community College contract provides for a priority list so that part-timers with 14 or more semesters of service receive consideration for part-time employment before a full-time instructor who requests an overload.

Part-timers argue that they should receive salary and fringe benefits in direct proportion to those of full-timers. They point out that they have been receiving less than equal treatment all along. For instance, even where part-time faculty members are entitled to sick leave they may be denied personal leave allowed to full-timers. In response, it is argued that the part-time faculty members are usually exempt from departmental chores and committee work.

Some part-time faculty members have sought to avoid dependence on the full-time faculty contract by organizing separately and negotiating for themselves. This resulted, for example, in a contract, signed in 1973, between the Adjunct Faculty Association and the Nassau County Community College. To date, however, this has remained a special case.

LAST YEAR'S CONFERENCE PROCEEDINGS

Readers of the Newsletter will be interested in knowing that the Proceedings of the Fourth Annual Conference of the National Center, held in 1976, is now off the press at a cost of \$7.00. This should not be confused with this year's Conference just held.

The contents include the following papers and addresses:

Welcome and Keynote Address -- by
Clyde J. Wingfield

Faculty Unionism and the Threat
to American Public Higher Education --
by Martin J. Morand.

Academics and Collective Bargaining --
by Seymour Martin Lipset.

State and Federal Legislation --
by Edward P. Kelley, Jr.

In Anticipation of the Coming of Age
of Community College Collective Bargaining --
by Ray A. Howe.

Community Colleges and the Conundrum
of Collegiality -- by Harold E. King.

Students and Academic Collective
Bargaining -- by Kathleen Brouder

State Government and Higher Education
Under Faculty Bargaining -- by
Kenneth P. Mortimer

Collective Bargaining and the Growing
Crisis in Higher Education: A Faculty
Perspective -- by David W. Shantz.

The Scope of Bargaining and Its Impact
on Campus Administration -- by
J. Victor Baldrige

COMPUTER SEARCHES NOW AVAILABLE

An invaluable aid at the bargaining table, for both sides, is a compendium of clauses that other negotiators have arrived at. These may be used as original proposals or as counterproposals, as the circumstances may warrant. Manual searches can also be prepared on request to meet individual needs.

The National Center's computerized Elias Lieberman Contract Library now has available print-outs of contract clauses under the headings listed below.

Current Contract Data Base Printouts drawn from current contracts are immediately available, at \$50 per topic, in the following areas:

Academic freedom
 Academic judgment, observation, visitation, evaluation
 Agency shop, union shop, dues check-off
 Arbitrability exclusions
 Collegiality
 Copyright, patent, royalties
 Department chairpersons
 Dismissal
 Due process
 Equity, Inequity
 Fellowship/Graduate assistants/
 Research assistant/Grants
 Fiscal crisis, financial exigency
 Grievance/arbitration
 Layoff
 Librarians
 Longevity
 Long-range planning
 Management rights
 Maternity/Paternity, Parental leave
 Merit pay
 Nurses
 Outside employment
 Part-time faculty
 Past practices
 Pensions, pension plan, TIAA/CREF
 Program elimination
 Promotions
 Recognition
 Rehire, reinstatement
 Retirement, (early)

Retrenchment
 Salary Schedules
 Seniority
 Split-appointment
 Student role
 Summer Salaries
 Tenure
 Travel funds
 Trustees
 Tuition remission
 Workload, overload, productivity, class size
 Zipper clause

Expired Contract Data Base Printouts drawn from expired contracts are immediately available, at \$25 per topic, in the following areas:

Academic freedom
 Artists
 Cost-of-living
 Day care programs
 Grievance/arbitration
 Hiring
 Insurance
 Librarians
 Long-range planning
 Maternity/Paternity leave
 Merit pay
 Non-reappointment
 Observation
 Part-time faculty
 Past practices
 Personnel files
 Promotions
 Recognition
 Research assistants
 Retroactive
 Rights - Faculty
 Rights - Management
 Salary schedule
 Sick leave
 Summer salaries
 Tenure
 Travel funds
 Trustees

NEWSWORTHY EVENTS

Bargaining Units

Court review of bargaining asked by University of Massachusetts re: inclusion of department chairmen and part-time teachers in bargaining unit. The Chronicle of Higher Education, 5, Apr. 4, 1977.

Contracts and Settlements

Academic Collective Bargaining Information Service completes study of salary and benefit settlements as 19 unionized campuses respond. Academic Collective Bargaining Information Service, Fact Sheet #33, Feb. 1977.

Criticism continues over State University of New York's new contract lay off provisions. Academic Collective Bargaining Information Service, Fact Sheet #35, Apr. 1977; and Chronicle of Higher Education, 14, Mar. 21, 1977.

State University of New York signs 2-year pact with teaching and nonteaching professionals at 34 institutions. Government Employee Relations Report, 700: 17, Mar. 21, 1977.

University of Rhode Island and AAUP reach summer pay agreement. Government Employee Relations Report, 703: 16, Apr. 11, 1977.

Discrimination Issues

Affirmative action suits: one settled at University of Northern Iowa, one suit filed at Michigan State University. The Chronicle of Higher Education, 2, Mar. 7, 1977.

Elections

Faculty may decertify at Central Michigan University. Academic Collective Bargaining Information Service, Fact Sheet #33, Feb. 1977.

Pennsylvania State University faculty reject unionization by big margin. Government Employee Relations Report, 703:14, Apr. 11, 1977.

Graduate Assistants

Graduate assistants at Syracuse University English Department protest workload. The Chronicle of Higher Education, 2, Feb. 14, 1977.

University of Oregon graduate assistants win bargaining rights. Graduate assistants have unionized at University of Michigan and University of Wisconsin at Madison. Unionization rejected at University of Minnesota. The Chronicle of Higher Education, 2, Mar. 7, 1977.

Internal Union Affairs

AAUP rejects proposal for alliance with NEA -- but talks may be held on other alternatives. The Chronicle of Higher Education, 4, Feb. 28, 1977. (Also in Government Employee Relations Report, 691: 17, Jan. 17, 1977.)

Faculty union in Pennsylvania cuts NEA ties. The Chronicle of Higher Education, 4, Feb. 28, 1977.

NLRB

Boston University challenges NLRB in their continued refusal to bargain with AAUP representatives. Academic Collective Bargaining Information Service, Fact Sheet #35, Apr. 1977.

National Labor Relations Board upholds administrative law Judge's decision that Kendall College administration unlawfully refused to meet and bargain. Academic Collective Bargaining Information Service, Fact Sheet #35, Apr. 1977.

Strikes

Faculty strike, precipitated by break-down in bargaining talks, ends at Connecticut's state technical colleges. Academic Collective Bargaining Information Service, Fact Sheet #35, Apr. 1977.

133 day faculty strike ends at University of Quebec at Montreal. The Chronicle of Higher Education, 4, Feb. 28, 1977.

Service workers end 26 day strike at 3 Michigan campuses. The Chronicle of Higher Education, 2, Apr. 4, 1977; and Government Employee Relations Report, 700:19-20, Mar. 21, 1977.

Stevens Institute of Technology faculty ends strike after 18 days -- with no agreement on contract. The Chronicle of Higher Education, 4, Feb. 22, 1977. (Also in Academic Collective Bargaining Information Service, Fact Sheet #34, Mar. 1977.)

Two Stevens Institute of Technology professors reinstated after dismissal over strike. Higher Education Daily, 2, Apr. 29, 1977.

Other

Alaska union, University ordered into arbitration -- after failing to reach agreement by court-ordered deadline. The Chronicle of Higher Education, 2, Jan. 17, 1977.

Board of Trustees at Kent State University pass resolution to permit student observer during contract negotiations. Academic Collective Bargaining Information Service, Fact Sheet #33, Feb. 1977.

Emerson College in Boston and University of Delaware face faculty-trustee question. Delaware government appoints AAUP leader to Board of Trustees over university objections. Academic Collective Bargaining Information Service, Fact Sheet #32, 33, Jan., Feb. 1977.

NATIONAL CENTER NEWSLETTER

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