1-1-1977

Newsletter Vol.5 No.1 1977

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

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

the City University of New York
17 Lexington Avenue
New York, N.Y. 10010

Newsletter Vol. 5 No. 1 Date Jan./Feb. 1977

Highlights of This Issue

FACULTY UNION ACTIVITY IN 1976

By Joseph W. Garbarino and John Lawler

(Editor's Note. The authors of this review of the events in 1976 are the director and a staff associate of the Faculty Unionism Project, Institute of Business and Economic Research, University of California, Berkeley. The project is supported by the Carnegie Corporation of New York.)

During 1976 about 15,000 faculty and professional staff in higher education chose to be represented by faculty unions for the first time, the highest number since 1971 and the third largest number since faculty unionization began in the early 1960s. At the end of 1976 there were 450 institutions engaged in collective bargaining with about 117,000 faculty and other professionals.

The 1976 record approximately matched the growth in 1975 when more institutions (59 compared to 53) but fewer persons (9,500 compared to 15,000) were added to the totals. Both of the past two years showed a substantially higher rate of growth than the years from 1972-1974. Although the newly organized institutions were about equally divided between two- and four-year colleges, about 70 percent of the faculty added were in four-year institutions. (See tables that follow.)

Election Contests The American Federation of Teachers won the largest election held during the year in the Florida state university system with approximately 5,400 bargaining unit members. The AFT also won representation rights in the second largest election in the Illinois state system of regional universities with some 1,800 members.

The American Association of University Professors won elections in the Connecticut state college system (1,500 faculty and staff), at the University of Connecticut (1,300), and at the University of Northern Iowa (500).

The National Education Association won its largest unit among four-year colleges in the election in the newly formed University of Lowell (300), and the NEA dominated the new community college units added during the year.

An interesting development during the year was the election held in the Illinois

system by voluntary agreement between the governing board and the faculty organizations. This pattern of conducting bargaining elections in the absence of a legal requirement has occurred so far on a substantial scale in Ohio and Colorado in addition to Illinois.

In the community college sector, 1975 saw the beginning of the transition of the massive California community college system to formal collective bargaining status under the Rodda Act. Although few elections had been held in the six months since the law became fully effective at midyear, 14 community colleges had recognized exclusive bargaining agents by the end of the year. The NEA affiliate in California has been designated the faculty representative in most cases. By the end of 1977 most of the 96 colleges are expected to have recognized bargaining agents.

Union Turndowns Rejections of collective bargaining continued at the same relatively high level as in 1975. "No agent" was the choice of the faculty in 18 institutions or about one out of every four elections. Eight of the rejections were in public four-year colleges with three more rejections in private four-year institutions. The most significant rejection occurred in November at the University of Oregon.

Had the 11 rejections in four-year institutions gone the other way, about 8,000 more faculty would have been added to the total organized. Until recent years a rejection by a public institution was a rarity; in 1976, 10 of the 18 were in public colleges.

First Decertification The past year saw the first decertification of a union without the simultaneous replacement by another agent. This phenomenon occurred in New England College where faculty members voted an AFT local out in a 31-30 vote in somewhat controversial circumstances.

There is little reason to regard this as a significant development. On the other hand, the University of Detroit chose a bargaining agent after two earlier rejections.

Outlook The loss of momentum in the spread of public employee collective bargaining generally suggests that the expansion of collective bargaining in higher education will continue its steady growth but will not experience any major upsurge in 1977 with the important exception of the California community colleges.

It is possible that already existing laws may be extended to four-year institutions in states such as California, Washington, or Wisconsin, but past experience counsels caution in the making of predictions.

TABLE 1

Bargaining Activity in 1976

	Institutions Organized	Faculty Covered	Rejections
Two-Year	25	3,100	3
Four-Year	25	11,200	11
Professional Schools	3	470	3
Decertified	(1)	(70)	1
Totals (net)	52	14,700	18

TABLE 2

Cumulative Totals 1975-1976

	Total		Four-year		
	Institutions	Faculty	Institutions	Faculty	Rejections
1975[a]	398	102,300	162	67,300	18
1976	450	117,000	189	78,970	18

[a]The 1975 figures published in Industrial Relations, February 1976 have been revised to reflect results of elections held but not certified at the end of 1975. This added 4 four-year colleges and four rejections to the previous totals. Data for earlier years can be found in the February 1975 issue of this journal. Data are collected by the Faculty Unionism Project, Institute of Business and Economic Research, University of California, Berkeley.

PATTERNS IN GRIEVANCES AND ARBITRATION

By Thomas M. Mannix

The National Center and the American Arbitration Association recently conducted grievance and arbitration workshops, co-hosted by Northeastern University in Boston and Northern Illinois University in DeKalb. In preparation for these workshops, the Center reviewed grievance procedures and arbitration clauses found in 165 of 173 college contracts readily available to the Center at the time of the study.

The review included 121 two-year public colleges, 5 two-year private colleges, 24 four-year public colleges and 23 four-year private colleges. (See Table 1.) The contracts were from 24 states--10 in the East, 8 in the Midwest, and 6 in the western United States.

Grievance Definition Eighty-three contracts defined a grievance relatively narrowly as a claimed violation, misapplication or misinterpretation of the terms of the contract. Eighty agreements defined a grievance more broadly to include not only the terms of the contract but also the by-laws of the Board of Trustees, college policies, and practices. A brief example of a broad grievance definition, found in a Wisconsin contract, reads: "Problems involving dissatisfaction, injustices, or grievances."

Perhaps a more complex but not broader grievance definition was taken from a New York State contract: "... any event or condition affecting welfare and/or terms and conditions of employment including but not limited to, any claimed violation, misinterpretation, misapplication or inequitable application of law, rules, by-laws, regulations, directions, orders, work rules, procedures, practices, or customs of the County and/or Board of Trustees and/or the Chief Executive Officer and/or the administration...."

Many of the reviewed contracts differentiated between a complaint (not an alleged violation of the contract and not arbitrable, but grievable internally), a grievance (an alleged violation of a portion of the contract which was not arbitrable but which could also be grieved internally), and an arbitrable grievance whose final resolution might rest with a binding decision issued by someone outside the college or university.

Arbitrable Limitations Seventy contracts imposed some limits on personnel decisions--appointment, reappointment, tenure, promotion, sabbatical leaves, etc. These contracts either removed such decisions from the purview of an arbitrator by making them grievances only within the college or university structure, or the clauses allowed grievances involving personnel decisions to be arbitrable only as to the procedural aspects of personnel decision-making and not as to the academic judgment component of the process.

The question of whether arbitrators will respect the strictures placed around academic judgments is far from settled. Even if arbitrators do respect the limitations placed on their review powers, faculty unions may bring increased pressures on college managements to open up personnel decisions in completing arbitral review.

The most common limitation on arbitral review was found in 105 of the 165 contracts which had grievance procedures. In these cases, the arbitrator is not permitted to add to, subtract from, or alter the terms of the contract as written by the parties.

Number of Grievance Steps Each grievance procedure reviewed contained several steps. The number ranged from two to seven, with three or four the most common. Most of the agreements referred to the importance of an informal attempt to settle all greivances. Some contracts made the informal-settlement attempt as the first step in the process.

Most agreements, however, called for the filing of a written, formal grievance at Step One only after an informal conference had failed to resolve the issue.

Time Limits The initial time limit for filing grievances varied widely from one college contract to another. Thirty-five clauses required grievances to be filed within 10 days; 73 required initial filing between 11 and 30 days; 14 clauses allowed from 31 to 90 days; 2 allowed more than 90 days; 4 agreements called for a "reasonable" time limit; 20 contracts indicated a time limit but gave no specifics; and 17 clauses did not mention any time limit.

It was not always clear from reading the contracts whether the days referred to in the initial time limit were school days, working days, teaching days, or calendar days. The parties to any given contract probably knew what they meant, but someone who was not intimately connected with the bargaining could be easily confused.

A delay of four to six months may be common from the time a grievance was originally filed until the demand for arbitration was reached. Adding together the busy schedules of arbitrators, a tendency to file lengthy post-hearing briefs, and the normal 30-day period an arbitrator has before his award is due after the close of a hearing, it may well take a year or more to get a final answer. Excessive delay frustrates everyone and works against the basic concept that grievances should be settled expeditiously.

A small number of contracts formally recognize this problem by allowing group grievances to bypass the first two or three steps of the grievance procedure. Another available device, though less frequently used in higher education, is the expedited rules of arbitration developed by the American Arbitration Association. In the few contracts where they are mentioned at all, expedited procedures are usually reserved for discharge cases.

Who May File The contracts reviewed did not clearly distinguish between someone who could file a grievance and someone who could demand an arbitration. In 154 contracts the bargaining agent was allowed to file a grievance. All but one of these contracts allowed an individual to file a grievance, and 124 clauses specifically allowed a

group of employees to file. The college was allowed to file in 19 of the 154 contracts. Eleven agreements contained a grievance procedure but did not identify who could file.

The arbitration trigger was more difficult to assess. A demand for arbitration could be made by 140 bargaining agents and all 19 colleges who could grieve. This 140-agent figure consisted of 90 contracts where the agent specifically might demand arbitration and 50 agreements where the grievant--who could be the agent, an individual or a group of employees--might file for arbitration after exhausting the internal-grievance steps.

As to who could file for arbitration, 21 contracts with arbitration as the final step were silent; 4 contracts with grievance procedures contained a final step that was short of arbitration. The 21 contracts which were silent about who could file for arbitration included 14 where the agent was given the right to initiate a grievance.

Here again, this situation may merely represent imprecise language drafting. The parties may be able to function quite well without any further clarification.

Types of Arbitration Some form of arbitration was the final step in most grievance procedures. Binding arbitration was found in 129 agreements. Advisory arbitration was the final step in 14 contracts. As the final step in the grievance process, 18 other contracts mentioned arbitration; but, there was no indication whether an arbitrator's award was binding or advisory.

Four contracts that had grievance procedures ended with an internal step short of arbitration. Eight contracts did not contain any provision for grievance. More than 97 percent of the college contracts with grievance procedures (161 of 165) contained some provision for arbitration.

Selecting Arbitrators Selection of an *ad hoc* arbitrator from lists supplied by the American Arbitration Association was the most popular single selection provision. The AAA list procedure was used in 122 clauses. A few other contracts provided for *ad hoc* arbitrator selection from the Federal Mediation and Conciliation Service or from state administrative agencies (PERB, PERC, etc.), which are responsible for administering state public employee bargaining laws.

Eleven contracts set up rotating panels of five, six or seven arbitrators. *Tripartite* boards of arbitration were found in five agreements. One college contract named a single arbitrator to handle all the grievances that would be referred to arbitration under the contract.

Twenty-two agreements provided no information on how the arbitrators were to be selected.

Who Pays Of the 161 contracts with grievance procedures and some form of arbitration, 152 required that the parties to a grievance share the cost of the arbitrator equally, with each party paying for the cost of its own arbitration preparation and presentation.

Four contracts required the losing party to pay for the cost of the arbitration.

The contracts which require the losing party to pay for the arbitration may be quite difficult to administer. It is not always readily discernible from many arbitration awards that there was, in fact, a winner and a loser. Arbitration is a method of interpreting contract language. Reducing it to a simple zero-sum situation may be impractical.

Four agreements were silent about how the arbitrator would be paid.

The most unusual cost provision was found in a public, four-year college agreement where the agent was bound to pay one-half of the arbitration cost, but only an individual could file for arbitration.

The Future The use of arbitration as the final step in a grievance procedure is now firmly established. Arbitration has been generally viewed as a final remedy, at least since the Supreme Court's Trilogy decision in the early 1960s. Now, however, affirmative-action cases which are arbitrated may also be heard *de novo* by the courts. This may result in a new approach in writing arbitration clauses.

With experience, college officials will probably lose their initial hesitancy about the reviewing and repairing of mistakes.

Faculty members and union leaders will come to recognize which type of employee complaints are grievable and arbitrable. Other employee complaints, including those that are completely valid as complaints but are simply not violations of the contract, may be handled through other channels.

One intriguing aspect of college grievance clauses is the current limit on arbitral review found in about half of the contracts. In 70 of the 161 contracts with grievance clauses that end in arbitration, personnel decisions, academic or peer judgment questions, are screened from arbitration except for violations that are procedural.

For this to continue, one can predict that the personnel decisions reached under these conditions will have to be supported by the faculty and the faculty unions. If faculty develop frustrations with the merits of appointment, reappointment, non-reappointment, tenure, promotion, retrenchment and other personnel decisions, then pressures will build for removing the limits on arbitral review. This is likely to be the case whether the frustrations are real or imagined, genuine or fabricated. The arbitration experience resulting from contracts that do not limit the arbitrator will be important but probably not controlling. Local faculty satisfaction with their own processes will probably determine the future union demands concerning the scope of the arbitrator's power.

TABLE 1

Contracts Reviewed

	Public	Private	Total
Two-Year Colleges	121	5	126
Four-Year Colleges	24	23	47
	145	28	173

TABLE 2

Time Limit for Filing an Initial Grievance

Initial Time Limit	Number of Contracts
Within 10 Days	35
Between 11 and 30 Days	73
Between 31 and 90 Days	14
More Than 90 Days	2
A Reasonable Time	4
No Time Limit Specified	20
No Time Limit Mentioned	17
No Grievance Procedure	8
	173

TABLE 3

Who can...

	File a Grievance	Demand an Arbitration
Agent	154	140
Individual	153	50
Group	124	50
College	19	19
Silent	11	21
No Arbitration Step	n.a.	4
No Grievance Clause	8	n.a.

TABLE 4

Types of Arbitration

Binding	Advisory	Unclear	None	No Grievance Clause	Total
129	14	18	4	8	173

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PART-TIME FACULTY IN FOUR-YEAR COLLEGES

by Vanchai Ariyabuddhiphongs

The survey of contract clauses reveals that (a) the definitions of part-time faculty in terms of teaching hours vary from contract to contract, (b) a distinction is frequently made between "regular" and "irregular" part-time faculty members, and (c) the terms "adjunct" and "part-time" are not necessarily synonymous, at least in one contract.

Definitions While part-time faculty may be those "who do not carry a full workload for two consecutive semesters" (Lorreto Heights contract), most contracts state the maximum or minimum number of hours the part-time faculty members may teach. The specifications vary from contract to contract. The LIU-Brooklyn and LIU-Southampton contracts allow part-time faculty to teach up to six credit hours; the Bloomfield College contract restricts the part-time faculty to no more than two courses. The Moore College of Arts contract permits a maximum of nine credit hours per semester. The University of Dubuque contract contains perhaps the most generous range of more than five but less than 12 hours for a part-timer.

Other contracts specify the minimum load a faculty member must carry to qualify as a part-time faculty member: at least one-half teaching load, under the Central Michigan University contract, or a two-thirds load, as in the case of Saginaw Valley College.

"Regular part-time" in contrast to irregular part-time, assumes some continuity of employment with the college. The contracts at Regis College and Rider College include such continuity of employment in the definition. The Regis College contract defines regular part-time faculty as those who are "teaching at least three semester hours and who have taught at least three semester hours in at least one of the two previous academic semesters."

The Rider College contract, on the other hand, defines part-time faculty members as "those who are currently teaching at the College and have taught at least one course in three of the last four semesters, including the current semester." The Ferris State College contract contains a more stringent requirement: part-time faculty are those "who have been employed for at least one-half of the average load for their department for each of the last three consecutive quarters." Part-time faculty members, according to the Bloomfield College contract, are those "who (are currently teaching and) have taught two full semesters within the past two years, one of which was in the preceding academic year."

The term "adjunct," which is used generally interchangeably with "part-time," is defined in one case to mean the equivalent of a full-time faculty member. The Fairleigh Dickinson University contract uses "adjunct" rank to designate a full-time appointment of an individual who is not a professional teacher. The appointment may be for one year or less and may be renewable for a cumulative total of three years.

Limiting Part-Timers The contract language dealing with the ratio between part-time and full-time faculty probably reflects the effect of the fiscal crisis in higher education. The clauses are intended to provide some safeguards against excessive retrenchment of full-time faculty by replacing them with part-timers. Among the contracts surveyed for this study, four contain provisions either specifying the part-time/full-time faculty ratio or restraining the administration from hiring part-timers where full-time faculty members are warranted.

The St. John's University contract contains an explicit clause on part-time/full-time faculty ratio: "Adjunct faculty in any college of the University ... shall not comprise more than forty percent (40%) of the teaching faculty of such college." However, it is not clear from the contract how this percentage is to be determined: whether each part-time faculty member is counted in the total number of teaching faculty or whether two part-time faculty members are counted as equivalent to one full-time faculty member.

A clearer approach is that adopted by the Bloomfield College contract which places the emphasis on the total number of courses

involved: "No more than twenty percent of the total course sections offered shall be taught by part-time faculty and no part-time faculty member may teach more than two courses during a given semester.: This would appear to be less susceptible to misunderstandings and grievances.

The University of Dubuque and LIU-Brooklyn contracts contain clauses restraining the administration from hiring part-time faculty. The Dubuque contract states that "part-time faculty ... shall not be hired for positions which would normally be filled by hiring a full-time faculty member." The LIU-Brooklyn contract states that "should a full-time faculty position become available, it shall be filled by a full-time person rather than divided among adjunct faculty."

The Lorretto Heights contract prohibits the employment of part-time faculty where the program warrants a full-time faculty member. The Rhode Island College contract, which excludes part-timers from the bargaining unit, forbids the college to use part-time appointments "to circumvent the intent of (the) Agreement by eliminating the hiring of full-time personnel."

Job Security Many contracts make provision for faculty to move to part-time employment instead of being retrenched completely; others provide for faculty who do not receive tenure to be retained as part-time faculty. A number credit part-time service toward seniority determination and tenure.

Oakland University, St. John's University and Eastern Michigan University provide for the retention of the retrenched full-time faculty as part-time faculty. The Eastern Michigan contract states that the reclassified faculty maintain their rank and are entitled to benefits provided for the part-time faculty. In the Oakland contract, laid-off faculty are offered the opportunity to perform part-time employment when available. Rejection of part-time employment does not modify the faculty member's right to recall.

While giving first choice to laid-off faculty for the teaching of adjunct hours, the St. John's contract is silent on what happens if such an offer is rejected. The Rider College contract allows faculty members who do not receive tenure within six years to become part-timers.

The use of adjunct service in the calculation of seniority is found in the LIU-Brooklyn and LIU-Southampton contracts. Both contain a clause stating: "In the event that two persons have the same number of years of full-time service in the University, the number of sections of adjunct service, or if equal, the earlier date of birth, shall be used as the determining factor in deciding order of seniority."

The Southeast Massachusetts contract is perhaps the only contract that provides uninterrupted employment security to female faculty members: the contract allows a non-tenured faculty member on maternity leave to elect to be on part-time appointment and have the part-time appointment accumulated toward her residency requirements for tenure.

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MERC (Michigan Employment Relations Commission) strikes down weighted voting; gives associate part-time professors greater say.

NLRB INCLUDES CHAIRPERSONS IN UNIT

Recent articles in this Newsletter have highlighted the ambiguity of the department chairperson's position under collective bargaining agreements. One aspect of the problem has now been clarified by the National Labor Relations Board, ruling on the issue in the case of Fairleigh Dickinson University (227 NLRB No. 40).

By a 2 to 1 vote, the NLRB panel found that the collective bargaining agreement itself had so altered the role of department chairpersons that they no longer met the requirements of the definition of supervisor. The Taft-Hartley Act amendments of 1947 had expressly excluded supervisory personnel from the provisions of mandatory collective bargaining and therefore from the bargaining unit. (National Labor Relations Act, Sec. 2(3))

Statutory Definition Supervisor is defined as follows: "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." (Sec. 2(11))

The Board has oscillated in past decisions between inclusion and exclusion of department chairpersons in the bargaining unit. Its guiding principle is an examination of the powers enjoyed by the chairperson in the particular institution.

Ordinarily a chairperson can make recommendations on hiring, appointments, reappointments, tenure, etc. The issue is how much weight his or her recommendations will carry. Originally, the Board found that at Fairleigh Dickinson the chairpersons had adequate authority to be viewed as supervisors under the statute and therefore excluded them from the unit. When the contract was negotiated, however, the authority of the chairpersons was considerably

reduced. Now a chairperson, under the contract, merely casts one vote among a committee of four, and the dean is required to implement the recommendation "except for substantial reasons stated in writing."

The majority of the NLRB panel concluded that the recommendations of the chairperson "can no longer be said to be given 'great weight.'" As a result, it held that "the authority and responsibilities of the chairpersons have been so significantly changed that (they) are no longer supervisors within the meaning of the Act."

In upcoming negotiations, administrators and faculty unions in private institutions subject to the NLRB would be well advised to determine just what has happened, if anything, to the authority of chairpersons during the life of the preceding contract.

REPORT ON WORKSHOP EVALUATIONS

Participants in the workshop on grievance procedures and arbitration techniques, conducted jointly by the National Center and the American Arbitration Association, were promised a summary of the evaluations submitted at the close of the sessions.

Sixty-six people, representing administration and faculty unions, attended, with 38 responding to the evaluation questionnaire. Administration personnel ranged from president to department chairman, and constituted approximately 2/3 of the participants; union personnel included officers and staff of national and state organizations and local college chapters; approximating 1/3 of the participants.

Answers to the question on the workshop aspects that were most helpful emphasized the mock arbitration and the discussion of "Negotiate or Arbitrate?" Other responses included:

- ... opportunity to meet with others in a small group and with a skilled arbitrator;
- ... importance of the arbitrator;
- ... playing the role of management to properly evaluate management's role in arbitration cases;
- ... exposure to experience at other institutions;
- ... preparation and involvement in mock arbitration process.

Responses to the question, "What can be improved?" included the following:

- ... more information and instructions on first day;
- ... rules and types of evidence to start off the mock sessions;
- ... case was so convoluted that it created difficulties in analyzing and planning strategy;
- ... location -- hotel preferable;
- ... limited time.

As promised, the tabulations of the responses are provided in detail on the following page.

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EVALUATION SHEET

Grievance-Arbitration Workshop
Fall, 1976

N=38

I found the following activities to be:

	Excellent	Good	Unsatisfactory
A. Plenary Sessions (1st day)	16	17	4
B. Workshop on "Negotiate or Arbitrate"	18	18	1
C. Mock Arbitration	31	6	0
D. Plenary Sessions (2nd day)	8	22	1
E. Materials	14	12	0

Other questions that lent themselves to tabulation produced these results:

1a. Would a workshop on collective bargaining techniques (negotiating the contract) be of interest to you? Yes 27 No 9

b. Would there be enough interest in this region for such a workshop? Yes 16 No 4 Don't know 10

2. Would other days have been more convenient? Yes 3 No 28

3. If we ran this workshop again, would you recommend it to associates who did not attend this one? Yes 36 No 1

4. Would there be enough interest in this region to have another workshop on the same subject next year at about the same time? Yes 15 No 2 Don't know 10

5. How would you rate this conference compared with others of this type which you attended?
Much better 19 About the same 5 Much poorer 1

(Six responded they had no basis for answering this question because this was their first experience at this type of workshop.)