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Bargaining Quality In Part-Time Faculty Working Conditions: Beyond Just-In-Time Employment and Just-At-Will Non-Renewal

Gary D. Rhoades¹

Introduction

A recent Delphi Project (2013) revealed widespread agreement among scholars and practitioners that the current working conditions of part-time faculty undermine quality education (see also Kezar, 2012a). Ample empirical evidence suggests that key aspects of those working conditions compromise student outcomes (Eagan & Jaeger, 2009; Ehrenberg & Zhang, 2004; Jaeger & Hines, 2008; Umbach, 2007). Here, the focus is on “just-in-time” employment and “just-at-will” non-renewal practices with regard to part-time faculty, providing examples of contractual provisions that can get us beyond educationally bad employment practices.

The great recession has heightened discourse about fiscal constraints. Such constraints have long been invoked as justification for the increased use and the working conditions of part-time faculty members, especially in their pay and benefits. Given that these faculty account for 49.3% of the faculty workforce (and nearly 70% in community colleges-see IPEDS, 2012), there is a structural fiscal deficit in higher education. Although colleges and universities are not, in fact, broke, their employment structure reflects a systematic, long-term financial disinvestment in instructional conditions of faculty work that detract from the learning conditions of students.

Yet some significant working conditions of part-time faculty members should be ascribed neither to new “financial realities” nor to decades of financial disinvestment, but

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rather to a more longstanding trend towards increased managerial discretion (Rhoades, 1998). That can particularly be said about hiring and reappointment practices.

As noted above, studies have consistently found that the working conditions of faculty in part-time positions have significant non-economic costs in various student outcomes. Such adverse effects are documented at an institutional level, and are not about the effectiveness of individual instructors but instead are about the working conditions that constrain instructors' opportunity to provide the education they would like to provide students. Indeed, the financial structural deficit of disinvesting in the core academic mission of education has yielded a structural educational deficit in higher education (Arum and Roksa, 2011).

This article concentrates on the structural problems of unavailability and unpredictability that particularly attach to two employment practices that define the structure of work for faculty in part-time positions. Both "just-in-time employment" and "just-at-will non-renewal" are described in terms of their impact on students' learning conditions. If the former practice is most common with regard to part-time faculty, the latter is also prevalent for full-time contingent faculty.

The body of the article addresses examples of relevant provisions in collective bargaining agreements. Recent research and professional practice point to the possibility of changing the conditions of employment for part-time faculty (Kezar and Sam, 2013). One key finding is the significance of collective bargaining in ensuring the negotiation of better working conditions that structurally support educational quality. A related finding speaks to the significance of "grass roots" leadership (Kezar, 2012b). Thus, the focus here is on contract provisions in collective bargaining agreements negotiated by and for part-time faculty only. There are many faculty unions that encompass part-time and full-time faculty in ways that address the interests of both. However, given the constraints of space, and given the author's interest in "bottom up" leadership of faculty who structurally have the least formal power, the focus here is on 13 contracts in four-year institutions and 43 contracts in two-year institutions drawn from a national database of collective bargaining agreements. Except for a recent contract at George Washington University, all the contracts are in a searchable database, the Higher Education Contract Analysis System (HECAS) compiled by the National Education Association (NEA) and available to members of that organization and the American Federation of Teachers (AFT). The HECAS includes contracts negotiated by various affiliate unions, including independents.

Just-In-Time Employment

The prevailing practice for hiring part-time faculty is “just-in-time” employment. Although assignments of classes might be made months ahead of time, there is no final commitment (and no pay) to the faculty member until classes start (and sometimes later). The practice involves not actually hiring faculty until just when classes start, and not providing faculty with support (e.g. not providing the non-fiscal access to instructional resources) for the pre-class and outside-of-class work that is so central to quality education. The “just-in-time” metaphor is drawn from retail business, with the idea being not to keep large stocks of inventory, but in higher education the practice is not just-in-time, not only for the employees, but also for the students.

A recent think tank report (Street, Maisto, Merves & Rhoades, 2012) reveals three ways in which this employment practice compromises educational quality. Embedded in this practice are working conditions that make faculty, the curriculum, and important instructional and learning resources unavailable to and unpredictable for students. Most obviously, students lose the opportunity to plan their program of study, select a desired instructor, or prepare ahead of time by a system that until the first day of classes leaves many sections with a posted instructor named “professor staff” and in many cases, as the surveyed faculty indicate, without a posted syllabus.

Moreover, this employment practice telescopes and even eliminates the preparation time of both faculty and students. Faculty are not provided the preparation time before classes start to revise and enhance instructional materials. Students have no access to the syllabus in order to have the opportunity to get a head start in preparing for class, even if some/many choose not to do that. Remarkably, Street et al. (2012) found that over one-third (38%) of the contingent faculty surveyed were even assigned classes less than two weeks before classes started (another 25% had between two and three weeks).

Further, “just-in-time employment” practices have built into them late and limited access to important instructional resources for faculty. That has direct and adverse consequences for the learning resources that are made available to students. Moreover, it is not a function of finances. In the study cited above (Street et al., 2012), nearly half (45%) received access to library resources less than two weeks before classes started. Nearly a third (32%) received curricular guidelines less than two weeks before classes (and another 21% never received them). Respondents also spoke of lack of access to the basic software and information and course management systems that are now a basic educational and learning resource.

In turning to contract language now, it must be emphasized that there is very limited language on course assignment. There is an overwhelming lack of meaningful due process in hiring part-time faculty. That also means no real peer review practices that would involve quality considerations in hiring. For most part-time faculty, their reality in terms of hiring “process” is what is stated in the University of Alaska contract (2010): “Appointments shall be ‘at-will’ and shall not carry any right or expectation of additional appointments, including adjunct and regular faculty appointments, or of any other term or condition of employment not expressly provided in this Agreement.” (Article 9.1)

One of the problems embedded in the just-in-time model is that the distinction between listings in the schedule of classes and the hiring of part-time faculty. As Article 7.1.A of Montgomery College’s contract (2011) indicates, “The listing of a course in the schedule of classes does not constitute an assignment.” Worse, even assigning a course to a part-time faculty member is distinct from actually hiring and paying that academic. At best, hiring and pay ensue the first day of classes.

As was found in a national analysis of collective bargaining agreements fifteen years ago (Rhoades, 1998, see especially Chapter 3) there are relatively few provisions that define substantial due process guidelines for hiring faculty in part-time positions. However, there are some important exceptions to this pattern. At a limited level, Flathead Valley Community College’s contract (2011) provides that there be a formal offer of appointment “at least twenty-one days prior to the beginning of the term.” (Article 5.8) However, the next sentences offer exceptions to this requirement:

However, it is recognized that the employer cannot always predict in advance all of the courses which may need to be offered through adjunct faculty. Nothing herein precludes the employer from requesting an employee to take on unanticipated assignments without providing the preferred advance notice. More extensive notice (45 days) is required by the Vermont State Colleges contract (2010).

Some collective bargaining agreements have provisions for a class cancellation fee. One recent agreement, discussed below, is fairly strong in this regard in the case of continuing part-time faculty members. By contrast, Roosevelt University’s contract provides for a flat \$250 fee for any bargaining unit member if a course is cancelled “and there is no available credit hour course to teach.” (2008, Article 7.G) Similarly, the Vermont State Colleges contract (2010, Article XVIII K & L), provides a cancellation payment to all unit members (7.5% if cancelled 30 days or more before the class starts, and if not replacement appointment of comparable value is made; 15% if the cancellation is after classes start). That is much more generous than the Flathead Valley Community

College contract which provides the part-time faculty member with \$30 if a class is cancelled due to low enrollment more than seven days before classes start (and \$50 if the class is reassigned to a full-time faculty member). But it clearly does not represent a significant financial exposure/commitment, although it does embed a formal recognition that cancellations of classes are problematic.

There is a significant difference between the contracts of part-time faculty in two- and four-year institutions. In the latter, 12 of the 13 contracts for part-time faculty only in HECAS provide for some payment in case of cancellation. By contrast, in the former, only 16 of 43 contracts for part-time faculty only in HECAS have such provisions.

The extent of the “just-in-time” problems are evident in the amount of language that refers to class cancellation after the first day of classes. For example, Yuba College’s contract states: “In general, contract classes shall not be cancelled after the first week of instruction, or second class meeting, whichever is later.” (2008, Section 7.4)

Attendant to such last second hiring is lack of access to basic instructional resources. The nature of the problem is evident in section 7.6 of the Montgomery College contract (2011), which assures that employees with course assignments have access to various resources such as instructional software and computer programs for the course, photocopiers for class purposes, college email, and administrative support (George Washington University’s contract has a similar section, but adds web space for the construction and maintenance of a web site for university-related work). Such clauses are also found in the contracts of some two-year colleges, as in Article 8 of Miracosta Community College’s agreement (2008). Yet part-time faculty do not have access to these materials until classes start, hindering their ability to prepare for the class and, thereby, hampering the quality of the materials that can be prepared for students.

Just-At-Will Non-Renewal

The dominant employment practice surrounding re-hiring decisions for part-time faculty is “just-at-will” non-renewal, which compromises and undermines educational quality for students in three ways. First, as many contingent, part-time faculty members will tell you, they are one student complaint from non-renewal, one disgruntled student who didn’t do well in their class away from what is effectively dismissal. That makes it literally dangerous for adjunct faculty to maintain strong academic standards. In recent years, for example, the American Association of University Professors (AAUP) has twice taken up complaints on behalf of contingent faculty who were non-renewed as a result of student complaints. (Jaschik, 2009). At New Haven University it was an English

instructor who had taught for 14 years (six as a part-time faculty member, and eight as a full-time contingent faculty member), and had a good teaching record. One of the student complaints was that the professor had been too harsh in dealing with a student who had committed plagiarism, referring to the act as an academic crime. At Nicholls State University, a non-tenure track math faculty member was released with one day's notice after teaching for twelve years with good reviews. The administrator's concern was that the professor was too rigorous in her grading standards, despite the fact that her students apparently did well in the subsequent math classes in the course sequence.

The Nicholls State case speaks to a related condition of contingent faculty work— instructors are one arbitrary administrators' action away from non-renewal. Such arbitrary action can result from academic freedom considerations. One such case was investigated, also in a 2009 censure case, and involved a part-time English instructor at North Idaho College who had taught there for 13 consecutive semesters. The faculty member alleged that she was fired because of conflict between college officials and her husband (a faculty member) over academic freedom issues. The AAUP investigating team found that the adjunct faculty member's non-renewal was a violation of AAUP principles.

A third problem with current non-renewal practices is the built-in uncertainty and unavailability that comes with the structure of decision making. Non-renewal is a decision marked by extensive managerial discretion. That flexibility compromises the ability of students to plan their programs, and undercuts educational continuity.

Turning now to collective bargaining agreements, several examples of contractual provisions reduce some of the above problems. At a basic level, Columbia College Chicago's contract has an "instructional continuity" provision (2010, Article VII.2). The clause indicates that if a class is dropped that the faculty member routinely teaches, "Every effort must be made to find another class for that unit member" (however, in other cases, the language is simply that "The possibility of teaching another class will be explored). Some other contracts (e.g. William Rainey Harper Community College, Prairie State College, City College of Chicago) also have "good faith" or "reasonable effort" language.

Along similar lines, the Montgomery College contract (2011), which refers to "recurring appointments" affords priority to faculty members who have taught for a certain number of previous semesters, indicating that "good faith consideration" shall be exercised by management in finding a replacement assignment. That good faith consideration involves defining a range of specific factors (e.g., downsizing of a

department, creation of a full-time position, under-enrollment, etc.) that allow management to “deny, reduce, or cancel the assignment(s) of an employee in a semester, or the appointment of an employee for an entire academic year...” (Section 7.3). But the factors are wide ranging and afford much discretion to management.

George Washington University’s contract (2013), takes two additional steps in facilitating the ability of part-time faculty to prepare for classes and in encouraging continuity in the renewal of faculty in part-time positions. First, Article V (sections E & F) provides continuing faculty with four-week’s notice of course assignment before the beginning of classes, building on a provision (section D) that states: “It is in the interest of the University and the Faculty member to make an appointment as early as possible before the beginning of the course.” Most other contracts for part-time faculty only in the HECAS database address seniority, reappointment, and renewal, with various mechanisms for giving continuing part-time unit members some priority in assigning classes. One of the most distinctive approaches to effecting prioritization is the contract of Mendocino Lake Community College District:

4.1. In making assignments of part-time instructors, unit members who have previously taught at least one section of a course will be given first consideration when that course is offered in subsequent semesters. Whether sections are offered to a unit member will depend primarily on the previous performance of the member as evidenced by performance evaluations, student services records, and fulfilling other college requirements in a timely and professional manner. After consideration has been given as indicated above, assignments may be made in accordance with the District’s need to develop a broad pool of part-time instructors.

4.2. For purposes of implementing 4.1, the District shall maintain a data base of unit members who taught for the District on a part-time basis within the previous four semesters, indicating courses taught for the District and the minimum qualifications/equivalencies recognized by the District. This information shall be provided to the President of the Association and all instructional administrators by the fifth week of each semester. Copies will also be available at the Lake Center, Willits Center, and Personnel Services. (2008, Articles 4.1 & 4.2)

Notwithstanding the “escape clause” at the end of Article 4.1, the provision not only expresses a preference in terms of priority, it also affords the union a mechanism for determining the extent to which management is following those priorities.

A second strategy of the George Washington University contract is to establish a cancellation fee for those continuing part-time faculty who have a course (or courses) cancelled:

Notwithstanding Article V of this Agreement (Appointment and Re- Appointment), if a Faculty member's appointment to teach a course is cancelled, denied or revoked for any reason after the Faculty member is notified of re-appointment, and less than 21 calendar days before the first day of classes of the semester or other applicable course start date, or less than 10 calendar days before the start of a summer course, the Faculty member will receive a course reduction fee of twenty percent (20%) of the salary that the Faculty member would have received for the course, provided that the Faculty member actually suffers a loss of compensation from the University during that same semester as a result of such cancellation, denial, or revocation. This fee will be in the form of a lump sum payment, made no later than 60 days after the first day of classes of the semester or other applicable course start date. (2013, Article XVII.A.5)

As noted in the previous section on just-in-time employment, several other contracts have cancellation payments as well. Given the pay of part-time faculty, the cancellation fee of the provision is not a major financial cost to the institution, but it is an important disincentive to arbitrary non-renewal practices that have considerable educational costs.

An even greater disincentive to institutions to non-renew contingent faculty is contractual provision of part-time faculty members' right to grieve non-reappointment decisions. The Vermont State Colleges and University of Vermont contracts accord that right to all members to grieve on the basis of the anti-discrimination and academic freedom articles, and the Vermont State Colleges' accords the right to grieve such decisions as "arbitrary and capricious" if they have 10 or more semesters of seniority at the particular college. However, these contracts are the exception to the rule in this regard.

Contract language on academic freedom can be found in many contracts that cover part-time faculty. For example, the recently (2013) negotiated contract at George Washington University has a relatively extensive, detailed article (VII) on "Academic freedom and faculty rights and responsibilities. At Columbia College Chicago, the academic freedom provision is the same as it is for full-time faculty.

However, as the website of P-Fac, the (Illinois Education Association/National Education Association affiliated) union representing part-time faculty indicates:

For part-time and other contingent faculty without tenure, there are even more complicated considerations. The ease of firing someone with a semester-to-semester or year-to-year contact, for instance, arguably creates a strong deterrent to a faculty member's speaking out on controversial issues or feeling free to take scholarly and teaching risks. (P-Fac, 2013)

It is not just the risk of being fired, because there are at least some "just cause" provisions surrounding the dismissal of part-time faculty. The biggest threat to academic freedom and educational quality here lies in non-renewal, an employment action that is far less defined by any due process considerations contractually.

Discussion

Holding aside the structural deficit in the pay and benefits of the "new faculty majority," there are conditions of employment for faculty in part-time positions that could be bargained to the benefit of enhanced educational quality for students. As noted in a national analysis of collective bargaining agreements (Rhoades, 1998, p.168):

Some such conditions are 'revenue neutral.' It would not cost managers any money, for example, to involve full-time faculty in hiring and evaluating part-timers [sic]. [E]stablishing professional (due) processes that involve full-time faculty would come at the expense of managerial flexibility. It is in managers' own interests to maintain [total, at-will] discretion in utilizing part-timers.

What was true over 15 years ago is even more true today. As the saying goes, faculty members' working conditions are students' learning conditions. Given all the policy and related managerial attention to quality and student learning, it is time to take some concrete steps to improving the working conditions of part-time faculty.

Leadership in improving the conditions of employment for faculty in part-time positions can be found in the negotiated contractual provisions of unionized colleges and universities. That is evident in a national qualitative study of exemplars in the working conditions of part-time faculty (Kezar & Sam, 2013). It also is evident in the examples discussed in the two sections of the body of this paper. Good contractual language has been negotiated in public and private colleges and universities, in the contracts of community colleges and of four-year institutions.

The number of colleges and universities with such provisions is limited but need not be. Such provisions do not require significant reallocation of existing monies or an infusion of new financial resources. What they require is a substantial readjustment in thinking about educational quality and managerial flexibility. That involves a substantial readjustment in our thinking about who employment is (and is not) “just-in-time” for, and when “just-at-will” renewal threatens the quality and integrity of the education that students receive.

The prevailing “just-in-time” employment practice of hiring significant proportions of part-time faculty less than two to three weeks before classes start may, in some sense, serve the interests of the employing departments, colleges, or institutions. It cannot be said to serve the interests of the students, of quality education, or of the professional working conditions of major segments of the academic workforce.

Much the same can be said of the “just-at-will” non-renewal employment practice. It may enhance the discretion of departmental, college, and/or institutional managers. It cannot be said to serve the educational interests of open, high-quality instruction and inquiry pursued by faculty and students with academic freedom.

It is noteworthy that one of the earliest and most celebrated cases of the AAUP regarding academic freedom surrounded the non-renewal, nearly one hundred years ago, of Assistant Professor Scott Nearing, a renowned economics professor at the Wharton School of the University of Pennsylvania whose activism surrounding child labor, the war, and more, did not sit well with the university’s Board of Trustees. Professor Nearing had nine years of extremely successful service, but in the summer of 1915, he received written notification of non-renewal. He fought the non-renewal, and was strongly supported in this by many colleagues at the University of Pennsylvania (and elsewhere), as a clear case of Nearing’s academic freedom being violated. The AAUP investigated the case. In the *New York Times*’ coverage of the AAUP report, although the situation was, in fact, legally a matter of non-renewal, the newspaper and indeed the public discourse adopted the AAUP’s effective re-definition of the action as a “dismissal” (Areen, 2009). Though Nearing did not get his job back, partly as a result of his case, key due process procedures and rights were established for professors on the tenure track, protecting them from arbitrary non-renewal.

That redefinition by the AAUP was part of a larger codification of the terms and conditions of tenure-track employment. It advanced the idea not just of tenure but of hiring, review, dismissal, and more.

We need a similar redefinition today, not just of part-time and contingent faculty's non-renewal, but also of their initial employment. The "New Faculty Majority" (2013) lacks key conditions of employment that are basic to quality education. Managerial flexibility should not be conflated with mismanagement of a valuable human resource (Street et al., 2012). In the interests of providing students with better learning conditions, we must rethink "just-in-time hiring" and "just-at-will non-renewal" employment practices.

The empirical evidence suggests that collective bargaining can provide a path to that redefinition. Some of that redefinition is already happening campus by campus and step by step. Moreover, the unionization of more part-time faculty will likely contribute to the considerable expansion of mechanisms to codify employment practices that will enhance educational quality. That may particularly be the case in metropolitan areas in which locals (e.g. SEIU 500) are undertaking a metro strategy to organize a local that includes part-time faculty at several universities in the area. As a final thought regarding the potential of collective bargaining, if a large state system of four-year institutions or a large district of community colleges were to negotiate a contract with faculty that established new norms of hiring and renewal employment practices that moved in the direction of being grounded more in the academic logic of quality than in the managerial logic of flexibility, it would mark a major advance could have a catalyzing effect state and nationwide.

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