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Bargaining for Contract Academic Staff at English Canadian Universities

Jula Hughes and David Bell *

Abstract

Successful unionization of, and conclusion of collective agreements for, contract academic staff in English Canada challenges the received wisdom that the Wagner Act model is an insurmountable obstacle to the unionization of contingent labour. It provides an example that might prove instructive for other contingent workers. This paper describes the process of unionization of contract academic staff in English Canada and seeks to explain its relative success. We suggest that the exceptional situation of contract academic staff as non-unionized workers in an otherwise unionized environment, access to the expertise and resources of large, national unions or associations and a sophisticated national strategy were contributing factors to successful unionization. The paper also considers the degree to which contract academic staff collective agreements fulfill or fall short of the promise of unionization. We analyze sample collective agreements, noting the variety and strength of various contractual models. We conclude by suggesting that contract academic staff have benefitted considerably from unionization. Despite these successes, the experience of contract academic staff supports critiques of the Wagner Act model as applied to contingent labour.

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1. Contingent academic labour

Contingent academic workers go by many labels and have a variety of tenures within their overall contingency.¹ They are called term employees, sessional lecturers, stipend instructors, part-time instructors, per-course teachers, contract academics, or simply adjuncts. Here, we focus on the most precarious class of contingent academics – those appointed to teach on an individual course basis, so that when the course ends their employment ends. We call this group contract academic staff to distinguish its members from regular (that is, so-called full-time) academics. As is often noted, the distinction between part-time and full-time is ironic in that often contract academic staff have heavier teaching loads than tenure-stream appointees.

In the history of ‘organizing the unorganized’, contingent labour has always presented particular challenges. Some challenges relate to contingent workers as a transient workforce: relatively poor opportunities for organization, worker isolation, lack of legal resources and the absence of ties to the traditional labour movement. Others arise from the *Wagner Act* model of labour law, the particular framework of labour legislation that forms the backdrop to all organizing efforts in Canada. Despite these obstacles, Canada has seen the near universal unionization of one group of contingent workers, viz. contract academic staff. This paper explores successes, failures and lessons in the certification and collective bargaining of contract academic staff at universities in English Canada since the 1980s in the context of the broader labour movement.

At first blush, and in the popular imagination, it might be a stretch to think of contract academic workers as part of the Precariat.² After all, they are well educated, they work in a high prestige work environment, and to their students they are indistinguishable from their tenure-track and tenured colleagues. They do not conjure up images of *Grapes of Wrath*. And yet, this seems to be a never-ending stream of news items in the past few years reporting on the plight of contract academic staff.³ In a recent study, the Law Commission of Ontario (LCO) suggested that it is important to recognize that vulnerability and precariousness attach to work rather than to individuals.⁴ It is entirely possible to be in a situation of precarious work without attracting other indicia of marginalization. For contract academic staff, the definition of precarious work adopted by the LCO is apt:

Precarious work is characterized by lack of continuity, low wages, lack of benefit and possibly greater risk of injury and ill health. ... Measures of precariousness are level of earnings, level of employer-provided benefits, degree of regulatory protection and degree of control or influence within the labour process.⁵

This definition captures some of the vulnerabilities of contingent academic workers. They face disjointed and uncertain employment contracts, wages that frequently fall below minimum wage if accounted on an hourly basis, and typically have no employer-sponsored benefits. They also lack control or influence over processes of hiring, evaluation, discipline and termination. In addition, contingent academic workers face peculiar vulnerabilities. These include a lack of academic freedom, a lack of ability to participate in collegial governance, inadequate or absent recognition of research and

service for evaluation purposes, inadequate choice of teaching spaces and materials, and an exclusion from the informational and relational networks of the university.

Wages, job security and benefits are the bread-and-butter of union work. One would expect to see significant improvements in these areas from unionization. Beyond that, trade unions generally, and public sector unions in particular, have a tradition of mobilizing union solidarity for the purposes of workplace democratization. Participation in governance, control over advancement, a voice in policymaking and the pacing of limits on managerial discretion are hallmarks of this aspect of union work. It is difficult to imagine a workplace for which this is more relevant than the academic workplace. But before any of these benefits might accrue, there has to be successful organization and collective bargaining.

Canadian labour law makes neither particularly easy. It is well understood that the Canadian labour relations model owes much to its American parent, the *Wagner Act*.⁶ Its chief features are majority rule and exclusivity. These two principles represent a *quid pro quo* wherein the union must demonstrate majority support in exchange for the right to be recognized by the employer as the sole bargaining agent and representative of the workforce.

The paradigmatic workplace has been the industrial plant, where all workers would be organized by the same union. Establishing majorities is fairly straightforward in this context because all workers participate in a single site during regular working hours. It is easy to see that contract academic staff do not fit this model well. The certification procedure, particularly the difficulty of identifying, finding and speaking

with workers, is difficult for a workforce that does not have consistent working hours or centralized work or break locations. Some university employers add to these difficulties by interfering with informational and other union activity on campus.

Labour legislation restricts anti-union activities by employers, but labour boards are sometimes reluctant to enforce prohibitions against unfair labour practices strictly lest they be drawn into the certification process prematurely and end up being perceived as interfering with the ability of workers to make up their own minds about unionization. The impact of this kind of self-restraint can be considerable.⁷ In the past two decades, the labour law environment has also changed in ways that makes it more difficult for organizing drives to succeed. In particular, the imposition of mandatory votes in many jurisdictions operates to provide additional opportunities for employers to interfere with organizing and to make organizing drives less successful.⁸

Exclusivity, that is the right of the union to be the exclusive bargaining agent for a group of employees for which the union has majority support, is generally thought of as the reward of certification. However, for contingent labour, the right to exclusive representation may also represent a challenge. The bargaining agent becomes solely responsible for representing employees --not only with respect to the collective agreement, but under the expanded vision of the exclusive jurisdiction of arbitrators developed by the Supreme Court of Canada in recent years with respect to human rights matters, employment standards matters, Occupational Health & Safety and, frequently, for the administration of personal and human rights-based harassment policies. These

representational obligations require legal resources and expertise as well as staff or volunteer union resources.

A common employer strategy for limiting bargaining power is to resist the preference of labour boards for single bargaining units representing all employees and to promote a fracturing of the workforce into groups of workers with allegedly contradictory or competing interests. Not infrequently do employees contribute to this fracturing by understanding their own position vis-à-vis other employees of the same employer as qualitatively different. Professional employees, in particular, have a long history of either resisting unionization or resisting their inclusion into a common bargaining unit. This is certainly the case for academic workers. In particular, there tends to be a high rate of contract academic staff from professions that have, at least historically, often been opposed to unionization. These include lawyers, physicians, architects and dentists.

From an international and comparative perspective, the Wagner Act model is rather unusual. In most other countries, labour legislation does not operate to divide the workforce into tiny bargaining units and does not require representatives of employee interests to win the support of the majority of employees in each micro-unit to be recognized.⁹ Alternatives include minority unions, sector bargaining,¹⁰ and employee councils.¹¹

2. The unionization movement

Unionization came to contract academic staff in the last quarter of the 20th century, at the same time that regular academics were unionizing. In English Canada, regular academics began forming professional associations after World War I and began converting these associations into unions in the 1970s. Within a decade, unionization was quite general in publically-funded universities, with the notable exceptions of McGill and Toronto.¹² It seems fair to say that until the 1980s regular academics, whether in management or in the union, still viewed the presence of contract academic staff within the university as temporary and anomalous. To regular academics, part-timers were engineers or lawyers brought in to teach a specialized course, or they were graduate students picking up a bit of income and teaching experience while waiting for their real careers to take off. Such peripheral status did not merit the effort of normalization.

What brought contract academic staff slowly into view was the funding crunch that overtook public universities in the 1970s, intensifying by the early 1980s into a new normal. The same budgetary stringency at a time of high inflation that led faculty associations to respond by turning themselves into unions also prompted university managements to see how they might cover courses and contain costs by using stranded graduate students as contingent, teaching-only academic labour. As the historian of York put it, it was only by use of such contract academics that the university made ends meet. In 1976 the Council of Ontario Universities feared the casualization was “now going on apace.” A decade later it acknowledged what it saw as a new order of

academics, ones holding “concurrent part-time appointments in several institutions or combin[ing] academic duties with other employment in their efforts to stitch together an adequate income.” Of the challenges these “gypsy scholars” faced, it noted that “new course responsibilities, which may differ from those of the year previous, require fresh preparatory work; travel time and costs may be multiplied; the insecure economic circumstances have their own destabilizing effects.” Not only did these contract academic staff come cheap; they were also throwaways. As the president of Dalhousie recalled of this time, an employer in financial trouble could and did dispense with their services quite readily.¹³

The long university funding crisis that began in the 1970s came just as expanded graduate programs were populated by students whose academic job prospects now seemed bleak. It was these graduate students who began pushing for better wages, regularized hiring and limited class sizes by forming union locals.¹⁴ Twenty years later, disappointed job hopes for would-be academics remained a primary impetus to unionization. Of the certification drive at Dalhousie, which began in 1992, the historian writes that:

The timing was perhaps a result of conditions in the academic job market changing for the worse, so that there were fewer full-time positions available and more part-timers being hired by the universities. ... By the 1990s only a minority of the part-time faculty and the graduate student TAs had any confidence of ever obtaining a tenured position in a university. Without any secure hope of future full-time employment, why should TAs or part-time faculty work for such low wages?¹⁵

The first part-time academics in English Canada to unionize did so in the early 1970s, forming an umbrella organization known as the Graduate Assistants Association.

As the name suggests, the earliest bargaining units (Toronto) included only teaching assistants; but when Local 3 formed at York in 1975, it covered both TAs and Contract Academics.¹⁶ Thereafter, most locals included both groups, prompting a name change in 1980 to Canadian Union of Educational Workers (CUEW). By the time CUEW amalgamated with the Canadian Union of Public Employees (CUPE) in 1994, it had 9 locals, most of composite membership.

On most campuses where contract academic staff unionised in the 1970s and 1980s, the move came shortly after certification of the university's regular academic faculty association. Yet there were only rare cases (Regina, 1977; Laurentian, Windsor & Calgary, 1994) where contract academic staff unionized as *part of* that faculty association. It is worth asking why. Unionization of English Canada's regular academics began in 1974 when some faculty at St Mary's University invited CUPE to organize them. Although the Canadian Association of University Teachers (CAUT) favoured faculty unionization in principle, it reacted to the CUPE foray with alarm. It feared, on one hand, that faculty associations would fall into the hands of a non-academic union, and, on the other, that conservative academics' disdain for a large, militant union like CUPE might kill the prospects for unionization in the country generally.¹⁷ CAUT won its campaign at St Mary's to secure victory for its own affiliate rather than CUPE, and soon CAUT-allied unions dominated English Canadian university campuses. Higher education would become the country's most thoroughly unionized job sector.¹⁸ But the question remains: If CAUT could mobilize so successfully to win the battle for unionization of regular academics, then why did it not lead a similar charge to persuade its many

affiliates unionizing in the 1970s and 1980s to include contract academic staff within their ranks?

While CAUT recognized the strategic advantage of faculty unions positioned to bargain with the employer on behalf of both regular academics and contract academic staff, this was not the view of many tenure-stream faculty themselves. Indeed, CAUT's own attitude towards the role of contract academic staff was severely negative. It saw the proliferation of per course instructors on campus as an "abuse" and a "threat." Their presence undermined faculty bargaining power, diluted academic freedom and circumvented tenure. Moreover, contract academic staff were probably not even good teachers as their opportunity to keep abreast of their field was necessarily limited.¹⁹ CAUT's official policy was that its affiliates secure collective agreement language that restricted employment of contract academic staff to the filling of temporary vacancies or providing unusual expertise. Regular academic collective agreements commonly did secure some version of these limitations. They could do so the more readily because their campus unions had not reached out to include contract academic staff bargaining units and so did not have to accommodate their bargaining needs.

With such attitudes prevailing among regular academics, it is unsurprising that most 20th century contract academic staff affiliated with CUEW, and later CUPE, rather than with their campus faculty association. As recalled by Michael Earle, an organizer of the CUPE local that covers Dalhousie and two other Halifax universities, "part-time and limited-term lecturers could never expect their interests to be properly represented by the tenured faculty unions." Regular academics might sympathize with the plight of

part-timers, “but this sympathy doesn't naturally extend to any steps which might jeopardize their own pay and privileges.” They would “invariably choose to seek improvements in their own conditions and pay rather than try to assist their under-privileged occasional colleagues.”

[T]hey feel the increased use of temporary replacement staff is weakening their university, if not threatening their own jobs. And so, in their collective agreements, they have generally succeeded in placing a cap of one-and-a-half or two part-time contracts being offered to any one individual. An improvement in the pay of such part-timers might lessen the number of limited-term contracts and thus strengthen the full time faculty's bargaining power, but, in negotiations, such considerations carry little weight for faculty union members.

By 1995, the time Earle was writing, a few faculty unions did include contract academic staff; but, he thought it, “difficult to find a single example of any meaningful benefit being obtained for part-timers by the existing faculty unions.”²⁰ A Canada-wide survey of regular academics taken about the same time found that 25% thought that contract academic staff should not be entitled to unionize at all, and half thought contract academic staff unionization would not be a positive thing for universities.²¹

Now, twenty years after Earle's assessment, most contract academic staff in English Canadian universities are unionized. However, the hesitancy of regular academics in following CAUT's advice to invite or to entice contract academics into their ranks has meant that a large minority belong to locals of CUPE or the Public Service Alliance of Canada or independent unions.²² One might anticipate that such unionization, under whatever banner, would so raise the cost of employing contract academic staff that there would be fewer of them. In fact, research suggests that while

unionization has curbed use of contingent full-time academics, presumably because they are nearly as costly to employ as tenure-stream appointees, the casualization of the academy through per-course instructors continues apace.²³

3. Are there benefits to unionization for contract academic staff? Some thoughts on methodology.

At one level, then, the success of unionization for contract academic staff is obvious. Unionization is near complete. At another level, it is less obvious that there has been any real benefit to contract academic staff arising from unionization. Methodologically, this raises the interesting question of how best to evaluate bargaining success. Much of the literature regarding bargaining power focuses on the private sector and uses predominantly an economic mode of analysis.²⁴ It is widely thought that it is more difficult to evaluate bargaining power in the public sector. This is because wages may be a less important factor, or power in bargaining may be more diffuse, or because the ability of employers to respond to financial demands of unions in the private sector is thought to be different than that of public sector employers, and because public sector workers themselves are thought to be inherently risk-averse and therefore less likely to engage in job action. This may be true even for workers who are not subject to restrictions on the right to strike imposed in some public sector legislation. Recent litigation in Canada surrounding police officers suggests that this analysis of public sector workers may be an oversimplification.

For this study, we made an assumption that may be subject to valid criticism in that we have not tested it empirically. We assumed that the bargaining priorities of contract academic staff would be similar across the country. We based our understanding of bargaining priorities on what we learned in our own negotiations. Our faculty association, the Association of University of New Brunswick Teachers, engaged the contract academic membership through a series of surveys. The data from the surveys were used to inform the decisions of a contract academic bargaining committee who, in turn, gave direction to the bargaining team. The committee included both long-term contract academic members and full-time members experienced in collective bargaining. We take some comfort from the fact that the themes we identified did in fact appear in all of the collective agreements we considered. However, we are unable to make any assertions about the vigor with which each of the component demands were pursued by the various unions or indeed about how bargaining unit members might have prioritized the demands.

In our surveys, contract academic members identified remuneration, lack of job security, working conditions, and lack of benefits as chief priorities. Over the course of three (!) years of bargaining towards a first collective agreement, additional concerns arose with regard to participation in collegial governance, the ability to participate in and receive remuneration and/or credit for research and union/service work, exposure to managerial discretion and arbitrariness and the scope of academic freedom. For our study, we surmised that these themes would resonate with contract academic

colleagues across Canada. We recognize that there might be considerable variation in the prioritization of these objectives by location and over time, however.

Since our interest was in evaluating the success or otherwise of collective bargaining for contract academic staff, we also considered elements of the collective agreement that might provide insight into the structural supports for labour rights in the various universities. Particularly, we were interested in the relationship between full-time and contract academic unions, and the degree to which the effectiveness of unionization was impaired by fracturing of the workforce into multiple bargaining units and, possibly, non-unionized groups.

In short, we approached the question of bargaining success not from the perspectives of comparison between the situation of contract academic staff prior to unionization and current terms and conditions of employment but, rather, by considering whether the bargaining objectives of contract academic staff have in fact been achieved in the process of collective bargaining. This methodology was chosen because the alternative would have required large adjustments to account for the historical development of contract academic bargaining units beginning in the 1970s. It seemed questionable whether the historical account would render useful data in light of the near complete unionization of contract academic staff at the present time. There is a considerable literature on the question for measuring what has sometimes been described as the union wage premium in terms of salaries.²⁵ This literature demonstrates the complexities of such measurement. It may also be misleading. Maynard and Joseph suggest that job satisfaction of contract academic staff is tied

somewhat to preferences and the role of contract academic work in the life of an employee, and not only to comparability with full-time academic staff.²⁶

4. Analysis of collective agreements

We included 19 universities in our study:

	Dalhousie	St. Mary's
	Manitoba	Toronto
	McMaster	UBC
	Memorial	UNB
	Moncton	PEI
Alberta	Ottawa	Victoria
Calgary	Saskatchewan	Western
Carleton	Simon Fraser	York

The 19 universities, including the largest in each province other than Quebec, were chosen to be representative across the country as including the full range of universities from those with full medical and other professional schools, to provincial comprehensive universities, to liberal arts colleges. Of the 19 collective agreements, 9 are CUPE locals (2 of which, McMaster and Toronto, are affiliated with CAUT), 7 are represented by faculty associations affiliated with CAUT, one is represented by PSAC and there are 2 institutions, Ottawa and Simon Fraser, where contract academic staff are represented by freestanding bargaining agents. Ottawa was organized in 1986 as Local 10 of the Canadian Union of Educational Workers. It disaffiliated in 1992.

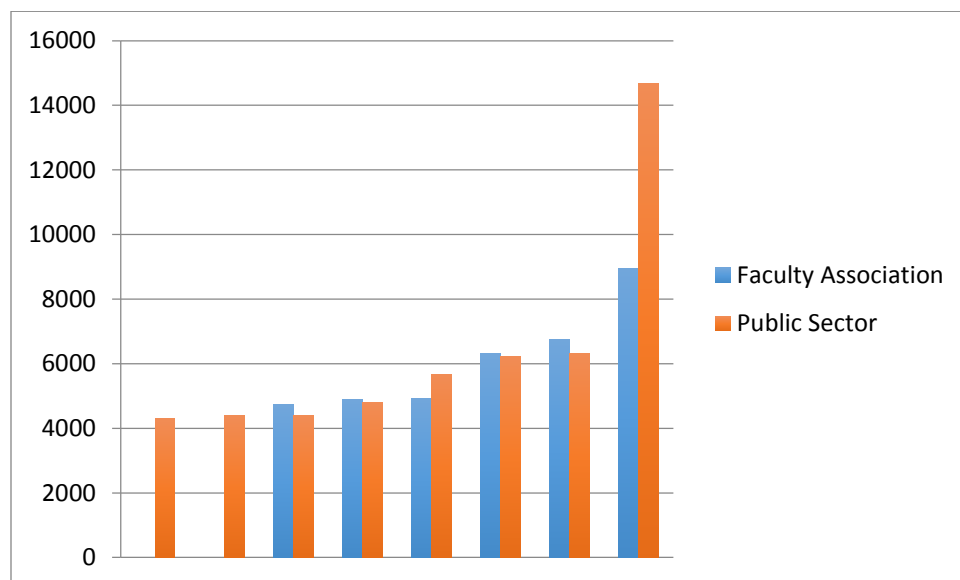
To put it more simply, roughly half of the collective agreements under study were negotiated by large public-sector unions while most of the others were negotiated by faculty associations and only 2 by unions not affiliated with either a public sector union or a faculty association. Most contract academic staff are in separate bargaining units from their full-time colleagues, but 5 of the 19 are covered by a single collective agreement together with full-time academic staff. All of the agreements in this latter category are faculty association agreements. The relevant time frame that was selected to examine the collective agreement was July 2010.

Wages

Comparing wages turned out to be more difficult than merely gathering wage data from collective agreements. This was because most, but not all, wages were expressed as a stipend based on three credit hours. Other collective agreements use base salaries, FTEs [pro rata model], contact hours etc. Additionally, a number of agreements provide for experience increments or steps, as well as additional credit for the terminal degree in the relevant

discipline. Of the 19 collective agreements under study, we were able to determine a basic stipend rate for 15 agreements. For comparison purposes we excluded enhanced stipends. The average rate for a 3 credit hour course in the fall term of 2010 was \$ \$6,186. The median stipend was \$5,300. The discrepancy between the average and the mean can be explained by the outlier, York University. The lowest stipend was \$4296 (St. Mary's), the highest was \$14,681 (York).²⁷

We considered a number of explanations for this variation in base stipends. We considered whether contract academic staff represented by public sector unions fared better or worse than contract academic staff represented by faculty associations.

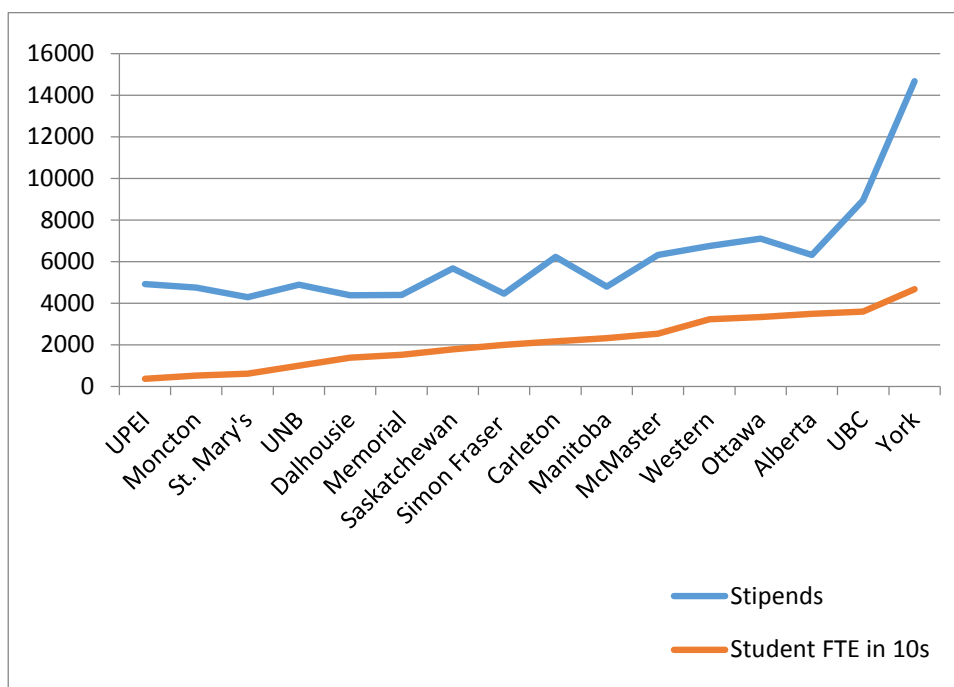


Except for outliers at each end of the spectrum, there was no significant difference.

We also considered the passage of time since unionization and the size of the institution. We found no correlation between the timing of certification/first collective agreement, but we found that the size of the institution was strongly correlated to wages. Employer size is a well-

known predictor of wages, though not typically of this size variation.²⁸ No other factor came close to explaining the variation.

The following graph shows the distribution of stipends organized by size of the institution. For this, we used the number of FTE students as the measure of the size of the institution overall.



Anecdotally, we know that contract academic staff at York were on strike twice.

Carleton University's contract instructors who are represented by CUPE 4600 almost went on strike in March of 2014, however it was ultimately avoided. The University of Prince Edward Island contract academic staff who are represented by University of Prince Edward Island Faculty Association (UPEIFA) along with full time academic staff went on strike in 2006.

Contract academic staff at Dalhousie also went on strike in 2004, they are represented by CUPE 3912. At Western, the librarians and archivists went on strike in 2011, but not the contract academic staff. The University of Alberta is represented by an Association who is not unionized

and hence they have never had a strike. The University of Calgary contract academic staff have never been on strike nor do they have strike provisions in their collective agreement. The University of British Columbia does not have the right to strike because they were voluntarily recognized. One might consider whether the willingness of members of the bargaining unit to strike is what explains the outlier experience at York University, but we have not studied this empirically.

Whether one considers the median or even the higher average stipend, it is clear that contract academic staff continue to be severely underpaid. Teaching loads for full-time faculty vary of course and it is therefore difficult to make direct comparisons. It does seem reasonable to assume that a full teaching load is no more than 6 courses per year. At that rate, the annual deemed salary at contract academic rates would be between \$31,800 (median) and \$37,116 (average). The rate of pay of contract academic staff does not meet or even approach the rate advocated for by the CAUT as part of its pro-rata model.²⁹

Job Security

The second bargaining priority we used to evaluate bargaining success was gains in job security. In the absence of collective agreement, contract academic staff work from stipend-to-stipend and contract-to-contract and improved job security was a prime goal of in our own bargaining experience. We coded collective agreements into four categories of job security: conversion, seniority-based, assessment-based, and minimal.

The highest level of job security we labeled 'conversion.' Conversion refers to the possibility that, after teaching a certain number of stipends, the appointment is converted from a per-course appointment to a permanent appointment. Seniority-based job security included

all instances where employees acquire a right of recall based on seniority, akin to standard lay-off and recall provisions in agreements outside the academic sector. In this category, assessments are either absent (true seniority) or they happen only once (somewhat akin to passing a probationary period review) and the employee was able to accrue seniority after that. The assessment-based category for job security refers to preferential recall rights (sometimes called rights of first refusal) based on periodic performance evaluations and interim seniority-based recall. Finally, we classified job security as minimal where the employer retained discretion to hire new entrants preferentially, sometimes based on contractual criteria. Even this latter form of job security is an improvement over the entirely arbitrary and discretionary hiring practices prevailing in pre-unionized environments.

Of the 19 collective agreements, 11 use seniority-based job security provisions, 4 collective agreements use periodic assessments, while two provide for the possibility of conversion and two have only minimal job security provisions. It should be noted that the seniority-based job security provisions vary greatly from accrual of seniority from the first appointment to seniority accrual following an assessment after five instances of teaching a course, and everything in between. Thus, it may be more accurate to say that assessment-based and seniority-based job security provisions represent a spectrum. Nevertheless, it is significant for employees whether they have to requalify for a job they have been doing for years. Requiring requalification is contrary to the fundamental labour notion that dismissal should be limited to cause.

Again, we considered whether this fundamental labour right was addressed more consistently in collective agreements negotiated by the large public-sector unions. This did not

turn out to be the case. There are instances of strong job security protections in agreements negotiated by faculty associations, and minimal job security protections in agreements negotiated by public-sector unions. There does not appear to be a trend. What is striking, however, is that the vast majority of collective agreements protect job security in significant ways. At the same time, contract academic staff continues to be subject to assessment and layoffs. The former might be explained by the context of the academic workplace, where regular academic staff are subject to assessments for tenure and promotion. The latter is consistent with the contingent nature of the work. One could argue that some contract academic staff get the worst of both worlds. Unionization appears to have ameliorated but not overcome this challenge.

Benefits

Next, we considered any fringe benefits contract academic staff are entitled to in their collective agreements. We categorized fringe benefits according to level of benefits provided. The most comprehensive collective agreements provided both fringe benefits and pension benefits. Four of 19 collective agreements fell into this group. A second group of collective agreement provided for health benefits and leaves but did not include pension benefits. Another four made up this group. A third group provided at least one benefit in addition to what was required under employment standards legislation. There were eight collective agreements in this group. Typically, the additional benefit was paid leave of some kind. One collective agreement offered membership in a defined contribution pension plan but no health benefits. A final group with three collective agreements merely confirmed benefits required by employment standards legislation. It appears that fringe benefits were more comprehensive in

collective agreements negotiated by public service unions. Only one faculty association agreement provided for pension benefits. Most of the faculty association agreements provided for ESA or ESA plus benefit levels.

We considered a second set of benefits related to academic work. These included professional development allowances, sabbatical leaves, conference funds and tuition waivers. All but two collective agreements provided for such academic benefits. There was, however, a fair range of the levels of benefit provided. There did not appear to be a trend of either faculty association agreements or public service union agreements providing richer benefits in this regard.

So far, we have seen the three top bargaining priorities for contract academic staff: wages, job security and benefits. Wages appeared to be determined by the size of the employer. Improvements in job security were found in all collective agreements, albeit to a varying degree. Finally, fringe and academic benefits were common, but public service union agreements tended to be more comprehensive.

A second set of questions related to the status of the union and its ability to represent its membership. We attempted to analyze the collective agreements in this regard by considering limits on management rights, supports offered by the employer for union work, and the integrity of the bargaining unit.

Management rights

Unsurprisingly, all collective agreements contain management rights clauses. It is generally thought that stronger collective agreements limit management rights through a "natural justice" or fairness obligation. In the absence of such an obligation, all matters not

specifically addressed in the collective agreement (or in documentation and/or legislation incorporated or deemed incorporated) falls outside of the scope of union representation and cannot support a grievance. Thus, a fairness obligation protects workers in two ways: it imposes on the employer a limit on the exercise of management rights, and it broadens the scope of matters subject to the grievance procedure. Of the 19 collective agreements in our study, 8 include such a fairness obligation. Of these, 4 are CUPE locals, 2 are faculty associations, one is independent and one is a PSAC local. Curiously, only one of the 4 collective agreements covering both full-time and contract academic staff includes a fairness obligation in its management rights clause. This makes it clear that neither the full-time nor the contract academic membership achieved fairness language in 4 out of 5 agreements. Similarly, only 4 of the 9 CUPE locals achieved fairness language. We speculated that because management rights clauses are infrequently opened, more recent first collective agreements might be more likely to include fairness language. This does not turn out to be the case.

There are still several possible explanations for the phenomenon. Limited management rights clauses can be understood as an indicator of bargaining strength on the side of the union but the absence of such limitations may not be an indicator of bargaining weakness. This is so because management rights clauses are not inherently strikeable issues. The absence of limitations can also be an indicator of a collaborative rather than an adversarial labour relations environment. An employer that considers itself generally bound by fairness obligations may not be in the habit of imposing unilateral workplace rules, and thus avoids such a demand at the table. Finally, the absence of limitations may speak to the labour expertise of negotiators. Since

members are highly unlikely to be aware of the need for such language, a bargaining process driven by a member demands would typically not yield a demand for fairness language.

In our sample, it seems reasonable to assume that all of the locals of large public sector unions would have been aware of the desirability of fairness language. Similarly, model language --including fairness suggested by CAUT --been available to bargaining teams for faculty associations. Gauging from the mood at national council meetings of the CAUT, it also seems likely to us that a collaborative labour environment cannot be said to have prevailed in Canadian universities over the last few bargaining cycles. Therefore, it seems most likely that the absence of fairness language is indeed an indicator of employer hostility or, possibly, relatively poor bargaining strength. The surprising finding that this extends to some full-time collective agreements as well supports the notion that employers may be equally hostile to their regular academic staff or that bargaining power may be relatively weak in various places across the academic sector.

Enabling union work

Organizing, negotiating and ultimately administering a collective agreement requires considerable resources. Some of these can be provided centrally. For example, some unions provide chief negotiators to their locals. An illustration of this is Memorial University where the contract academic staff agreement was negotiated by a PSAC staff negotiator. National unions can also provide training, grievance support, legal and advocacy support and financial assistance. Even taking all of this into account, there is no question that much of the work has to be carried out by bargaining unit members as volunteers, or by the staff of the local. Most academic bargaining units are too small to support a large staff. This is particularly true of

contract academic units where the job insecurity of the membership also translates into insecurity of dues receipts for the union. For these reasons, we expected that many unions would attempt to negotiate clauses that saw the employer provide some support, maybe in the form stipends, for the ongoing work of the union. We discovered that 9 out of the 19 collective agreements we considered did contain such clauses. Both the scope and the focus of the support varied considerably among these 9 collective agreements. Some offered stipend support for bargaining, others offered stipend support for grievance administration. Some collective agreements provide for monetary lump sums to the union, others provide for individual member pay. Only one of the combined full-time and contract academic staff collective agreements provided for union work support for contract academics. This raises the question of whether full-time members in those bargaining units are typically in charge of negotiating and administering the collective agreement and, if so, what mechanisms are put in place to ensure that the interests of contract academic staff are represented appropriately. Overall, it appears that the work of unions for contract academic staff is reasonably well supported. Most of them are part of larger local unions or national unions and roughly half have negotiated employer support for the work of the union. The notable exception is Simon Fraser University, where contract academic staff are organized by an independent union and where the collective agreement does not include any employer support for union work.

As a third indicator of the ability of unions to represent the membership adequately, we considered whether the bargaining unit had sufficient integrity. For this purpose, we looked at recognition clauses. We hypothesized that employers might seek to fracture bargaining units by creating exceptions. In our experience, exclusions of individuals who perform bargaining unit

work from the bargaining unit for any reason tends to undermine the integrity of the bargaining unit, lead to jurisdictional disputes and weaken the work of the union. In this category, the inquiry was not focused on groups who are exempt because they belong to another union or are in a position of management that would traditionally exempt them from the union. 58% (11 out of 19) of the institutions had recognition exemptions, while 42% (8 out of 19) either did not have a recognition exemption clause, or excluded only management employees or otherwise unionized employees.

In those collective agreements that had recognition clauses of interest, those excluded could generally be classified into 3 sub-groups: professionals, teachers in programs that do not grant degrees, and clinical or applied teachers. Six institutions had such exclusions. Most had exclusions in more than one category. It appears that schools with professional programs are more likely also to have exclusions in non-professional categories. The history of these exclusions is not known to us. However, we consider it likely that they represent a mixture of employer-sought exclusions, and exclusions resulting from difficulties in attracting union support from professionals in the context of organizing drives.

Considering the structure of bargaining units, support for union work and the scope of management rights together, we would suggest that unions representing contract academic staff operate in a challenging union environment. Bargaining units are relatively small and frequently fractured, and union members are subject to significant management rights. However, the integration of contract academic staff unions into larger public sector and/or faculty unions means that both the negotiations and the administration of collective agreements tends to be well supported.

The final line of inquiry was whether contract academic staff enjoyed academic freedom. One of the concerns associated with casualization in the academic sector has long been that casual academic workers would not enjoy academic freedom. Regular academic staff has long considered academic freedom not only a hallmark of academic work, but also a core requirement enabling teaching and research in the university context. Collective agreements have the potential of being effective protectors of academic freedom. The job security regimes discussed above go some way towards providing contract academic staff with the security needed for the performance of academic work, though they clearly fall short of a grant of tenure.

Academic freedom clauses can also provide assistance. All but three of the collective agreements included an academic freedom clause. However, some fell far short of what is thought required to protect academic freedom. We defined academic freedom as including the right to (1) criticize and/or scrutinize the employer and (2) allow instructors to exercise their academic freedom beyond the confines of their discipline. Only 31% (6 out of 19) of the collective agreements examined met this requirement. While many collective agreements included a reference to academic freedom, only 31% gave employees the express freedom to criticize their employer and did not limit academic freedom to their discipline. The remaining 58% (11 out of 19) did not meet the standard for academic freedom as defined in this research. This 58% excludes 2 collective agreements that did not have any clause in relation to academic freedom. Thus, in total there were 68% collective agreements that did not meet the required standards to have meaningful academic freedom, 2 of which did not make reference to any sort of academic freedom for their contract academic staff. Faculty associations negotiated 4 of the

6 collective agreements that protected academic freedom fully. Of the remaining two, one was a CAUT-affiliated CUPE local and the other was represented by PSAC. This suggests that faculty associations may be putting a higher premium on protecting academic freedom than public service unions. That said, of the 2 collective agreements that did not make any mention of academic freedom, one was independent and the other one was a CAUT-affiliated CUPE local.

The data suggest that the concerns over the loss of academic freedom through casualization are well-founded. We can only speculate about the reasons for the relatively poor showing. From our own bargaining experience, we know that our employer was reluctant to agree to a full academic freedom clause for contract academic staff but, after many weeks of negotiations on this issue, ultimately agreed because of a pre-existing campus-wide policy that granted academic freedom to all members of the academic community.

5. Conclusion

Contract academic staff have benefitted considerably from the unionization movement that began four decades ago. While wages appeared to be highly correlated with the size of the employer, unionization has resulted in wage increases. We also found improvements in job security in all collective agreements, albeit to a varying degree. Fringe and academic benefits are also a direct result of unionization. They were common, and we found that public service union agreements tended to be more comprehensive.

However, despite these successes, the experience of contract academic staff continues to support the existing critiques of the Wagner Act model as applied to contingent labour. The wage disparity between full-time and contract academic staff should be understood as the direct consequence of the fractured bargaining environment that is promoted by the Wagner

Act model. Both the ubiquity of certification of contract academic units and their relative bargaining successes can be attributed to a highly unionized environment in the academic sector and either the support by or union competition from faculty associations. Given the size and structure of bargaining units, unions representing contract academic staff operate in a challenging union environment. However, the integration of contract academic staff unions into larger public sector and/or faculty unions means that both the negotiations and the administration of collective agreements appear to be reasonably well supported.

The data supports the concerns about the threat to academic freedom from casualization.

What can we learn from contract academic staff unions for other contingent labour?

First, unionization of residual groups of nonunionized workers in sectors with great union density is easier than the expansion of unions into new sectors. Competition between unions may be helpful rather than problematic in this regard. Secondly, contingent workers can expect real benefits from unionization but, realistically, should not expect transformative change.

Finally, bargaining power of contract academic unions is weakened because the same difficulties that make certification challenging for precarious workers also result in considerable challenges in the administration and improvement of collective agreements. The contingency of work puts pragmatic limits on the ability of unions to mobilize workers in support of job action.

¹ V. Smallman, "Contingent Academic Work in the Canadian Context," *COCAL report* (2004): 1-2. <http://www.chicagococal.org/downloads/Unions-Canada.pdf>.

² Guy Standing, "The Precariat: From Denizens to Citizens," *Polity* 44:4 (2012): 588.

³ A recent American example was the death of a former longtime adjunct faculty member at Duquesne University who was marginally homeless and died in poverty. The story was initially

reported by the Pittsburgh Post-Gazette and was subsequently picked up by various news sources such as *The Chronicle of Higher Education* see Lindsay Ellis, “An Adjunct’s Death Becomes a Rallying Cry for Many in Academe”, *The Chronicle of Higher Education* (19 September 2013) online: <<http://chronicle.com/article/An-Adjuncts-Death-Becomes-a/141709/>>.

Also, see Daniel Kovalik, “Death of an Adjunct”, *The Pittsburgh Post-Gazette* (18 September 2013) online: Post-Gazette.com <<http://www.post-gazette.com/Op-Ed/2013/09/18/Death-of-an-adjunct/stories/201309180224>>.

For a Canadian example of the media’s portrayal of the plight of contract academic workers see “U of C teacher quitting over low pay”, *Calgary Herald* (08 February 2008) online: <<http://www.canada.com/calgaryherald/news/city/story.html?id=f0a5d178-e039-49b6-9146-442cfe20d4eb>>.

⁴ Law Commission of Ontario, *Vulnerable Workers and Precarious Work* (Toronto: Law Commission of Ontario, 2012), 11.

⁵ *Ibid.*, 19.

⁶ George W Adams, *Canadian Labour Law*, 2d ed (Canada: Canada Law Book Inc., 2005); Pierre Verge, “How Does Canadian Labour Law Fare in a Global Economy?” *Journal of Industrial Relations* 42:2 (2000): 275.

⁷ Paul Weiler, “Promises to Keep: Securing Workers’ Rights to Self-Organization under the NLRA” *Harvard Law Review* 96:8 (1983). Paul Weiler notes that unfair labour practices reduced the number of pro-union votes by 4% and reduction was 15% when unfair labour practices took the form of specific threats or actions against union supporters. When both legal and illegal practices were taken into account, it became more than 99% certain that a typical employer campaign reduced by at least 5% the probability that the average worker would vote for unionization, and it was more than 90% certain that the campaign reduced that probability by at least 10%. This is a significant problem because small shifts in individual decision-making can have substantial effects for the overall outcome.

⁸ Susan Johnson, “Card Check or Mandatory Representation Vote? How the Type of Union Recognition Procedure Affects Union Certification Success,” *Economic Journal* 112 (2002): 344.

⁹ For a discussion of some alternative models, see: Clyde Summers, “Unions without Majority A Black Hole?” *Chicago-Kent L Rev* 66 (1990): 531; Clyde Summers, “Exclusive Representation: A Comparative Inquiry into a Unique American Principle,” *Journal of Comparative Labour Law & Policy* 20 (1998): 47.

¹⁰ For an example of broader based bargaining in Quebec: Patrice Jalette, “When Labour Relations Deregulation is not an Option: The Alternative Logic of Building Services Employers in Quebec,” *International Journal of Comparative Labour Law & Industrial Relations* 329 (2006): 300-36 and 344-46.

¹¹ Roy Adams, *Industrial Relations under Liberal Democracy: North America in Comparative Perspective* (Columbia, SC: University of South Carolina Press, 1995), 143-46.

¹² M. Horn, "Unionization and the Canadian University: Historical and Personal Observations," *Interchange* 39 (1994): 45; Paul Axelrod, *Scholars and Dollars: Politics, Economics, and the Universities of Ontario* (Toronto: University of Toronto Press, 1982), 204-12. There is little overview writing on the history of academic unionization.

¹³ I. Rajagopal, *Hidden Academics: Contract Faculty in Canadian Universities* (Toronto: University of Toronto Press, 2002.), 38-39; M. Horn, *York University: The Way Must Be Tried* (Toronto: York University in association with McGill-Queen's University Press, 2008), 166; Council of Ontario Universities, *Academic Career Planning: The Ivory Tower and the Crystal Ball* (Toronto : Council of Ontario Universities, 1976), 15; Council of Ontario Universities, *Bottoming Out: Review 1982-83 to 1985-86* (Canada: The Council, 1986), 16; Howard Clark, *Growth and Governance of Canadian Universities: An Insider's View* (Canada: UBC Press, 2003), 148.

¹⁴ M. Groom, "Organizing Part-time Workers in the Educational Sector," in *Hard Lessons: The Mine Mill Union in the Canadian Labour Movement*, M. Steedman, P. Suschnigg & D. K. Buse eds. (Canada: Dundurn, 1995), 246. An exception to this generalization is the University of Ottawa, where the CUEW local (organized beginning 1985) excluded TAs. As the CUEW national organization was dominated by TAs, who were markedly younger than contract academic staff, this became one of the points of tension that led the Ottawa local to secede in 1992: P. C. Byam, "History of the Association of Part-Time Professors of the University of Ottawa, 1986-1996," (1997): 31 [unpublished: available from APTPUO].

¹⁵ [anon] "The Formation of Dalhousie EWOC", nd, pt 1: <http://3912.cupe.ca/about/history/#Part1>.

¹⁶ Paul Axelrod, *Dollars and Scholars* (Toronto: University of Toronto Press, 1982), 204; D. M. Zinni, P. Singh and A. F. MacLennan, "An Exploratory Study of Graduate Student Unions in Canada," *Industrial Relations*, 145 (2005): 151-52; J. Guard and D. Allen, "A Bargaining History of CUEW/SCTTE Local 3, 1975-1991," (1991): 3 [unpublished: available from CUPE 3903].

¹⁷ Donald Savage, "How and Why the CAUT Became Involved in Collective Bargaining," *Interchange*, 25:1 (1994): 57; D. O. Carrigan, "Unionization in Canadian Universities," *International Journal of Institutional Management for Higher Education* 1:1 (1977): 22-23. Strictly speaking, the first regular faculty in English Canada to unionize was at Notre Dame University of Nelson, in British Columbia.

¹⁸ D. Dobbie and Ian Robertson, "Reorganizing Higher Education in the United States and Canada: The Erosion of Tenure and the Unionization of Contingent Faculty," *Labor Studies Journal* 33:2 (2008): 117- 119, 131-32.

¹⁹ K. Banks, "Weakening the Tenure System: The Use and Abuse of Sessional Appointments," *CAUT Bulletin* (1995): 3. The author was a CAUT professional officer. Regular academics' attitudes towards contingent faculty as surveyed in the 1990s was significantly negative: Rajagopal, *Hidden Academics*, ch 5.

²⁰ M. Earle, "Revolt among the Peons of Higher Education," *New Maritimes*, 14:2 (1995). Perhaps, as well, some CAS thought of themselves as too close to the real working class to seek alliance with a regular faculty union: Guard & Allen, "Bargaining History of CUEW Local 3," 3.

²¹ Rajagopal, *Hidden Academics*, 185-86.

²² Smallman, "Contingent Academic Work," 4. A few CUPE locals have also affiliated with CAUT.

²³ Dobbie and Robertson, "Reorganizing Higher Education," 134-35.

²⁴ Examples of research focusing on an economic mode of analysis can be found in Douglas Mann and Heidi Nelson Hochenedel, "A Manifesto of the Twenty-First-Century Academic Proletariat in North America," *Journal of Social Philosophy* 34 (2003): 111-124. Although this work makes note of job security and benefits afforded and not afforded to professors, its focus is on pay differentials.

Also see Paola Manzini and Dennis J. Snower, "Wage Determination and the Sources of Bargaining Power," IZA Discussion Paper 535 (2005): 2. Available at SSRN: <<http://ssrn.com/abstract=323587>>, which references the large literature on wage bargaining generally and is focused on the source of bargaining power in wage negotiations.

Also, see Toke Aidt and Zafiris Tzannatos, *Unions and Collective Bargaining Economic Effects in a Global Environment* (Washington, D.C: The World Bank, 2002), 4. <documents.worldbank.org/.../unions-collective-bargaining-economic-eff...>.

This work is focused on the link between labor standards and economic performance. Specifically it narrows in on two questions: what is the impact on the economic well-being of individual workers and the performance of firms basing industrial relations on collective bargaining between unions and employers rather than relying on individual contracting (question A) and what is the impact on the macroeconomy of adopting different institutional approaches to collective bargaining (question B). The authors note that Questions A and B have been thoroughly researched by economists, industrial relations scholars, and political scientists.

²⁵ David G Blanchflower and Alex Bryson, "The union wage premium in the US and the UK," [electronic resource] Discussion Paper. London: London School of Economics, Center for Economic Performance, (2004).

²⁶ Douglas C Maynard and Todd Allen Joseph, "Are all part-time faculty underemployed? The influence of faculty status preference on satisfaction and commitment," *Higher Education* 55 (2006): 139.

²⁷ This degree of variation is staggering. By comparison, Statistics Canada reports the average hourly wage of an experienced full-time unionized employee in Nova Scotia to have been \$25.67, in Ontario \$28.91 for April 2013. (<http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/lfss01a-eng.htm>).

²⁸ Charles Brown and James L Medoff, "The Employer Size Wage Effect," NBER Working Paper 2870 (1989): 1-48.

²⁹ In fact, our data suggests that an incremental approach to achieving prorated compensation may be misplaced. Contra: George Davidson, "Victories Large and Small, Fight for Pro-Rata Terms" *CAUT Bulletin* 57 (2010).

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