February 2013

It's All About the Power

James Castagnera
castagnerac@aol.com

Follow this and additional works at: http://thekeep.eiu.edu/jcba

Part of the Education Law Commons, Education Policy Commons, Higher Education Administration Commons, Labor and Employment Law Commons, and the Labor Economics Commons

Recommended Citation
Available at: http://thekeep.eiu.edu/jcba/vol4/iss1/1

This Op-Ed is brought to you for free and open access by The Keep. It has been accepted for inclusion in Journal of Collective Bargaining in the Academy by an authorized editor of The Keep. For more information, please contact tabruns@eiu.edu.
It’s All About the Power
Jim Castagnera1

By and large, we academics may behave more civilly than our counter-parts in the corporate world. But, whether that’s the truth or merely an urban legend, the irrefutable fact is that in the academy’s labor relations, it’s just as much about power as it is at General Motors, Coors, or Caterpillar. This is worth remembering, when the Utopians among us talk wistfully of labor-management cooperation.

Nobody ever handed organized labor anything. In the legendary days when the likes of John Mitchell and Gene Debbs and Sam Gompers were organizing, pitched battles were common. The Homestead Strike of July 1892 pitted striking steelworkers in the hills, armed with rifles and a homemade cannon, against Pinkertons and scabs working their way up river to Andrew Carnegie’s mill. The first day of battle left ten dead and 70 wounded.

My Great-Uncle Eddie Eichorn proudly remembered the mid-century auto strikes in Detroit, when he went to the picket line with a lead pipe up his coat sleeve. The National Labor Relations Act, which helped level the battlefield, was enacted because FDR and his New Deal Congress relied on Big Labor and its millions of voters.

That it’s all about power is perhaps best demonstrated by permanent replacement of striking workers. The Supreme Court ruled as early as the mid-Forties that employers were entitled to permanently replace workers engaged in an “economic” (as opposed to an “unfair labor practice”) strike. So why in the steel, auto, rubber, glass and other heavy industries did they never do it? You know my answer.

Only in 1981, after organized labor, which at its peak represented one in three Americans working in our private sector, had experienced a steady downward drift in membership, did Ronald Reagan have the nerve to bust the air traffic controllers union. The permanent replacement of PATCO members signaled a shift in U.S. labor policy. Numerous companies soon followed suite and got away with it.

1 Jim Castagnera is a member of the Advisory Board of the National Center for the Study of Collective Bargaining in Higher Education and an Associate Editor of the Journal of Collective Bargaining in the Academy. He brings to these comments more than 25 years as a management-side labor lawyer and a university counsel. He has published 15 books on labor, employment, and higher education topics.
Where the gutting of our manufacturing sector by foreign competitors was the primary cause of the subsequent evisceration of the once mighty private-sector unions, a 5-4 Supreme Court decision in 1980—just months before the PATCO strike and the union’s debacle—eviscerated private-sector organizing in higher education. The Yeshiva University case held that full-time, tenured faculty at private universities were managerial employees and, therefore, not protected by the NLRA. Numerous private universities withdrew recognition and refused to bargain with their faculty unions.

However, some private universities to this day continue to bargain with their faculties’ unions. Why? Let me suggest from personal knowledge that the answer is: those faculty bargaining units have remained powerful forces on their campuses. I say this because, no matter how much lip service administrators give to collegial, cooperative relationships with their faculty unions, nine out of ten would shed their institutions of these unions if they had the chance. I’ve seen some recent statistics that support my opinion.

Today, the large public-employee unions are under fire. More aptly, a perfect storm is brewing. Cash-starved states and their strapped taxpayers are eager to shed their budgets of expensive pension plans and healthcare programs. Politicians, particularly conservatives, and most particularly Tea Partiers, flush with PAC cash thanks to the Citizens United decision, would love to deprive their opponents of the only organizations large enough and wealthy enough to even begin to match the right’s corporate and billionaire supporters (see Benedict & Benedict, “Ohio SB5 and the Attempt to ‘Yeshiva’ Public University Faculty” in this issue). And, third, the onslaught of contingent-faculty hiring, for-profit/online competitors, and most recently the advent of “Massive Open Online Courses” out of Harvard, Stanford and elsewhere, combine to undermine the power of the tenured professorate at a time when students and parents groan under loans.

Can organized labor hold back the tide of contingent faculty and online options that threatens to swamp the tenured faculty’s boat? I’m not so sure it can. But if it does, it will be because of the effective use of power, and not because Labor has persuaded governors, legislators, and administrators that labor-management cooperation is the wave of the future.

Let me conclude (like any good lawyer) with a caveat: I am not advocating labor unrest in higher education. As a management-side labor lawyer and university counsel, I welcome exactly the opposite. I simply am suggesting here that labor-management cooperation arises in any economic arena only when the labor union involved is
cooperating from a position of strength. My motive is to inject this (obvious, once it’s been stated) important point into conversations that otherwise are often Pollyannaish.