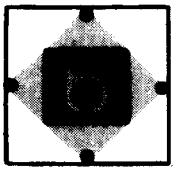
COLLECTIVE BARGAINING IN HIGHER EDUCATION

Proceedings,
Third Annual Conference
April 1975

Thomas M. Mannix, Editor



National Center for the Study of
Collective Bargaining in Higher Education
Baruch College-CUNY

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Order of speeches for the Journal of the Third Annual Conference of the National Center for the Study of Collective Bargaining in Higher Education.

Introduction

This volume represents papers presented at the Third Annual Conference of the National Center for the Study of Collective Bargaining in Higher Education conducted in New York City on April 28-29, 1975. The papers covered a wide range of topics as indicated by the program:

Monday, April 28, 1975

10:00 *Introduction*
Clyde J. Wingfield, President, Baruch College-CUNY

Welcome
Alfred A. Giardino, Chariman, Board of Higher Education-CUNY

10:30 Collective Bargaining's Impact on Governance, Joseph Garbarino, Professor of Business Administration, University of California at Berkeley

12:00 The U.S. Congress and Public Employee Legislation, Frank Thompson, Jr., U.S. Congressman, 4th District, New Jersey

2:00 Federal Legislation for Public Employees: A Management Perspective
Sheldon Steinbach, Staff Counsel, American Council on Education

A Union Perspective
Stephen Perelson, Co-Deputy, New York State United Teachers

3:30 The Canadian Experience: Collective Bargaining in Higher Education
Donald C. Savage, Executive Secretary, Canadian Association of University Teachers,

and

D.V. George, Dean of Academic Studies, Notre Dame University of Nelson, B.C.

Tuesday, April 29, 1975

9:00 Collective Bargaining and Tenure — A Collision Course?
Richard Chait, Director, Institute for Educational Management, Harvard University

Irwin Polishook, Vice President, Professional Staff Congress, AFT/NEA

10:30 Small Group Sessions

Collective Bargaining and the Two-Year Colleges Jerome M. Staller, U.S. Department of Labor, Washington, D.C.

Private College Bargaining Problems
Kent M. Weeks, Dean, University of Dubuque, Iowa

Jules Kolodny, Professor, New York University and Vice President, AFT

Dispute Settlement Techniques
Thomas Emmet, Special Assistant to the President Regis College, Denver, Colorado

Management Rights in College Contracts Margaret Chandler, Professor of Business, Columbia University

12:00 Disparities Between University and Private Sector Collective Bargaining Joseph Crowley, Professor of Law, Fordham University and Member, New York State Public Employment Relations Board

2:00 Collective Bargaining and Affirmative Action Susan Fratkin, Director, Special Programs, National Association of State Universities and Land Grant Colleges

Carol Polowy, Counsel, AAUP, Washington, D.C.

When the *Proceedings* volume of the National Center's First Annual Conference, April 1973, went to press, 211 colleges and universities covering more than 321 campuses had collective bargaining agents. When the Second Annual Conference, April 1974, *Proceedings* went to press, the number of institutions with bargaining agents had risen to 244 covering at least 350 campuses. Now, in the summer of 1975, as *Proceedings* for our Third Annual Conference April 1975 go to press, some 274 institutions of Higher education covering more than 439 campuses have collective bargaining agents. Two hundred and eleven colleges and universities in twenty-six states and the District of Columbia have signed contracts.

The National Center for the Study of Collective Bargaining in Higher Education was founded at Baruch College, City University of New York, in 1972 at a time when collective bargaining for faculty members and other professionals became one of the newest and fastest growing phenomena in higher education.

Conceived as national in scope, objective in approach and comprehensive in service, the Center embraces the following activities:

1. A national databank on collective bargaining in higher education with emphasis on faculty bargaining. A grant from the Elias Lieberman Memorial Foundation enabled the Center to establish The Elias Lieberman Higher Education Contract Library.
2. An information clearinghouse with suitable media for information circulation and exchange, including a periodic newsletter and annual journal.
3. An ongoing program of interdisciplinary research and analysis on issues in the field.
4. A program of collective bargaining training for education leaders through

seminars, institutes, and other programs. Its long-range goal is to develop a corps of skilled and informed leaders for both sides of the bargaining table.

Acknowledgements

A publication of this type relies heavily on the efforts of many people. The conference contributors and participants provide the basic information. The National Advisory Committee provides ideas and suggests themes. The Faculty Advisory Committee of the National Center provides time and energy in planning and carrying out the annual conference. Special recognition should be paid to the Audio Visual staff of Baruch College under Mr. Lawrence Arnot and the College Relations staff under Robert Seaver. Transcribing the tapes and preparing the manuscript for publication was done by Carol Kenny, Annie Polite, Mary Ziegler and Patricia Doocey of the National Center secretarial staff. Finally, the editor gives special thanks to Mrs. Evan G. Mitchell for the long hours spent in supervising the annual conference and in the preparation of this volume.

T.M.M., editor

Welcome and Introduction of Keynote Address

President Clyde J. Wingfield

About four years ago, some of those who make the academic machinery at Baruch College turn, sat with me to discuss a variety of problems in the college and the university, many of which in one way or another were related to collective bargaining. In that discussion we said to ourselves, "that within the City University we must have at least half of the accumulated collective bargaining experience, both good and bad, in higher education beyond the community college level. Why don't we begin to do something somewhat systematic by way of analyzing our processes?" It was out of that casual conversation over coffee one morning that the proposal of the National Center came to be.

We prepared a formal proposal, put it before our Board of Higher Education and in the fall of 1972, the National Center was established at Baruch College. It has, since that time, done some rather remarkable things. Perhaps the best test of usefulness is whether or not other institutions find our products and programs useful. Your presence here suggests that you do, but maybe more importantly I shoud note that we now have 94 affiliate memberships, institutional memberships, in the National Center.

The National Center has been the recipient of three significant foundation grants: a Ford Foundation Grant for a study of management rights, which Professor Margaret Chandler of Columbia University will soon publish; a Carnegie Grant in which Maurice Benewitz, the first Director of the Center, undertook a study of the grievances under the City University contract; and a Lieberman Foundation Grant which helped establish the Library of the National Center where we now believe we have more than 90% of all the junior college contracts. Some 124 of these contracts are in a computer with a full-text retrieval capability.

We have a number of publications including the several bibliographies you have received and which the Center updates each year. The Center's *Newsletter* is published five times each year, and, of course, we have a number of training sessions both here and away, in addition to this annual conference.

Our first speaker this morning is Chairman of the Board of Higher Education of the City University of New York, and if that were his only credential he would be a welcome addition to the program. But, it happens that he has other credentials for addressing this Conference. Because of those other credentials we thought it appropriate to ask him to keynote this meeting.

Al Giardino has served as President of the Board of Education in New York City. He is a practicing attorney specializing in labor and international law. He has served as Executive Secretary of the New York State Labor Relations Board. He has been an active arbitrator, member of an international mission on labor to Bolivia, special representative to the United States Departments of State and Labor on the study of labor laws in South America. He was a drafter of the labor attache program for the United States State Department and he taught labor law at Columbia, N.Y.U., Cornell, and Geneva. He is Secretary to the United States Committee of the International Society of Labor and Social Legislation.

It is then, my pleasure to introduce to you a specialist in our field of endeavor, who is also the Chairman of our Board of Higher Education, Mr. Alfred Giardino.

Keynote Address

Mr. Alfred A. Giardino
Chairman, Board of Higher Education, City University of New York

We have a wonderful group here this morning. On behalf of the Board of Higher Education, it becomes a personal and official pleasure to greet you.

As the largest public-funded, urban university in the world, City University is really quite unique. A Conference which provides information and exchanges information in the public interest is exactly the kind of project that our Board is eager to see our University do. Baruch College and the National Center are to be congratulated for this type of conference that is most important for all of us.

Permit me one minute of broad background and observation on the subject of public employees. We all know the tremendous development of the last ten and fifteen years. What we may not remember is that as far back as 1830 the first public employees were organized with our craftsman in the United States. The first strike of those craftsmen for a shorter work week was in 1836. Exactly 100 years later, in 1936, the A.F. of L. created the first national union with the American Federation of State, Municipal, and County Workers.

Today, the number of our public employees has increased tremendously. The figures indicate that one out of four or five employees are public employees. Since World War II they have more than tripled in size so that we now have some fourteen or fifteen million public employees as opposed to 4.2 million of thirty years ago.

We also know that in the forefront of that development lies the advance of unionization and collective bargaining in the field of education. But, even in education this is not really new. It was over 75 years ago that the Chicago teachers organized the Chicago Teachers' Federation in 1898. A few years later in 1902 they affiliated with The Chicago Federation of Labor. And in more recent years, as we look back to get a moment of perspective, we find that, in the public educational institutions, faculty would organize in legislative councils or in other similar activities in order to compete for the public dollar and to be sure that their interests and the interests of their institutions would be protected.

Then, in the 1960's we have our boom and expansion in higher education. Mass higher education developed. Decentralization occurred as size increased. Unfortunately, depersonalization also affected many of our institutions. As the increased role of the student developed, it coincided with the acceptance of increased unionization of public employees and other white collar employees. But enough on our broad perspective.

What about today? What is the perspective of a Board of Trustees or of a Board of Higher Education as it is known in New York City, in connection with the subject of collective bargaining? Too many people think of it in the limited and traditional sense of the union or faculty group being opposed to the college administration. From my vantage point may I add some additional ingredients which do not receive sufficient attention.

The Board or the policy-making agency of public institutions is created by the legislature. In our case, the members are named both by the Governor and the Mayor of the City of New York. At times, those two gentlemen may be of varying political faiths and different political views. Moreover, the Board is financed by public funds, guided by the educational policies of the Board of Regents, controlled by the statutory policies of the Taylor Law or of the Public Employment Relations Board, responsible

for the university in the face of the diverse interests of students, faculty, administrators, alumni, public —. The job is not easy.

The Board, which has the legal authority and jurisdiction over collective bargaining, encounters a number of legal restraints. The Board of Regents, the supreme educational authority in the state, has its views on collective bargaining. For example, in 1972, the New York Board of Regents set forth guidelines for institutions of higher learning in which it said that "some academic matters must remain outside of the purview of negotiation" including items such as: academic tenure; curriculum development and revision; the processes for faculty evaluation, promotion and retention; student-faculty ratios and class size; and administrative and/or academic organizational structure. They then concluded that:

> "The foregoing are matters of educational policy essentially non-economic and consequently non-negotiable . . . The mandated process of collective bargaining is cumbersome, rigid and unable by its very nature to make those administrative decisions crucial to the effective operation of a higher education institution."

Two years later, in November 1974, the Board of Regents repeated its concern with the problem. It stated that —

> "The State Education department . . . will monitor closely the impact on program quality which could accrue should institutions bargain away any of those prerogatives which have implications for program quality control. The department is prepared to reject a program proposal submitted by an institution whose collective bargaining agreement has weakened its ability to control the quality of the program in question. Institutions must be vigilant in limiting the areas of discussion at the bargaining table to items and issues not restricted by the State Regents' position."

Enters the Taylor Law and the Public Employment Relations Board. They say, "Mr. Institution of Higher Learning — you shall bargain on terms and conditions of employment. We (PERB) shall determine the interpretation of what is the term or condition of employment."

The Taylor Law in New York does not permit strikes and there is a mandatory bargaining responsibility. Thus, these statutory duties impose more of the industrial unionism thrust as opposed to the educational thrust of the Board of Regents.

In addition, we have our faculty and our unions with some conflicting philosophies. The uniqueness of our higher educational systems and of our faculty for many centuries has been the collegiality or the judgment of peers which has prevailed. However, more recently, unionism has come to the fore adopting, in the broad sense, a more industrial unionism approach. As a consequence, many difficult questions arise.

Should there be the presumption that someone should be reappointed when he has already served one or two or three years reasonably satisfactorily or even eminently satisfactorily in the academic field? Traditionally, there has been no presumption or reappointment of faculty.

What about tenure? Should that be or should it not be a mandatory subject of bargaining? What can be done in areas of that nature? May a college, and it is one of the questions that has come up at City University, refuse to confer tenure on an individual with excellent qualifications? We find that the arbitrators have indicated yes where it is for sound institutional reasons, or where it is motivated to meet the broader needs of the institution as opposed to the individual needs of the person who is being considered.

When you have committees, as many institutions of higher learning do have, that are concerned with personnel and budget problems, and they compare the qualifications of their colleagues in a confidential atmosphere, may you require the members of that committee to testify regarding those confidential discussions dealing with the qualifications of their close friend and colleague who has been rejected for promotion, or for tenure?

Should a student be allowed to participate and be a member of that P & B (Personnel and Budget) Committee?

These are some of the questions that do arise when you try to take the background of faculty life as we have known it in most universities for many years-judgment by peers-and impose on it some degree of the industrial unionism approach that has prevailed elsewhere.

The Board of Trustees of a public institution is also controlled by statuatory law developed over the years for the protection of public employees, usually under the Civil Service Laws. Tenure is spelled out the New York State Law occurring after five, full continuous years if appointed for the sixth. Due process is set forth. There are appeals to the Commissioner of Education. And there are special laws, federal, or state, dealing with discrimination or specialized subjects that must also be taken into account.

But over beyond these legal or statuatory provisions or legal restraints on the collective bargaining process, there are many practical restraints which don't always show their head until a moment of dire consequences is forthcoming. One such seems to be now in the City of New York.

There is a practical restraint called money. Public institutions are financed both by the State and by the City. Here in New York, that is approximately 90% true, the other 10% coming from fees of one nature or other. The financing that is provided, or is not provided, for City University or State University, obviously must have various effects. It must affect the nature of the education programs that we can or cannot give. It must affect the question of salaries and fringe benefits that are available or not available for faculty or staff. And, sometimes, it also affects the question of academic freedom. Where there is a single source of control,—a given legislature or a single donor in a private institution, — then the wishes or mores of that source will sometimes limit, the freedom of flexibility that the institution may be able to exercise. Happily, here in New York City that question is far in the background. However, it was otherwise in California a few years back.

Thus we find that a Board of Trustees in a public institution of higher learning must deal with the legislature and with the Mayor or the Governor and with the budget directors. In addition, we must deal with the faculty and we must deal with the students. Accordingly, it looks not at the traditional union and college administration relationship alone. A Board must have a broader perspective and a broader view because its duty is to synthesize these different forces the pull in different directions and to set priorities that are meaningful.

At the end of your two-day conference, I hope that all of you could come up,—facetiously speaking,—with a good simple one-sentence rule. President Wingfield may have thought that I came because of his smiling Texas persuasion, or because of the high quality of the participants. Really I came to ask you to provide the Board in one sentence with a guide that can help the Board effectively handle its collective bargaining responsibilities consistent with the guidelines of the Board of Regents, with the Taylor Law, with our budgetary restraints, our principle of free tuition and high quality, and at the same time bring smiles to the faces of the Mayor, the Governor, the Union, the students, the faculty and the public.

Collegiality, Consensus, and Collective Bargaining

Joseph W. Garbarino
*Director, Faculty Unionism Project *Institute of Business and Economic Research, University of California, Berkeley*

Few of the potential effects of faculty unionism in higher education have attracted more attention than the changes that collective bargaining is expected to bring to academic governance. Most discussion of collective bargaining and governance centers around the question of the impact of faculty unionism on academic senates. The theme of this paper is that while this question is an important one, the changes in the practice of governance that academic unionism is bringing are much wider in scope than is suggested by the concentration on the fate of the senate as an institution. The additional areas of importance are collegiality as a process of decision making and contract negotiation as a mini constitutional convention in its potential for change.

I shall begin by advancing some propositions concerning the relationships between unions and senates that are suggested by experience with faculty unions to date:

(1) Considered across the whole range of institutions of higher education, faculty unionism has increased the effectiveness of senates as vehicles for faculty participation in governance dramatically. The key to this possibly surprising statement is that only about one-eighth of all the institutions of higher education have been organized, and there is no question that in the unorganized seven-eighths, scores of new senates have been created and scores of existing senates have been reinvigorated as a result of the spread of unionism. This is important since a large number of institutions will never unionize and many others will not for years, and the faculties of these institutions will enjoy (if that is the right word) the benefits of increased participation in governance during the interim. In addition, in many instances these new and strengthened senates will turn out to be, not permanent substitutes for unions, but an organizational prelude to their later introduction. In a sense, of course, this spillover effect is a side issue, the major question is the effect of unions on the senates in the unionized institutions.

(2) In organized institutions the most common form of relationship between senates and unions to date has been one of cooperation, often guarded cooperation, but cooperation nevertheless. Let me confess immediately that this conclusion is not based on quantitative evidence, but on my own observation and a reading of the substantial number of case studies that are now becoming available. The principal reason for this development is that the unions so far have directed most of their attention to subject areas in which senates have not been active or in which they have had little effective power. This is likely to change as collective bargaining matures.

In 1970 the AAUP conducted a comprehensive survey of governance practices in over one thousand institutions that gives us a picture of existing practice at the beginning of the major growth period of faculty unionism. Thirty-one separate areas of governance were included and the levels of participation were characterized as

* The project is supported by the Carnegie Corporation

either *determination, joint action, consultation, discussion,* or *none*.[1] For all 31 areas considered together, the median level of participation was found to be just short of *consultation*.

I have arbitrarily divided the 31 areas into three groups: personnel matters (e.g., promotion, tenure, salaries), academic matters (e.g., curriculum degree requirement, departmental affairs), and administrative matters (e.g., planning activities and selection of administrators). There was a clear cut pattern of difference between the level of participation in the three groups. In 1970 faculties had the greatest influence in academic matters where the median level of participation for 11 of 12 items was *joint action*. The next highest level was found in personnel matters where the median level for 5 of 7 items was *consultation*. However, the exceptions where salary levels and individual salaries for which the medican level of participation was in administrative matters where 7 of 12 items had a median score at the *discussion* level, while 4 scored as *consultation,* and 1 as *none*.[2]

The major part of the bargaining effort of the faculty unions has been expended on personnel issues such as salaries and promotion with less attention paid to administrative matters, and least to the academic matters in which senates have been most active. Although instances of union-senate competition exist (CUNY for example), on balance, senate and union action has been complementary rather than competitive.

(3) Where competition for power and jurisdiction exist, the primary reason is the lack of correspondence between the constituency of the senates and the membership of the bargaining unit, or, more precisely, the active membership of the union. There are three variants of the problem of unmatched constituencies:

(a) The bargaining unit includes all members of the senate but also includes substantial numbers of other occupational groups. CUNY is the leading example of this type with SUNY not far behind. Another version of this situation exists at Rutgers where employed graduate students make up a significant part of unit membership. When the proportion of the membership of the faculty senate who are union supporters is relatively low, there is likely to be competition between the senate and the union as rival organizations in at least some matters. The legal monopoly of the union in personnel matters make the identity of the winner in this area a foregone conclusion. Even on personnel matters, after the union victory, however, a competition for influence on union policy may continue inside the union with the faculty senate constituency functioning as a caucus in intra-union politics. The faculty of the medical centers at SUNY seems to exemplify something close to this situation.

(b) In many smaller unionized institutions the bargaining unit and the senate are roughly co-terminous in their membership but the union members and their leaders may support policies at variance with the preferred policies of the senate leadership. This split may result from the common situation in which only 50 percent or less of a unit are union members and therefore determine union policy. It may well be that those senate members who join the union are those most dissatisfied with the traditional role of the senate. This competition may be eliminated eventually if the union succeeds in expanding its membership to match that of the senate more closely and the policies of the two organizations converge over time.

Another possibility is that one or the other organization (in most cases

probably the union) will be able to co-opt the other by winning control of the opposing organization through the electoral process. Rutger's President Blaustein has noted that the union at Rutgers appears to be trying this tactic by backing candidates for senate offices.

(c) In some institutions conflict between the senate and union may arise because the senate may include groups not represented in the union. The most obvious examples are those institutions where students have effective influence in senates but are excluded from the union. The importance of this problem will depend on how much influence students have in the senates, and my guess is that serious conflict between the senate and union cannot be sustained over time solely from this source in many institutions.

Two Versions of Collegiality

The importance of the various patterns of overlapping memberships of unions and senates in the previous discussion suggests that the really critical question is not the impact of the union on the senate as an *institution* of governance but on the *process* of governance that hte senate is presumed to embody, the ill-defined notion of collegiality. I propose that there are two principal versions of collegiality, the *traditional* (or administrative) version and a new emerging version that I shall refer to as the *union* version.

Collegiality as it is practiced in academia varies a great deal from one institution to another, but in general it can be described as faculty participation in decision making at all levels from the department to the office of the chief executive officer, or even to the governing boards. The mechanism of participation is the ubiquitous committee and the product of the participation can be anything from a vaguely formulated concensus of opinion to an elaborate formal report with recommendations.

From the administration point of view, the benefits of the traditional version of collegiality are many and varied.[3] In the United States the concept of "shared authority" has traditionally meant that administrations have voluntarily shared some of *their* authority while retaining ultimate power. In this system collegiality can be applied to a wide range of issues and a very wide spectrum of interest groups can be included in the process of consultation. Of the whole range of 31 subject areas surveyed by the AAUP, the participation level of *none* was reported by as many as one-third of the institutions for only 20 percent of the questions. When the recommendations for action that are forthcoming are reasonably consistent with what the administration would have liked to do anyway, the appearance of effective delegation can be produced at relatively little cost. Because they have the final decision, administrations can arrange for, or at least cheerfully accept, "participation" from groups they know in advance will present diametrically opposed recommendations. They can often even influence the content of the advice they receive by selecting or influencing the selection of some of the members of the advisory committees. This can provide the appearance of widespread consultation while leaving the administration free to choose in making the ultimate decision. Let me stress that there is a positive side to this approach in that it permits the administration to encourage debate and to elicit varied proposals from highly qualified persons concerning issues on which they are expert. Many of the proposals put forth will be superior to any available to the administration from their own staff and they can be gratefully

adopted. Many are in areas in which the administration is essentially indifferent to the end result over a wide range, and they are happy to acquiesce to faculty desires.

It remains true, however, that as far as the administration is concerned, it is the use of the process of consultation itself, not the adoption of a faculty recommendation that is the essential element that makes the system collegial. To the administration the rejection of a faculty recommendation that is the product of serious and responsible deliberation is an unfortunate but a natural and acceptable outcome of the collegial process. To the union it is a repudiation of the process, an undermining of its integrity.

To offset the substantial benefits of the system of collegiality to the administration, there are some important costs. If the faculty is to continue to cooperate in the operation of the system and to accept its results, they must be continually given some evidence that they have real influence on a substantial proportion of the decisions they are asked to consider. At least some of the recommendations accepted must be on issues of substance, and some of them must lie outside the area of academic housekeeping, such as degree requirements and student evaluation. A good deal of managerial time and effort must be expended, and a sense of frustration will be frequently experienced. When an administration feels that it has to take the initiative on an important issue in order to introduce a change that is seen to be unpopular with many faculty, it may find that it has to engage in extensive manipulation of the collegial system if the appearance of a collegial decision is to be preserved.[4]

The tradition that every interested group has to be consulted at length on any important issue makes major policy changes hard to accomplish and results in leaving many minor changes that are thought to be desirable but not vital off the agenda altogether. The variety of conflicting positions and a tradition against resolving the contradictions by authoritative managerial decision creates a presumption of compromise and consensus.

When a faculty union enters, the situation changes in several important ways. If collegiality is defined as decision making by consensus of the parties (including the administration) affected by the decision, there will be a good deal less of it in unionized institutions. If collegiality means an official and effective faculty voice in decisions, in unionized institutions there may be a simultaneous reduction in the number of areas in which faculty are consulted, and a strengthening of their influence in the areas that are subject to bargaining. The scope of bargaining will be narrower than the scope of collegiality was previously.

The administration will lose much of its flexibility in deciding which issues will be subject to the collegial process. The union will demand, usually with the support of law, that certain issues be the subject of collective bargaining as a matter of right. For its part, the administration may consider that there are other issues that in the past may have been the subject of regular consultation with faculty group, but now should be kept out of the process lest they become subject to mandatory bargaining in the future.

The union will demand that it become the exclusive representative of the faculty at least on all issues the law places within the scope of bargaining. Even for areas outside the legally required scope, the union regards itself as the natural partner in consultation and sees administration efforts to deal with other faculty groups as a challenge to the union's legitimacy as the faculty's representative. Joint administration-faculty committees are not ruled out, but the union will want to select the faculty representatives and ratify any decisions that result.

The requirement to bargain on an issue implies a requirement to reach an agreement or else to face a strike threat or, more usually, to enter into some form of impasse procedure, such as fact finding with third party intervention. This is a far cry from soliciting a collegial recommendation from a faculty committee with the understanding that the final decision remains in management's hands.

A neglected aspect of the union's impact on collegiality is the pressure to make collegial review of decisions, particularly personnel decisions, less secret and more open to public view. Much of the workability of peer review depends on protecting the exact content of the decisions and the identity of the "peers" making them from disclosure. As the process becomes more open and the decisions are subject to debate and possible challenge, the peer system will break down rapidly. As presently operated, faculty are asked to make frank and candid judgments on the performance of their colleagues as a matter of professional obligation. There are no extrinsic rewards for exposing oneself to possible recrimination, unpleasant and embarassing personal and social consequences, or, for that matter, even to possible court action. To those who think that anonymous peer review is an invitation to arbitrary and prejudiced actions, the system is part of the problem of professional evaluation not a valid form of a solution, and its demise will be seen as a net gain. The question remains as to whether there is any other system that will protect the quality of academic appointments as well in that minority of institutions in which peer review has been taken seriously and performed conscientiously in the past.

Although this may sound like the end of collegiality, it really amounts to a redefinition of collegiality by the union. Unions argue that they are making collegiality effective for the first time because they define collegiality as a process of decision making in which the parties considering an issue reach an agreement that is binding on the administration or, if it is rejected, the rejection is then subject to review by a third party.

As a result of this process, the wide range of issues that have historically been the subject of collegial discussion (e.g., the AAUP's 31 items) will be divided into mandatory, permissive, and prohibited subjects for bargaining. The division of the topics among the categories will be the result of legal prescription and court or labor board decisions, but private sector experience points up the fact that the question of what is negotiable is itself largely negotiable.

This need not mean that consultative collegiality will be completely replaced by bargaining collegiality. How much consultative collegiality survives will in part depend on how badly administrations want to preserve it. There is no need to assume that competent administrations will be overpowered in negotiations with faculty unions. There is a very real possibility, however, that college administrators may come to see real advantages to trading in their traditional collegial system of decision making for the new collective bargaining model. Running an organization by consensus can be a trying and frustrating experience and a bargaining system has some attractions.

Consensus vs. Bargaining

Occasionally a college administrator suggests that there might be some real advantages for management if colleges were to forthrightly embrace the collective bargaining system of faculty relationships. It is time to take these random musings seriously.

Faculty unionism imposes some serious direct costs on university administrations in terms of an expanded staff, a loss of flexibility, and a need for elaborating policies and policing procedures that represents a dramatic break with the past. Not the least of the costs is a general raising of adversarial consciousness in faculty-administration relationships. On the other hand, for an aggressive administration there are two major advantages of a collective bargaining system compared with what I have called the traditional collegial system characterized by consensus decision making.

(1) The first advantage arises from the fact that bargaining at periodic intervals with an official and exclusive representative encourages the simultaneous consideration of the whole range of issues between the parties. The collegial system diffuses responsibility for particular topics over various groups of faculty. There are no contract termination dates and no strike deadlines. Issues are usually taken up one at a time and often considered in isolation. Multiple committees, sometimes with changing membership, may be involved, the process is continuous, often sequential, with long gaps for vacations, and there may be little sense of urgency.

The possibility of considering a whole set of issues in a single negotiation, under pressures of time, encourages the "packaging" of items. The inclusion of one item is contingent on the inclusion of another. Bargaining strategy accepts the introduction of extreme demands as a normal tactic and encourages the presentation of a wide spectrum of demands. The basic terms of the relationship can be opened for discussion in a way that would be revolutionary in a collegial system. Something like this, for example, seems to have happened in the negotiations between the University of Hawaii and the American Federation of Teachers local ill-fated agreement in 1973.

These characteristics of bargaining open the possibility of increasing the rate of change in university affairs very substantially.

(2) Adopting the bargaining system means abandoning the assumption that change depends on reaching a consensus among major interest groups in favor of a reliance on majority rule. A collective bargaining agreement need only be acceptable to a numerical majority in the bargaining unit. The existence of such a majority is often tested in a secret ballot election on a one-man, one-vote basis. Since the settlement involves packages of items, the package is constructed with the need for building a majority in mind. Of course, union officers cannot consistently ignore large segments of its membership with impunity. They have to consider the potential cumulative effect of large disgruntled minorities on the union's status as the elected representative, but the overthrow of a set of officers or the replacement of a bargaining representative are difficult processes which become more difficult as the union becomes firmly established.[5]

Underlying this discussion of the changes that might be expected from the replacement of the collegial-consensus system with a bargaining system, has been the assumption that the advantage would redound to the benefit of management on balance. Compared with the consultative collegiality system, bargaining will be a vehicle of accelerated change. As a tool of change, bargaining may be exploited as effectively be an aggressive faculty union as by a university administration. I suspect that in the years ahead administrations are more likely to be continuously and successfully aggressive in introducing changes in employment conditions than are faculty unions. Note that this does not mean that faculty unions will not provide major advantages to organized faculties. Administrations are going to be aggressive promoters of change with or without faculty unions, and unions are a method of holding

management "accountable" for some of their actions.

The major advantage that will accrue to the both parties will be the ability to establish "linkages" between issues. By "linking" a union concession in one area with a management concession in another, formal agreements to institute change will be facilitated. Unilaterial agreements to modify existing practices will become rare, rather, any modification will become the currency of bargaining.

A California university recently adopted a version of the 4-1-4 academic calendar in which the fall semester was advanced so as to end before Christmas while the spring semester continued to begin around February 1, after a one-month hiatus. I am sure that this switch was proposed and adopted for weighty educational reasons, but the impression remains that it was initiated by the faculty and students for their convenience. Under collective bargaining, any proposal such as this would come up in a context that encouraged the administration to "link" it to another issue of importance to them. Few changes that are more valued to one party than the other will be agreed to without the question of a quid pro quo arising.

The evalution of the impact of faculty unionism on governance has to avoid two traps. One is to assume that a revolution in relationships is involved because the bargaining system is compared to an ideal collegial system in which academic governance is seen as the product not of a community of scholars but of a community of saints, free from all taint of ignorance, passion and prejudice. The other trap is to assume that faculty unionism will have no independent effect on academic relationships because it simply formalizes trends and eevelopments that are going to occur in any event.

Summary

To sum up, faculty bargaining is another form of academic governance. It is one that replaces custom with contract, collegial consensus with majority rule, consultative committees with bargaining teams, and continuous discussion of discrete issues with periodic open-ended constitutional conventions.

Consultative collegiality will survive as a system of governance over wide sections of academia for a long time. The challenge of collective bargaining will make it function more effectively in more institutions than ever before. Its natural domain will be the private colleges and universities, but it may also survive in relatively prestigious public institutions not swept into large multi-institutional systems.

Bargaining collegiality will become the dominant role of governance in public institutions, expanding along with the expansion of public employee collective bargaining laws. After years of stressing the role of the public employee bargaining law in the expansion of faculty unionism, I have come to the conclusion that the critical factor in this relationship is the centralized budget of the public sector. The public universities, particularly the multi-institutional systems, are coming to resemble civil service departments more closely.[6] As the public sector as a whole changes its system of employee representation, college and university faculty will find it necessary to participate in the new order if they are to influence events.

The third major type of university governance that will continue to exist is administrative domination. None of the three types are pure forms, and administrative dominance will coexist with elements of collegiality and elements of bargaining. Administrative leadership will exist in all types and the degree of dominance will vary

by subject matter, but there will continue to be many institutions in which most decisions, in most areas, most of the time will be decided by administrative fiat. It is this area that will shrink as consultative collegiality and bargaining collegiality both expand in the future. Many observers will challenge this conclusion on the grounds that administrative dominance will best characterize the situation in most institutions where the form of relationship is nominally consultative collegiality or bargaining collegiality. The reason for predicting effective limitations on administrative dominance is not a belief in a benign bureaucracy, but in the ability of organized faculty using a combination of collective bargaining, legal action and lobbying to impose limits on administartive power.

It would be useful to close with an estimate of ways in which institutions of higher education will be divided between bargaining systems and collegial systems. Some indication of the end result is provided by our estimate that, as of the beginning of 1974, almost 75 percent of all public institutions in 15 states with strong collective bargaining laws covering all of higher education were already organized. This figure is heavily influenced by the almost 100 percent organization of public institutions in New York State, but as more institutions organize and more states adopt supportive laws, collective bargaining as a governance system will continue to spread.[7]

If we look three to five years ahead, a good assumption is that two thirds of the states will have strong public employee bargaining laws covering public higher education. If we assume further that 70 percent of the faculty and professional staff in these states will be organized, and that private sector organization continues to maintain its present relative position, then there might be as many as 225-275,000 faculty and staff represented by faculty unions as against some 92,000 today. This may seem to be too high an estimate, but if a federal law covering nonfederal public employees were to be passed in the next two years as some predict, it could even be a modest forecast.

Finally, in our colleges and universities the actual process of governance will look more like collective bargaining in the future whatever official organizational form faculty representation and participation takes.

Footnotes

[1]*None* and faculty *determination* are self explanatory. *Joint action* means that formal agreement of the two parties involved was required; *consultation* means that a formal procedure for the presentation of a recommendation or other method of presenting the faculty position was provided; *discussion* means that informal expressions of opinion of faculty were accepted or that formal opinions were solicited only from administratively selected committees. *AAUP Bulletin,* Spring 1971.

[2]Measured another way, when the choices were scaled in multiples of 100 running from *none* to *determination* at 500, the average score for the 12 academic items was 372, for the 7 personnel items 254, and for the 12 administrative items 237. It may be of interest that, through the cooperation of Maryse Eymonerie and the AAUP, the average 1970 governance scores for the 80 four-year and the 43 two-year institutions in the survey that had been unionized by mid-1973 were calculated. The unionized institutions in each category were found to have higher scores than the population of institutions as a whole. For details see the author's *Faculty Bargaining, Change and Conflict,* McGraw-Hill, chapter 2, forthcoming.

[3]In a provocative statement at a previous conference here, Donald Wollett suggested that faculty participation resulted in the administration getting some of their unpleasant tasks done for them. Wollett thought unions might be better advised to accpet administrative initiative in decisions with the right to challenge actions after the fact.

[4]In one instance, maneuvers that a university administration felt were necessary to maintain nominal collegiality when it had to introduce an unpopular quarterly calendar created so much faculty resentment that its effectiveness was seriously reduced.

[5]It is true that a strong administration stand at the University of Hawaii produced a contract that was not ratified by the unit members, but which sparked as successful campaign to replace the AFT with an AAUP-NEA coalition. In the Hawaii case, as in an earlier contract rejection at Central Michigan University, faculty unions which had no more than 50 percent membership in the bargaining unit submitted their contracts for ratification to the entire membership of the unit. Ratification elections limited to members of the union might have produced a different result.

[6]As an indication of the size of this sector, the Faculty Unionism Project estimates that about 45 percent of all faculty are in public multi-campus or multi-institutional systems.

[7]This relative saturation helps to explain the slow growth of organization in 1974.

Collective Bargaining In Higher Education

Congressman Frank J. Thompson Jr.
D–N.J. 4th District, Chairman of the House Subcommittee on Labor

Traditionally, when we think of higher education and professors, we think in terms of Mr. Chips—and Ronald Coleman, with leather elbow-patches, contentedly, very contentedly, smoking his pipe while adoring students sit around on the floor. His wife provides tea and sympathy on those rare occasions when he falls into a fit of pique because examinations are not up to expectation. Serenity is sometimes marred. The neglected wife may sometimes flirt too hard with the handsome graduate student; and, on rare occasions, Henry Fonda or some other "male animal" had to risk discharge for his right to read the last letter of Sacco and Vanzetti to his English class. But, generally, life on the campus was imagined in terms of books, music, impeccable standards, high intellectual stimulation, autumnal walks through falling leaves, shabby gentility all intermixed with football weekends, winter carnivals, and occasional theater sprees to the nearby Big City. The cynic might add—under his breath—that the three best reasons for going into teaching are June, July and August; not to mention the sabbatical leave. This was the public image, fixed, though false. Professors, recruited because of their brilliance earned by foreign travel and attendance at the best (and most expensive) university, were not even paid enough to reproduce their own kind.

On the other hand, the public image of "collective bargaining" conjured up images of men who worked with their hands, grimy and dust covered, speaking sometimes with a foreign accent, ready to strike the boss at the first opportunity. This sterotype was also false, but fixed.

I may exaggerate, but in 1935 when the Wagner Act was passed into law, there was no indication whatsoever, in any of the extensive debate and legislative history, that any Congressman or committee witness ever thought of collective bargaining in terms of higher education.

The Wagner Act, the express purpose of which is to encourage the practices and processes of collective bargaining, simply said nothing about professors. This left the problem to the NLRB in its day-to-day administration of the Act. But the problem was not a large one. As far as I can determine, there was only one case involving education. The teachers at *The Henry Ford Trade School* joined a union in 1944, and asked the NLRB to conduct a secret ballot election. The Labor Board took jurisdiction over the controversy, because, as it said: "The avowed educational purposes for which the school was organized" is not inconsistent with the conclusion that it 'substantially affects commerce'. 58 NLRB 1535 (1944).

In 1947, the Wagner Act was completely overhauled with the Taft-Hartley amendments. This time Congress turned its attention to education.

A House Bill would have excluded from the Act all "Churches, hospitals, schools, colleges, and societies for the care of the needy". The Senate disagreed with the need for such an exclusion, and limited its exemption to non-profit hospitals (I would add, parenthetically, that this exclusion was eliminated from the Act last August, and the workers at non-profit hospitals are now free to join unions of their own choosing, or

refrain from doing so). The disagreement was sent to conference, and the conference committee accepted the Senate version. Both Houses agreed, with the consequence that schools and colleges were not put outside the coverage of the Federal Law. In an entirely different section of the Act, public employers were put outside the law; with the consequences that the employees of private colleges and universities had protection if they sought to join a union, whereas there were no orderly dispute-resolution procedures if the employees of public institutions wanted collective bargaining.

Again, the task fell to the Labor Board to administer the Act.

When we think of higher education, we think of professors and students. But there is far more to life on the campus. There are dormitories, and there is a crew which makes the beds, sweeps the floors, keeps things tidy. There are restaurants, and there is a crew which scrubs the pots, cleans the dirty dishes, mops the floors and keeps things sanitary. There is the grounds crew, with their rakes and shovels and pruning shears. There are those who work in the college laundry, washing the dirty sheets. There are the painters, the electricians, the plumbers, the typewriter repairmen who do the maintenance work. There are the secretaries, the librarians, the book-binders, the engineers in the college radio station—a host of people who do an unlimited variety of supportive services.

These are the people most in need of a collective voice and bargaining power; these are the people who first turned to the Labor Board with their problems.

And in the initial years after Taft-Hartley, the Labor Board was receptive. The Research Assistants at *Illinois Institute of Technology* wanted a union, and the Labor Board ordered a secret ballot election. The engineers at the radio station at *Port Arthur College* wanted a union, and the Labor Board ordered a secret ballot election. The Editorial Assistants employed by the *Southern Baptist Convention* to publish the educational materials wanted a union, and the Labor Board ordered a secret election. Under the Labor Act, the educational institution was required to bargain in good faith with the union should the election results go that way.

A process for the negotiation of disputes was emerging on the campus, when along came the *Columbia University* case, and an about-face by the Labor Board.

The clerical employees at the various Libraries at Columbia joined a union, and requested the University to negotiate their problems. Columbia refused, and the union sought help from the Labor Board. They did not get it. The Labor Board stressed the "charitable purposes and educational activities of the institution" and held that it would not "effectuate the policies of the Act . . . to assert jurisdiction over a non-profit educational institution where the activities involved are non-commercial in nature".

Then followed the dark years.

Ever since the World War II higher education has been on the move. Enrollment mushroomed, with the population explosion and the realization that college was not restricted to the elite. New colleges proliferated, Bernard Baruch, for example. Existing colleges extended to new campuses; and old colleges changed their names from the Smith or Jones Normal School to the Smith or Jones State Teachers' College, to the Smith or Jones State College, and, finally, to the State University at Smith or Jones; with corresponding changes in curriculum and degree granting authority. We also witnessed the advent, or, at least, expansion of the two-year junior or community college; often headed by the former school superintendent with a background in high school administration.

There was also a new breed of teachers.

The GI Bill was the gateway to graduate school for many veterans of World War II and, having risked their lives in battle against totalitarian regimes, they were apt to question authority when exercised in dictatorial fashion. They were followed by the finest and the best, those who had interrupted graduate training for service in the Peace Corps or in the Civil Rights struggles of the early 1960s. The "permissive society" reached the campus, and with it came militancy. With all these changes in size, purpose, function, outlook, societal background, and so on, conflict was inevitable and not long in coming.

The Black cafeteria workers in the University of North Carolina went on strike against the plantation mentality which had so long reigned without question, and state troopers were sent in to quell the picketing.

Before long, the Black Cafeteria workers at Duke were on the picket line, and Duke students boycotted classrooms in sympathy. The hospital workers employed by the University of South Carolina in Charleston went on a long and bitter strike, with Correta King, Ralph Abernathy among the arrestees.

The maintenance employees at the Iowa State Student Union, the seamen on the three vessels owned by the Marine Science Institute of the University of Miami, the cleaning women at the Columbia University Dormitories, the junior professionals at the Linar Center at Stanford, even the professors at St. Johns University here in New York all formed unions and requested bargaining. When this was refused, and when the NLRB denied its jurisdiction, the only recourse for redress was the sidewalk confrontation and other forms of self-help.

Some few states saw the need for regulating these disputes into constructive and orderly channels, most did not. These were the dark years.

In 1970, Cornell University was faced with conflicting demands by competing unions and sought the assistance of the Labor Board. It was joined in this request by Syracuse, beset with similar labor problems. The Board decided it was time for another turn-about, and granted its jurisdiction. (*Cornell University,* 183 NLRB No. 41 (1970.) It did so, expressly, because the combined annual operating budgets of the 1,500 private colleges of America amounted to over six billion dollars a year, with an obvious impact on interstate commerce. It did so, expressly, because 35 states had defaulted in their obligation to take up the slack when the Labor Board had maintained a hands-off attitude toward the campus labor disputes.

It has not been easy in the five years since *Cornell,* but things are now shaking down. Most of the difficult technical problems are now resolved.

There is the problem of the appropriate bargaining unit, when the professors want to bargain about problems on only one of several campuses, and a rival group of professors, or the university, wants a broader unit, perhaps many different campuses within the same system.

There is the problem of whether the Law School, the Dental School, the Hospital should be included within the campus-wide unit, or given separate representative status because it is geographically removed with its own academic calendar and subjected to restraints by a governing professional organization.

Once the over-all bargaining unit is established, there is the problem of what groups of individuals should be placed within it. Are departmental chairmen "supervisors" within the meaning of the Labor Act, and hence excluded from a bargaining unit of professors? And what is the status of the professor elected by his peers to serve

on the Faculty Council, or the Tenure Committee? Is he to be excluded from the bargaining unit as a "supervisor"?

How about the part-time or "adjunct" teacher; the professor on terminal contract, the professors in a non-tenure earning position? Then there are research associates and program specialists who are employed in a professional capacity, but who do no or little teaching. Should they be included in a bargaining unit of teachers? And there is the perennial problem of the graduate student, in his final years of study, who teaches the introductory courses within his discipline.

Then there is the problem of the librarians, the ROTC instructors, the coaches, the members of the religious societies who have taken vows of poverty and obedience. Should these categories of employees be included in the same bargaining unit with the professors?

These and other technical problems were difficult for the Labor Board, and there was some tugging and hauling; with an initial result one way, followed by experience and a reconsideration headed in another way.

But those problems have been resolved in the five years since Cornell, in scores of disputed cases. They are now behind us, and it is appropriate to examine the substance instead of the processes of collective bargaining.

What is bargaining about on the campuses? Unfortunately, the subject fare on the bargaining tables reflects poorly on how so many American colleges have operated in the past.

The professors insist that their peers be consulted when it is time for promotion or tenure, and that the matter of discharge be referred to an elected faculty committee in the first instance.

The professors insist that they have some voice in the selection, re-appointment and dismissal of their departmental chairmen and other supervisors.

The professors insist that they have some voice in the governance of the institution, through an elected Faculty Council or Senate, and that they be consulted in the academic decision-making process. This takes on new and added dimensions when so many colleges are facing "financial exigencies" and budget cuts are necessary somewhere along the line.

They insist, in short, upon the standards recommended and proposed by the American Association of University Professors along with the Association of American Colleges and some ninety other educational associations and societies.

They also insist upon compensatory salary increases for women and minority group professors, to make up for the administrative neglect or callousness of many years standing.

They insist upon maternity (and, sometimes, paternity) leaves, and the abolition of the nepotism rules which precludes the wife from following the profession for which she trained.

They insist upon bread-and-butter matters: across-the-board salary increases, hospitalization insurance and sick leave; research leaves and travel expenses to professional meetings; the variety is unending.

But unanimously, or almost unanimously, they insist upon an arbitration clause so that disputes which arise under the contract can be settled by impartial outsiders without the need for internal shows of force.

Collective bargaining on the campus is here. It was a long time coming, and often a hard time coming, but it is here, and here to stay. It is the idea whose time has come.

Over 80,000 faculty members on some three hundred campuses are now represented for collective bargaining purposes by the AAUP, the AFT or the NEA.

In my home state of New Jersey collective bargaining is an on-going day-to-day situation at Bloomfield College, the College of Medicine and Dentistry, at Rider College, on the four campuses of Rutgers, on the six campuses of New Jersey State College, at Monmouth College and at the Newark College of Engineering.

Here, almost within earshot, there are collective bargaining units at Bard, at Hofstra, at the Polytechnic Institute of New York, at St. Johns, at Wagner, at the 18 campuses of the City University, at the Pharmaceutical College of Columbia, at the three campuses of LIU, at Pratt, and at the Law Schools of NYU and Fordham.

There are bargaining units at private colleges and universities throughout the United States, and they work well.

But there are no bargaining units in many state supported universities and colleges because the state legislative bodies do not permit them, and because the National Labor Relations Act excludes the states and their political subdivisions, including the universities, (and it does), it would be made available to the nearby public colleges and universities.

I have introduced a bill in Congress to eliminate the barrier to collective bargaining in the public institutions of higher education in our nation. My bill does not force anyone to do anything, but it permits the faculties and other employees in the appropriate bargaining units to vote in secret ballot NLRB elections for union representation if they are so disposed. At many campuses there will probably be no interest. At others, the interest may be slight. But at some public institutions, collective bargaining may be the last hope for averting campus conflict, and I intend to fulfill this hope by pushing my bill with all I have.

Federal Legislation for Public Employee Collective Bargaining: Legislative Initiatives for Higher Education

Sheldon Elliot Steinbach
Staff Counsel, American Council on Education

"The most natural privilege of man, next to the right of acting for himself, is that of combining his exertions with those of his fellow creatures and of acting in common with them. The right of association therefore appears to me almost as inalienable in its nature as the right of personal liberty."

de Tocqueville

"Human nature is such that paternalism, no matter how bounteous it gifts, may be of less real satisfaction and advantage to both sides than the process of reasoning together around the family table no matter how meager the fare."

Department of Labor, New York City,
Report on a Program of Labor Relations
for New York City Employees, p. 84 (1957)

"When an issue is a matter of low Federal priority, considerations of federalism dictate that governmental action be left to state or local initiative. One can claim more, however, than that municipal public employee bargaining should have a low priority on any agenda for Congressional action. One can claim that intervention at the national level would be positively harmful. Federal legislation or regulation necessarily tends to a uniform rule. In the case of public employee unionism, uniformity is most undesirable and diversity in rules and structures virtually a necessity."

H. Wellington and R. Winter,
The Unions and the Cities, 52-53, 1971.

Legislation extending collective bargaining to public employees is expected to receive serious attention later in the 94th Congress. Private colleges and universities are already subject to federal jurisdiction on collective bargaining issues under the National Labor Relations Act. The objective of this paper is to examine the potential impact of further legislation on public colleges and universities and the issues posed in providing collective bargaining rights to their employees. In the course of the legislative process, there will be opportunities to suggest alternative approaches that could make any legislatively mandated system of public employee labor relations more compatible with public higher education, without superimposing the traditional industrial model.

The legislative progress has been interrupted by a pending Supreme Court decision which is of major importance to the legal foundation for any statute extending federal guidelines or control to state and local public employee collective bargaining. In

December 1974 the Chief Justice of the U.S. Supreme Court set aside the 1974 amendments to the Fair Labor Standards Act pending final review by the Court. The Court's action resulted from a suit filed by the National League of Cities and others questioning the constitutionality of the extension of federal minimum wage legislation to state and local employees. This challenge to the extension of the federal labor standard through the commerce clause to state and municipal employees has put a temporary damper on further consideration of federal legislation governing public employer collective bargaining. With the basic legal premise on which the proposed legislation under question is based, real action on any federal legislation in this field will probably await the Supreme Court's decision.

The response of the higher education community to the proposed legislation, as of this writing, has not been formulated. However, various activities are being undertaken by higher education associations to monitor and inform the institutions of current developments and to develop alternatives to legislation which may be proposed. Among the general alternatives being considered are (1) delaying the legislation to seek further clarification of the issues, (2) removing higher education from some of the provisions under consideration, (3) modifying legislation to make it compatible with the manner in which higher education institutions function, and (4) totally resisting the extension of collective bargaining rights to employees of public institutions of higher education. The first three are politically feasible in varying degrees; the fourth would require a confrontation with labor leadership which has traditionally supported the education community on most issues in recent years.

Coverage of Public Employees

The initial question is why any Federal legislation is necessary to adequately regulate public employee collective bargaining. It has been argued by some that the crazy quilt pattern of statutes and regulations that presently govern public employee relations in this country have produced irreconcilable differences in the rights, obligations and remedies of public employees. State laws range from so-called progressive legislation to those that some might even term "reactionary" without any minimal standard provided so as to ensure basic safeguards for public employee collective bargaining.

One of the principle methods suggested for dealing with the issue was that proposed in the 93rd Congress by Congressmen Carl D. Perkins and William L. Clay.

The major provisions contained in the proposed statute are as follows:

1. The statute would regulate the employment relationship between certain public employers and their employees.

2. Administration of the statute would be by an impartial agency consisting of five members appointed by the President with the approval of the Senate.

3. Each employer would bargain over terms and conditions of employment and other matters of mutual concern relating thereto exclusively with the employee organization that represented a majority of the employees in an appropriate unit.

4. An employee organization would be recognized as the exclusive representative if it was able to demonstrate its majority support through appropriate evidence. An

election would be held if the Commission concluded that other forms of evidence were not adequate to demonstrate majority support or if there were competing claims from two or more employee organizations.

5. Supervisors and nonsupervisors would be required to have separate bargaining units, except in the case of firefighters, public safety officers and educational employees. Professionals and nonprofessionals would be required to have separate bargaining units unless a majority of the employees in each category desired inclusion in a single unit.

6. All members of the bargaining unit who were not members of the recognized organization would be required, as a condition of continued employment, to pay to such organization an amount equal to the dues and assessments charged members.

7. An employer and a recognized organization would be permitted to enter into an agreement pursuant to which all members of the bargaining unit would be required, as a condition of continued employment, to become members of the recognized organization.

8. Impasses in bargaining would be resolved as follows: (a) A mediator would be appointed by the Federal Mediation and Conciliation Service and would meet with the parties in an effort to effect a mutually acceptable agreement; (b) If the mediator were not successful in resolving the dispute within a specified number of days after his appointment, a fact-finder with power to make findings of fact and to recommend terms of settlement would be selected by the parties, or if they were unable to agree upon a mutually acceptable person, would be appointed by the Federal Mediation and Conciliation Service. The recognized organization would decide whether the recommendations of the fact-finder are to be binding or only advisory.

9. If the recommendations are to be binding, the recognized organization would be prohibited from engaging in a strike. If they are to be only advisory, the organization would be enjoinable only to the extent that it posed a clear and present danger to the public health or safety, or if the organization had not attempted to utilize the impasse procedures provided in the statute.

10. An employer and a recognized organization would be permitted to substitute their own impasse procedures for those provided in the statute.

11. If any state, territory or possession established statutory procedures for regulating employer-employee relations that were substantially equivalent to those provided in this statute, it would be permitted to operate under its own statute.

The other approach, sponsored by Congressman Thompson, simply sought to amend the National Labor Relations Act so as to include all public employees. In support of this approach, it is argued that governmental employees should not be subjected to different labor relations standards than private enterprise, and that it is no longer an acceptable concept to sanction dual standards in employment relationships. For many years public employees have claimed that they have been treated as second-class citizens and that the time has arrived for them to be treated in the same manner as any other employee. The Thompson bill proposed to transfer the existing law developed under the National Labor Relations Act to the public employee sector.

Because the 94th Congress has not yet been presented with legislative alternatives

on this issue, which have not attracted any real enthusiasm, attention continues to be focused on the approaches described above. Following is a discussion of the unique kinds of issues that could be presented for higher education.

Who Is The Employer

In the public sector the description of the employer at an institution of higher education is a highly complex matter. Various campus administrators have suggested that existing collective bargaining laws seriously fragment the operational unity within an institution. State employees representing the Governor for the purposes of negotiation salaries and fringe benefits, for example, have often been designated as the employer rather than the trustees. Who indeed does constitute management at a public institution? Is it the campus administration, i.e. the chancellor or the president? Is it the Board of Trustees or Regents? A coordinating Board? The Department of Education at the state level? The Governor's office? or some combination of the above. Certainly institutions of higher education should have a clear picture of who is the employer for this purpose, so that confusion may be eliminated and adequate preparation may be taken for dealing with the issue arising under any union organization or collective bargaining situation. Any statute, therefore, should provide reasonable guidance for institutions with regard to this question of who is the public employer for collective bargaining, designating with sufficient specificity who will be the negotiator and signatory of the collective agreement.

The Election Process

In general, in a representational election a union must obtain a majority of all the votes cast rather than a majority of the eligible employees in the bargaining unit. If no option on the ballot receives a majority of the votes cast, a runoff election is conducted between the two choices receiving the largest and second largest number of votes. If the option of no union was one of the two highest vote getters, it is included as one of the options in the runoff election.

Several states have begun to utilize a two-part election which would seem to provide a more equitable environment for a determination of employee choice. The ballot would first indicate whether the employee desires to be represented by a union; the second part would indicate the represented preference. If the first ballot indicated that a majority of the employees in the unit desired not to have a bargaining representative, the second portion of the ballot would be discarded. If the employees voted for a representative in the first part, the second part of the ballots would be counted to choose the preferred representative. This provides for a real choice and avoids the confusion which may have resulted on campuses where faculty members assume bargaining will occur and, therefore, choose the most desirable union when they, in fact, are opposed to unionization.

Representation

A. *Exclusive Bargaining Agent*—a unique set of circumstances arises in higher

education when one assigns exclusive bargaining right status to the elected collective bargaining agent. Under a normal labor-management situation, the employer is not permitted to unilaterally establish new policies relating to the wages, hours or conditions of employment without negotiating these matters with a certified agent. Of particular concern to some administrators is the potential conflict with internal organizations which have been active participants under the shared governance concept at many schools. Faculty senates, where they exist, could prove a major stumbling block to the implementation of normal collective bargaining relations on campus. On one hand, an employer may not provide undue influence in support of employee organization, yet the "Senate" as a deliberative council has traditionally focused on numerous issues that could fall under collective bargaining. Many educators feel that collective negotiations should not supplant the more traditional modes of faculty participation in university governance, and that any federal or state legislation for that matter should permit the existence of faculty senates. Traditional methods of faculty governance could be incorporated into a system whereby it can lend itself towards the satisfaction of the employee grievances in its traditional manner without being trampled by the newly emergent collective bargaining representative. Basically, the question is whether the contract or perhaps even the statute will preempt the activities of and issues that are presently within the province of the faculty senates, such as some promotion and tenure questions that would otherwise be totally within the domain of the bargaining agent. Should these existing operations become defunct in light of any negotiated contract or should some accommodation be made that would enable some of the traditionally informal means to exist within university governance under a collective bargaining contract?

B. *Union Security–The Agency Shop*—Most legislation does not really provide for a guarantee for any form of union security. A general range is left open for development under a contract. In general, the education unions embrace an agency shop whereby union membership is not required, but members of the union must pay a service fee as a condition of continued employment. This is distinguished from a union shop wherein membership is not required as a condition of original employment but must be obtained within a specified time after employment has commenced. It has been argued that any compulsion to pay union dues may violate due process and unjustifiably deprive any public employee of a vested right that they have previously accrued. An example would occur where a public employee, tenured professor, refuses to subscribe to a requirement that in order to maintain his teaching position, he must pay dues to such union. The problem persists in the "free rider" situation in which individuals enjoy the benefits of union membership but do not participate financially in its support. Perhaps an alternative would be an agency shop that would be established for faculty who had strong objections to paying dues or charges and who pay instead an equal amount to a union designated charity.

It is interesting to note that the National Right to Work Committee has just challenged the union security agency shop agreement within the Minnesota State College system.

A civil rights lawsuit challenging the constitutionality of compulsory union representation was filed in Minnesota in January 1975. The suit strikes at the foundation of exclusive representation for public employees by challenging the right of a union to make a contract binding on those who do not want union representation, and the

power of the State to require payment of union fees as a condition of public employment.

Court challenges of compulsory unionism up to now have never attacked compulsory union representation. It is argued that such compulsion is the key to a system that compels the payment of money from public employees, and especially teachers, who do not want union representation, and who see such forced support of public-employee unions as an infringement upon academic freedom and the merit principle in public employment. This case may determine if it is constitutional to constrain the freedom of public college employees to determine their own employment conditions, and if it is constitutional to discriminate against those employees when that discrimination is based only on nonmembership in a private labor organization.

Plaintiffs seek a declaratory judgment and permanent injunction against various provisions of Chapter 179, Minnesota Statutes, which require them to be represented by a teachers' union and financially to support the union's activities. The plaintiffs claim that, besides "collective bargaining," the union engages in political "propaganda, agitation, and lobbying" to which they are opposed, and uses fees coerced from teachers to fund a variety of "socio-economic services" the benefits of which are limited to union members. The case will come to trial in the fall of 1975.

Unit Determination

A. *Department Chairmen*—The position itself invariable represents the level above which managerial authority will normally be found by labor boards and below which such authority has not been found. Roles of department chairmen vary widely among universities. In many institutions they represent the first-line of management and as such should be excluded as managerial employees, since they have significant and nonroutine role that requires the exercise of independent judgment in employee relations and administer budgets for their department. There are undoubtedly some faculty members who are designated as chairpersons though they are not charged with managerial responsibilities under the regular department chairman model. In all instances, one must look to the duties performed by the individual bearing such a title. The following indicators may be used in determining whether a particular department chairman is in fact a managerial employee: (1) is the individual appointed by another managerial employee; (2) does he receive added compensation for performing his managerial duties; (3) do his responsibilities usually include: a. developing academic programs and priorities, b. assigning teachers and academic counseling responsibilities, c. fielding faculty grievances, d. developing and managing budgets, e. allocating departmental resources in support of teaching and research functions, f. recruiting and appointing faculty, g. evaluating faculty including recommendations for promotion and tenure, h. determining faculty salaries and the budget limits for review and approval of the dean, i. assigning duties to graduate students, and j. officially representing the department, publicly and within the university.

It has been suggested that since the department chairman has been primarily a member of the faculty, he should be included within the faculty units. Under this line of reasoning, the term "supervisor" should mean any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, promote, recall, discharge, assign, reward or discipline other employees or the responsibility to direct

them or to adjust their grievances or effectively to recommend such action if the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. A caveat is quickly added that in an institution of higher education any chairman, director or other leader of an academic unit or program who performs duties falling within those enumerated above, primarily in the interests of the academic unit or program, shall not be deemed a supervisor.

B. *Part-Time Employees*—Many colleges and universities make substantial use of adjunct professors and teaching faculty who are part-time employees. For the most part, these people hold full-time employment elsewhere. This group of employees has a different community of interest than the normal teaching faculty, and they operate under different rules and compensation schedules and have substantially different career goals and loyalties. As such, they could constitute a separate unit.

The following cases, which demonstrate the manner in which the NLRB has chosen to proceed regarding the status of part-time faculty, is instructive. In *C.W. Post* The Board applied industrial precedents that mandated the inclusion of regular part-timers in the bargaining unit. In the case of *University of New Haven* the Board ruled that "adjunct faculty members are regular part-time professional employees whose qualifications and work functions are identical with those of the full-time faculty," and thus the Board merely treated the threshold question of whether part-timers ought to be included, and only observed in passing that part-timers generally teach three hours while full-timers teach twelve.

In a followup case, *University of Detroit,* the Board concluded that any part-timer teaching one quarter of the teaching hour load of the full-timer in the representative schools was a "regular."

In succeeding cases, the one-quarter rule was challenged. The Board reiterated that the qualification and functions of part-timers are identical to those of full-time faculty. Subsequent history illustrated the difficulty of applying the Board's formula once the Board expanded the voter eligibility standard and coupled it with its minimum workload test. As thus refined, the Board was confronted with the application of the *C.W. Post* rule to the law faculty of Catholic University. Due to the disparities in full-time workload when viewed solely as a function of teaching hours, the Board was unable to propound a single mechanical formula.

Two cases re-presenting the issues, *New York University* and *Fairleigh-Dickinson University,* gave the Board a chance to reconsider its rules, and the Board was sufficiently concerned to order oral argument in both of them. As a result, the Board overruled the *New Haven* doctrine with an expression of concern for the effects of its decision on the life of the institution and excluded those part-time faculty "who are not employed in 'tenure tract' positions."

It would seem that in considering any federal legislation, colleges would want included in report language a flexible rule which would comport to academic reality. In some institutions, however, the thrust toward the part-time employees receiving reasonable similar proportional compensation and fringe benefits as full-time faculty members may indeed ally their cause with the full-time faculty teaching members which might in the future dictate that they be embraced within the major faculty bargaining units.

C. *Students in Bargaining Units*—Many student employees' jobs are temporary or part-time, and as such, their community of interest with the primary bargaining unit is at best tenuous. This is in spite of the fact that it is acknowledged that they do in

many instances perform tasks that are also assigned to traditional faculty members. Yet, those who are classified primarily as students within an institution should retain that status for all purposes regardless of the similarities of some duties performed.

Quite apart of the student as employee, a student qua student may be able to find a reasonable position at the collective bargaining table through one of several mechanisms. Initially, students might ally themselves with one of the sides of the negotiating team. Secondly, they might be able to secure a more substantial input in the collective bargaining process with the concurrence of the two parties by securing a seat at the bargaining table for observation purposes. More radical departures have been suggested including allowing students to participate as members of one or the other of the negotiating teams or perhaps constituting a separate bargaining team which might have veto over specific matters which directly affect students. As of this moment, little in the way of concrete experience has been had on this issue and the student role in collective bargaining has been substantially limited. In considering any Federal legislation relating to public employee collective bargaining, it may be desirable to reexamine the whole position of the consumer of education, and the role he or she ought to play in the collective bargaining process. Indeed, in this area, like many of the others discussed herein, it would seem to be wise to avoid precipitious action but instead try and establish a sufficient factual background hopefully accompanied by innovative solutions so as to establish a process which maximizes the opportunity for realizing the goals of all parties.

D. *Non-Teaching Professionals*—Most institutions have a substantial number of nonteaching professionals including librarians, coaches, researchers, and others. While these professionals sometime have a degree of training and expertise commensurate with the teaching faculty, the question arises whether their interests are such that they should vote in the same unit.

E. *Geographic Scope of the Bargaining Unit*—One of the major questions that has occurred frequently in the early stages of collective bargaining in higher education is whether within a single college or university system a single state-wide unit is appropriate. Traditionally, the NLRB in establishing the appropriate unit has considered the community of interest of the employees, including the commonality of policies, practices and working conditions and the desire of the employees, as well as the history of past dealings by the employer with the employees. Perhaps any Federal statute should provide that those instances within a university system or even perhaps within a single college, schools should not be mandatorily combined where there is a diversity of educational mission or a highly autonomous administrative structure. Language to that effect could be inserted in the statute so as to provide sufficient guidance to hearing offices in making unit determinations.

F. *Craft Severance*—In initial cases decided by the NLRB, after assuming jurisdiction over private higher education, petitions by law school faculty for severance from a university wide bargaining unit have uniformly been granted. It was suggested in the decisions that the commonality of interest and of academic structures of the law schools are substantially different so as to warrant the severance from the body of the university. Query as to whether this educational craft severance can really be terminated at the law school door? Might this concept be extended to the dental, medical, and other faculties which have distinct facilities, administrative structures and perhaps a commonality of interest which could be deemed to be separable from the general run of the institution. This is an issue that institutions will have to look into

most carefully in any legislation that is drafted so that reasonable guidelines will be provided for dealing with this question. It may indeed be in the institutions' benefit to have all such professional schools included in one collective bargaining unit so as to avoid competitive wage negotiations between different segments of the institution and the conceivable emergence of a multitude of differing bargaining units and agents within the institution with contracts terminating at different times within the year.

Scope of Negotiations

Unless there is a meaningful difference in the statutes enacted in any potential federal legislation, the general rules as to the scope of bargaining handed down by the NLRB will provide the requisite guidance. Traditional statutory terms permit bargaining over wages, hours, and conditions of employment in the NLRA suggest that there are ambiguities inherent in the term "other conditions of employment," which may produce endless dispute. The Clay bill provided for bargaining over "terms and conditions of employment and matters of mutual concern relating thereto." Teachers are seeking to participate in decision making with respect to teaching methods, curriculum content, educational facilities, and other matters designed to change the nature and improve the quality of services being given to the students. It is uncertain, therefore, what veto power over management prerogatives, if any, is contained within the phrase "other conditions of employment." It could seemingly reach into matters of inherent managerial policy, which would include such policy areas as programs, standards of service, overall budget, utilization of technology, schedule of work, curriculum, class size, and organizational structure. Unless the statutory phrase is limited or specific items are withdrawn from the scope of bargaining, institutions could find themselves with substantially diminished management rights.

The Preemption Question

Over the course of the testimony given on the extension of public employee collective bargaining rights under Federal statute, little attention has been devoted to the problem of preemption of state legislation dealing with terms and conditions of employment of state and local employees. In the field of education, preliminary studies indicate that there are hundreds and perhaps thousands of such statutes that have a material impact on teachers and all levels. The question remaining to be dealth with in any Federal statute to be introduced is to what extent, if any, would or should Federal legislation providing bargaining rights to state and local public employees preempt state legislation involving items such as retirement benefits, tenure, layoff and reemployment, probationary status, promotion, veterans benefits, sick leave, military leave, etc. It is essential that Congress in enacting any legislation regulating public employees has a clear understanding of the implications of new legislation for the existing statutes.

Conclusion

The issues described above provide a persuasive argument that the Federal government might best be able to establish and guarantee the rights of public employee collective bargaining by establishing minimum standards and allowing those states

who comply with those standards to experiment within them. In this manner states might control situations in light of local circumstances and nurture the laboratory experiments which may ultimately enure to the national benefit as proven methods in conducting collective bargaining.

Federal legislation could set the basic requirements such as the right to organize for mutual benefit, the right to belong or not to belong to an organization, but with a permissive agency shop, proper protection of employees from unfair labor practices of employers, a requirement that public employers recognize collective bargaining agents and negotiate in good faith. The mechanics of the question of elections and certification procedures, employee covered, unit determination, bargainable issues, impasse proceedings could be left up to states according to their needs.

Thus Congress could pass basic legislation requiring states to adopt collective bargaining legislation and ensure that they did so within a reasonable length of time. Failure to comply could bring about termination of federal funds to the states. Under this method one can utilize to the greatest extent the experience that already has been developed in the states accompanied by the security of national standards for those states that have not as yet undertaken to enact collective bargaining legislation for their public employees. From a higher education perspective, this procedure might grant the greatest flexibility in dealing with all issues and enure to the benefit of all interests: the public, the university administration, the faculty, and the students.

Federal Legislation for Public Employees: A Union Perspective*

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I. Federal Legislation Is Necessary

In the 94th Congress there will be a drive for federal legislation to guarantee to public employees collective bargaining rights. The factors that have led to this development are: (1) the growth of the public sector; (2) the growth and development of public employee unions; (3) spiraling militancy among public employees; and (4) the general failure of the States to adopt satisfactory public employee labor relations legislation.

In the last 40 years, public employment has been the most rapidly growing sector of employment in the country. When the N.L.R.A. was passed in 1935 there were 2.7 million state and local government workers. By 1973 the public sector had more than quadrupled to 11.3 million state and local government employees with a payroll of more than $96 billion. More than 4.5 million public employees are organized — a greater proportion than in the private sector.

According to data compiled by the Bureau of Labor Statistics in 1958 there were 15 work stoppages in the public sector involving 1,700 workers and 7,500 man days. In 1973, there were 386 work stoppages in the public sector, involving 195,000 workers who lost 2.3 million man days.

In a recent speech, W. J. Usery, Jr., Director of the Federal Mediation and Conciliation Service (FMCS) stated:

> "In the vast public sector of our economy confusion is the order of the day on labor-management relations. All too often and with growing frequency that confusion is resulting in bitter and generally illegal strikes. The strikes, in turn, have caused men and women of good will to fashion a crazy quilt of hundreds of individual laws, regulations and executive orders to deal with the increasingly chaotic conditions."

Let us briefly examine this "crazy quilt." Thirteen states have no provision for collective bargaining with public employees or even "meeting and conferring." In North Carolina any collective bargaining agreement with public employees has been made illegal, unlawful, void and of no effect. In the remaining states, some have comprehensive state bargaining laws which apply to all groups of public employees, while others have separate statutes, often differentiating between occupations, and even geographic locations within the state, as to whether collective bargaining is required or permitted and the scope of such bargaining.

In California, Texas, South Dakota and a number of the Southern states, binding arbitration of grievances of public employees has been held to be illegal while in

*The opinions expressed herein are those of the author and do not necessarily reflect the views of the New York State United Teachers, Inc.

others arbitration has been a useful adjunct to the bargaining process.

This hodgepodge of conflicting and often irreconcilable state policies should be rationalized by federal legislation to assure the right of any employee, whether in the private or public sector, to have a say in determining the conditions under which he or she must work.

Albert Shanker, President of the American Federation of Teachers, in testimony before the Senate Subcommittee on Labor on October 1, 1974, stated:

> ". . . the interests, concerns and problems that public employees have with respect to their jobs are in no basic way different than the interests, concerns and problems of private sector workers. This viewpoint is strengthened by what we believe to be the absurd situation of the professor of history at New York University having the right to strike, the professor of history at the City University of New York not having the right to strike and the professor of history at the University of Illinois not even allowed to engage in any form of collective negotiation through a recognized representative. . . . The fact is that under the present structure of labor relations in the United States, the extent of an employee's right to have a say in the conditions under which he or she must work depends not at all on what he or she does but whom the employer happens to be—public or private sector."

The opponents of federal collective bargaining legislation for state and local employees have begun their clamor shouting governmental sovereignty, states rights, undermining of the private sector, that public managers are somehow more responsible to workers, and even predicting the total demise of our democracy. I join with Dr. Helen D. Wise, of the National Education Association, who stated in her testimony before the Senate Subcommittee on Labor:

> "The real reason for the resistance to collective bargaining is obvious. Collective bargaining means bilateral decision-making in respect to many matters traditionally within the unilateral control of the school board, and history teaches us that authority is seldom relinquished without a struggle.
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> * * *
>
> We believe that the root cause [for collective bargaining in education] is the desire on the part of teachers to have the basic right which other workers have had for decades—the right to a meaningful voice in the formulation of the terms and conditions under which they serve."

The National Labor Relations Act has not engendered a bland uniformity of collective bargaining practices. Differences do exist from industry to industry in bargaining structure, the subject matter of negotiations, tactics and outcomes. Recent experimentation with interest arbitration has had its birth in the private sector not the public sector. There is no reason to assume that a Federal law *per se* will stifle experimentation in the public sector.

On the other hand, I fail to see any benefit in encouraging diversity with respect to the basic rights that are necessary to protect employees' freedom of choice and the development of stable collective bargaining relations.

The underlying rationale for the NLRA is that breakdowns in labor-management relations impede commerce and are contrary to the general welfare of the nation. It is

anomolous to contend that a strike at Long Island University will effect "interstate commerce" and, therefore, should be covered by a national labor statute while a strike of 70,000 employees in the Board of Education of the City of New York will have consequences only for the citizens of the municipality and is, therefore, beneath federal concern.

Obviously, the same rationale for federal intervention applies now in the public sector as first applied 40 years ago in the private sector, and for this reason and those previously considered, a Federal stature governing state and local public employee relations is a necessity.

II. The Impact of Federal Legislation in Higher Education.

1. Unit Scope and Composition

In defining any bargaining unit, the NLRB or analogous Board considers both its scope and composition. The scope of the bargaining unit referring to which group of employees shall be included, and composition referring to which employees fall within that group.

The NRLB in 1970 reversed long standing prior precedent and asserted jurisdiction over private, non-profit colleges and universities.[1] Since the *Cornell* decision it is apparent that the Board has proceeded on a case by case basis and has recognized that not all of the unit principles developed in the private sector in an industrial context are capable of being applied to academic institutions.

Since we now have a body of decisions of the NRLB, examination of some of those decisions should provide us with insight into the impact of federal legislation for public sector collective bargaining in higher education.

Most of the cases before the NRLB did not include unit scope issues. The reason for this was that the parties, by stipulation, had already reached agreement on this issue. In such cases, it is Board policy not to disturb the parties' agreement unless it contravenes the requirements of the National Labor Relations Act.

The most frequent unit scope issue which did surface was whether it was appropriate to have a single campus unit, or a multi-campus university-wide unit.

In *Fairleigh Dickenson University,*[2] the Board determined that the employees' interests would be better served by a university-wide unit. The Board found that policies regarding wages, hours, fringe benefits, hiring, termination, advancement and attainment of tenure were all administered on a university-wide basis. The University Senate, which formulated academic policy was composed of faculty representatives from all three campuses. It was concluded by the Board that there existed a "substantial community of interests shared by all of the faculty, regardless of their campus location," and that a unit limited to a single campus was inappropriate.

Issues of unit composition have been routinely pressed before the NLRB. It has been argued that *all* faculty members are supervisors, managerial employees, or independent contractors, and, therefore, not "employees" under the NLRA.

The Board has soundly rejected the concept that "collegiality" or "shared authority" makes *all* full-time faculty members supervisors, and thus excluded from the coverage of the Act. This determination flows directly from the narrow definition of the term "supervisor" in the Act which includes only individuals who exercise

supervisory authority "in the interests of the employer."[3] The Board has held that faculty participation in the "collegial" decision-making process is exercised on a collective rather than on an individual basis, and is exercised in their own interests rather than "in the interest of the employer" as required by the Act.[4]

In *New York University,*[5] the Board indicated that it would not deny employee status to faculty members on the theory that they are independent contractors or agents. The Board found that the latitude afforded the faculty members indicated that they were, in fact, professionals. This, in turn, did not make them independent agents since the incidents of such a relationship were completely absent.

It seems clear that the National Labor Relations Board views the relationship of a university or college to its faculty as essentially an employer-employee relationship subject to coverage of the Act.

The question of whether deans and department chairmen should be excluded from the unit as supervisors, has turned invariably upon the "effectively to recommend" language in the statutory definition or supervisor. Only if the recommendations of a particular chairman are deemed to be effective will he be considered a supervisor. It would appear that the extent of the presence of the collegial decision-making process is crucial to the Board's determination. The presence of the collegial decision-making process has been found by the Board to deprive department chairmen of their ability to make effective recommendations as individuals, and thus deprives them of supervisory status under the Act. It would appear that a majority of the Board considers that as a general rule department chairman are *not* supervisors and are covered under the Act as employees.[6]

Part-time faculty members were originally held by the Board appropriately included in the same bargaining unit with the full-time faculty. In the *NYU* case, by a vote of 3-2, the Board reversed the prior precedent and excluded all adjunct professors and part-time faculty members not employed in tenure track positions. The Board carefully considered a number of factors that distinguished the part-time faculty from the full-time faculty in reaching this decision and concluded that the relationship that New York University maintained with its part-time faculty was essentially transient in nature and, therefore, no community of interest really existed with the full-time faculty.

2. Scope of Bargaining

Under the NLRA, the scope of bargaining is defined as "wages, hours, and other terms and conditions of employment."[7] Many states, including New York, have defined the scope of bargaining in virtually identical language. This language has been found or should be found generally satisfactory by both labor and management. In seeking federal legislation for public sector collective bargaining, the objective of the unions is not uniformity of substance, but simply a uniformity of process. It is disappointing to see, particularly in collective bargaining at institutions of higher education, both labor and management applying so little creativity at the bargaining table; and such exciting concepts as interest arbitration being experimented with in the private sector.

3. Remedial Powers

In many institutions of higher learning, the procedure and proceedings which lead to a determination not to reemploy a faculty member or to deny tenure and/or

promotion to a faculty member are protected by a thick blanket of confidentiality. Under the Act, where a *prima facie* case of unfair labor practice can be shown, such confidentiality will disappear. It has been suggested by Mr. Justice Douglas in his dissent in the *Roth* case[8] and I agree, that the knowledge of possible scrutiny of the decision-making process can only act to improve the process itself and the decisions reached thereby.

The availability of the services of the Federal Mediation and Conciliation Service will bring under federal legislation experienced and knowledgeable people to the bargaining table to assist the parties who, often in the public sector, lack experience and knowledge themselves. Again, the objective of federal legislation should not be uniformity of substance but a uniformity of process. The FMCS is fully armed with a complete arsenal of tools for impasse resolution.

4. Preemption

The doctrine of preemption may be stated as the deprivation of the power of a state court or state labor relations board to entertain any action or proceeding falling within the scope of the N.L.R.A. The doctrine, like a mathematical formula may be simple of statement but under given circumstances proves difficult of application. Preemption is a judicially created doctrine to enforce the intent of Congress and the federal interests in a uniform law of labor relations centrally administered by an expert agency.

Anyone concerned about the impact of proposed federal legislation for public sector collective bargaining cannot ignore the possibility of preemption problems arising out of the legislation. In my opinion, careful drafting of the legislation will obviate most, if not all, preemption problems arising from new federal legislation.[9]

The problem of preemption attendant to any federal legislation must, however, be kept in its proper perspective. Preemption may be of little concern to those public employees whose terms and conditions of employment are subject to unilateral change by the public employer. *i.e.*, those with *de minimus* or no collective bargaining rights. In addition, in most situations what a Legislature has granted, it may also take away.

The Supreme Court of the United States in *Maryland v. Wirtz*[10] found that the extension of the Fair Labor Standards Act to state schools and hospitals was valid under the Commerce Clause, and not invalid as interfering with sovereign state functions. The Court reasoned that since strikes and work stoppages involving public employees of schools and hospitals, which institutions were major users of goods imported from other states, obviously interrupted and burdened the flow of goods in interstate commerce; a rational basis for congressional action, was established.

In the *League of Cities* case,[11] the Supreme Court will hear argument on the reach of Commerce Clause vis-a-vis the Tenth Amendment once again. In my opinion, federal legislation for public sector collective bargaining may very well be affected by the outcome of the *League of Cities* case now pending.

If the Supreme Court finds for the appellants in the *League of Cities* case within the confines of the dissent of Mr. Justice Douglas and Mr. Justice Stewart in *Maryland v. Wirtz*, who were concerned that the fiscal impact of the FLSA interfered with sovereignty, the proposed legislation might be distinguishable in that it is procedural and not fiscal in nature.

III. Concluding Remarks

In the final analysis, time is ripe both rationally and politically for Federal legislation to guarantee to public employees collective bargaining rights. Assuming the inclusion of public employees under the NLRA the impact of such legislation on higher education would extend to faculty in public academic institutions rights presently enjoyed by faculty in private academic institutions. Careful drafting of such Legislation will obviate most, if not all, preemption problems. The arguments against such legislation are simply not persuasive.

Footnotes

1. *Cornell University*, 183 NLRB 41 (1970), overruling *Trustees of Columbia University*, 97 NLRB 424.

2. *Fairleigh Dickinson University*, 205 NLRB 101 (1973).

3. National Labor Relations Act, §2 (11), 29 U.S.C. §152 (11).

4. *C.W. Post Center of Long Island University*, 189 NLRB 904 (1971).

5. *New York University*, 205 NLRB 16 (1973).

6. *Rosary Hill College*, 202 NLRB 165 (1973).

7. National Labor Relations Act, §9 (a), 29 U.S.C. §152.

8. *Roth v. Board of Regents*, 408 U.S. 564, 92 S. Ct. 2701 (1972).

9. See, Chanin & Snyder, THE BUGABOO OF FEDERAL PREEMPTION: AN ANALYSIS OF THE RELATIONSHIP BETWEEN A FEDERAL COLLECTIVE BARGAINING STATUTE FOR EMPLOYEES OF STATE AND LOCAL GOVERNMENT AND STATE STATUTES AFFECTING SUCH EMPLOYEES, NEA March, 1975, for a complete explanation and analysis of the preemption doctrine.

10. *Maryland v. Wirtz*, 392 U.S. 183, 88 S. Ct. 2017 (1968).

11. *League of Cities, et al. v. Brennan*, Case No. 74-878.

Collective Bargaining In Canadian Universities

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There are similarities in the development both of collective bargaining and of higher education in Canada and the United States but there are also some important differences. First, by decision of the Canadian Supreme Court collective bargaining under labour legislation is a matter within the jurisdiction of the ten provinces rather than of the federal government except for those who are explicitly employed by the federal government or work for a federally regulated industry. Since the federal government is not the explicit employer of university professors nor regulates the universities, all collective bargaining pertaining to university professors falls under the jurisdiction of the ten provincial labour acts. Although these are basically similar, there are important technical differences as well as variations in approach and style.

Secondly, Canadians do not draw a sharp distinction as in the United States between public and private universities. Some universities are public foundations and some private but all receive government support both provincial and federal. Receiving government assistance does not in law turn universities into government departments and thus professors are not civil servants and are not automatically regulated by legislation pertaining to collective bargaining for civil servants. All collective bargaining for university professors that has taken place to date in Canada has fallen under private sector labour legislation and the agreements pertain to individual universities—not to all universities within a provincial jurisdiction. This holds true for the even larger group of unionized employees other than faculty on university campuses. To date, no provincial labour board or court has prevented university professors from securing certification under private sector labour legislation.

Thirdly, Canada not only has ten provinces but an official cultural duality of French and English. You will see in this paper that collective bargaining for university professors first developed in French Canada and has been coloured not only by economic and teaching conditions but also by nationalism. This duality has also affected the organization of trade unions across Canada. The Canadian Labour Congress represents the majority of trade unionists within the country but there is also a trade union federation in Quebec—the Confederation of National Trade Unions—which competes with the CLC unions in Quebec. Any national union that attempts to operate throughout the country faces the need to recognize the duality of Canada. Some do it better than others.

Fourthly, community colleges in Canada have emerged as a system almost entirely separate from the universities although frequently reporting to the same provincial minister. This development has been very recent nor did it grow out of any existing system of junior colleges. In terms of collective bargaining, the five provinces with the most developed systems show a remarkable variety. In Alberta and British Columbia, community colleges were founded as individual entities and the faculty

*Note. This paper represents the personal views of Dr. Savage and is not an official paper of the CAUT.

organized on the same basis in much the same manner as in the universities. In Ontario and Manitoba, provincial legislation turned the community college teachers into civil servants and thus into members of provincial civil service unions. In Quebec, these colleges are organized as local entities, the teachers are not civil servants but nevertheless bargain at the provincial level through two unions—the teachers' union and another affiliated to the CNTU. This paper will, however, be dealing largely with the universities and not with the community colleges.

In 1974-75, statistics Canada calculated that there were 342,380 university students and 225,080 enrolled in non-university post-secondary institutions. There were 29,880 university professors plus 17,500 teaching in other post-secondary institutions. At the university level there is a great variety of institutions ranging from the very tiny to the multi-university. In eastern Canada, many of the universities were founded by one or another of the Christian denominations thus creating a considerable number and variety. In the West, governments have tended to favour one or two massively supported institutions on the model of American state universities. Thus collective bargaining inevitably means different things to different professors depending on the region of the country and the size and background of the institution.

At the university level professors began to organize prior to the Second World War but only in local associations with no central body. The small number of faculty and the fragmentation (geographical, linguistic and ecclesiastical) of Canadian universities along with the controls and shortages of staff during the Second World War inhibited any effective grouping of these associations until the postwar period. Then professors found that inflation was rapidly eroding their standard of living. Moreover, many professors who returned from the war were not prepared to accept the old pieties about how universities should be run. The consequence of this dissatisfaction was the formation in 1951 of the Canadian Association of University Teachers (CAUT).

Unlike the AAUP, the CAUT was a federation of local associations. In its early years it concentrated on the economic problems of the profession by supporting higher salaries and by participating in the political lobby which resulted in the later part of the nineteen-fifties in a dramatic increase in the federal funding of universities. This in turn led to rapid expansion as in most other western countries. The number of universities rose from 29 in 1951 to 45 in 1970; the number of professors grew between 1956 and 1966 from 6,719 to 16,000. Salaries also rose. An associate professor, for instance, earned on the average $4,156 in 1947-48; $9,399 in 1960-61; and $16,096 in 1970 although inflation eliminated an important part of the gain.

Towards the end of the fifties there occurred a hotly contested and very public case involving the dismissal of a tenured professor at United College in Manitoba. This focussed the attention of the Canadian academic profession on matters of academic freedom. The case persuaded academics to create a permanent national office for the CAUT and to adopt procedural policy statements somewhat similar to those of the AAUP. The great expansion of Canadian universities and the consequent impersonality and inexperience of many of them made such due process arrangements absolutely necessary. While Canadian universities did not have to face disruption on the scale of many institutions in the United States, nevertheless there were serious confrontations, notably at Simon Fraser University and Sir George Williams University, which demonstrated the fragility of the university community and the difficulty of working due process procedures in such dramatic circumstances. Basically, the CAUT

worked in a manner similar to the AAUP, namely by private negotiations with delinquent universities leading to possible public censure of the recalcitrant, although CAUT was more favourable to the use of third party arbitration as a means of resolving disputes. These procedures were codified by the CAUT in 1967. The first two censures were imposed shortly thereafter and brought immediate redress. Many thought the promised land had arrived.

At the same time, CAUT pressed for the development of collegiality through greater faculty representation on senates, boards of governors and faculty councils. It also pushed for contractual limitations on the terms of administrative contracts and new methods of choosing such administrators. This movement reached its peak in the mid-sixties with the publication of a special report by Sir James Duff and Professor Robert O. Berdahl on university governance in Canada.

But these developments did not solve some of the major problems. Representative government was sometimes vitiated by the presence of large numbers of ex-officio administrators. On some campuses these changes were perceived more as a concession to student than to faculty power and became the forum for student attacks on the faculty.

In the area of academic freedom large numbers of university professors have used the services of the Academic Freedom and Tenure Committee of the CAUT and have secured redress. In addition, many universities have been persuaded to adopt reasonable procedures. Nevertheless, there have been a number of university administrations who have chosen the path of defiance, believing that such action could be sustained in a period of hard times. The most notable are Simon Fraser, the University of Ottawa and Mount Allison University. At Simon Fraser, the Board of Governors unilaterally abolished the arbitration procedures which safeguarded professorial contracts and then dismissed several faculty members without a hearing. This action demonstrated that contractual provisions that depend solely on the by-laws of the university can be changed at the whim of the Board of Governors. This demonstration of power occurred just at the moment when the expansion bubble began to burst. The universities stopped expanding. The press became hostile, particularly when the universities could not produce magic cures for the ills of society but only seemed to be a forum to air certain of these ills. Provincial governments found new priorities. It was not surprising to find a growing interest among professors in collective bargaining.

The pioneers were in the French-speaking universities in Quebec. The nineteen-sixties had seen a quiet revolution in Quebec part of which resulted in the displacement of the clergy from the control of education including higher education and their replacement by the new technocrats. Thus the old forms were broken. The provincial government as a demonstration of its policy of modernization created a new University of Quebec with campuses in various parts of the province. This was modelled on the University of California. The new university, particularly its Montreal campus, became the focus of academic discontent. This was partly caused by the failure of the University of Quebec to translate its democratic oratory into democratic practice, by the desire of some left-wing professors to associate with the working class through unionization, by the experience of many of the new professors with trade unionism at other levels of the educational hierarchy, and by the nationalist feeling that Quebec professors should organize themselves. The Montreal campus thus unionized and affiliated with the CNTU in 1971. All the other campuses of the university have now

unionized, some with the CNTU and some with the teachers' union. However, the radicalism and direct political action of these unions alienated the majority of faculty in the more established institutions in the province, notably at Laval, Montreal and McGill. As a consequence, although unionization has spread to all the other francophone campuses, they have chosen to affiliate with a professorial federation in Quebec with which the CAUT works closely.

Unionization is less universal in English Canada. One large and two small universities are certified and all are affiliated with the CAUT. These are the University of Manitoba which is a large multi-faculty university in the West plus two small institutions, St. Mary's in Halifax and Notre Dame of Nelson in British Columbia. Applications are before the labour relations boards for Carleton University, a medium size university in Ontario, and for St. Thomas University, a Catholic college in New Brunswick. Voluntary recognition is being sought at the University College of Cape Breton in Nova Scotia. At the University of British Columbia, one of the largest in Canada, the faculty has been holding a series of votes over the last year to determine its status. At the University of Saskatchewan, another large Western university, the faculty association is attempting to demonstrate juridically that it has been voluntarily recognized as a collective bargaining agent since 1952.

There is no equivalent in English Canada of the American Federation of Teachers. Real power in the teachers' unions exists at the provincial rather than the national level. Provincial federations of teachers frequently have statutory rights and to date this has persuaded them to negotiate solely for their existing clientele. The only challenge to CAUT in English Canada has come from the Canadian Union of Public Employees (CUPE), a union which has had considerable success in organizing hospital employees and other groups of government workers. In 1974, CUPE attempted to raid the CAUT local at St. Mary's in Halifax but was defeated in a vote ordered by the Labour Relations Board.

The events at Nelson, St. Mary's and St. Thomas all indicate the truth of Professor Lipset's observations that faculty in denominational or ex-denominational colleges would likely turn to collective bargaining to curb the unrestricted power of clerics or their successors. The very fact of certification itself is a demonstration of faculty power since it is usually fought tooth and nail by the administration. The contracts at Nelson and St. Mary's have also concentrated heavily on the procedures to handle appointments, promotions, renewal, tenure and dismissal. But it would be a mistake to think that the events at St. Mary's or Nelson are an aberration or outside the ken of other university professors. This was indeed a frequent initial reaction among professors. But it is clear that collective bargaining became a serious issue both at British Columbia and at Manitoba because of the failure of these universities to create constitutional rule. At Manitoba, the faculty perceived a rapid growth of academic bureaucracy just at the moment when the money for faculty salaries and research began to dry up. It seemed to them that the new bureaucrats wished to run a managerial system not unlike that of General Motors. Manitoba had, of course, more of a constitutional structure than the smaller universities already mentioned. In fact, as late as 1970 some members of the faculty association considered that the association might just as well be wound up since the faculty had secured representation on the senate and the board of governors. However, it turned out that such representation was only marginally useful since the senate was too large to be effective and was domianted by a bloc of ex-officio administrators somewhat on the model of British

colonial legislatures. Such a body was unlikely to take positions differing from that of the administration. The consequence of faculty frustration in regard to this structure was the decision to proceed to certification. Administrative attempts to secure tenure quotas merely added fuel to the fire.

Clearly financial issues have played a role as well. At the University of British Columbia the failure to create any reasonable procedures for handling faculty contracts helped provoke the rise of feeling in favour of certification. But the failure of salary negotiations and the contemptuous dismissal of faculty association recommendations played a larger role. Salary issues are clearly central in a period of two digit inflation. But redundancy is probably even more crucial. Threats of redundancy were the central concern of the faculty at Carleton University. Not only was there the direct and obvious fear that professors would be fired for budgetary reasons but there were related problems such as class size and teaching loads which were likely to be adversely affected by the financial situation.

It is clear that not all the problems can be solved by collective bargaining at the local level and that it will be necessary to arrange some form of negotiation with provincial governments for the total salary package of the universities in a particular province and on pensions. It is unlikely, however, that faculty will choose direct negotiations through collective bargaining at the provincial level in the first instance. The reason is fairly evident. Canadian governments, both federal and provincial, have traditionally demanded very extensive management rights in return for the right to collective bargaining. Thus faculty associations will probably try to entrench their rights in private sector agreements and then work out forumlae, perhaps on the model of the British universities or on that for setting doctors' fees, in order to negotiate the salary package and pensions. In addition, it should be noted that most English-speaking provinces are opting for grants commissions to act as a buffer between the government and the universities and that any such negotiating structures would have to be created in the light of these developments.

Another area of collective bargaining is that of educational television. Five of the provinces have created ETV agencies to produce and broadcast material some of which will pertain to the university sector. CAUT and its provincial affiliates have joined with the Association of Radio and Television Artists (ACTRA), a union representing writers and performers, and with some provincial secondary school teachers' unions and community college federations to form consortia in Ontario, Alberta and Saskatchewan. These consortia negotiate with the provincial ETV agency to secure contracts covering the membership of all the participating organizations. Writers and performers contracts have been signed in Ontario and are currently being negotiated in Alberta. It is expected that such contracts will also be extended to consultants. The purpose of these contracts is to ensure that editorial control and copyright reside with the creators and that there is fair payment for programmes and for their resale.

The CAUT has taken the view that collective bargaining must realize the traditional ends of the organization—proper procedures for the handling of faculty contracts, constitutional rule, and economic security. It is too early to say whether contracts will be written to achieve these aims. But it is an exciting and interesting time in Canada.

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Collective Bargaining in Canadian Higher Education—A Management View

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Collective bargaining under labor legislation is a new experience for North American faculty members. In Canada the experience is somewhat newer than it is in the States. Despite its recent origin; however, unionization is now a well-established fact of life in the Canadian college systems, and seems to be gathering momentum in the universities.

Some of the reasons for the move towards unionization are inherent in the recent trends in the higher education systems; some are the results of trends in the organized labor movement in general. Tightened budgets with all the attendant administrative problems and adverse effects on faculty working conditions, worsening opportunities in the job market, a desire for greater participation in institutional governance, and pressure from the public and the students for accountability—and, no doubt, other reasons — have all caused faculty members to seriously consider the merits of collective action under labor legislation to protect and improve their working conditions and academic freedom. Trends in the organized labor movement have also contributed at least indirectly. The growth of union activity among white-collar and professional workers has led faculty members to question their traditional view that unionism is incompatible with scholarship and professionalism; the increasing use of collective bargaining in the public service sector is also probably having its effect on faculty members in our universities and colleges.

Most of the Canadian provinces now have extensive networks of university (i.e., degree granting) services, and the newer community college (mostly two-year) developments. In the universities, collective bargaining under labor legislation is of very recent origin. University of Quebec at Montreal started the move some years ago, but there are still only a handful of unionized university faculties. On the other hand, collective bargaining in some form is much more extensive in the community college systems, though even here most of the developments have occured in the past four or five years.

In this paper I propose to discuss some of the more important aspects of the trend towards unionization in the universities, then to make a few general observations regarding the college situation.

In looking at the university situation it is difficult to know what to pick out as being of greatest importance. Collective bargaining for Canadian university faculty members is so new that the issues and their relative importance have not yet been clearly defined. It is quite possible, therefore, that questions that seem important now may as collective bargaining develops become much less important. However, some aspects of unionization for Canadian faculty members have now been discussed at some length in many universities; and though most of the discussion to date has been rather theoretical there is now some limited practical experience on which to judge the relative importance of questions relating to unionization. This paper looks at some of these questions from a management viewpoint.

Management's Attitude

One of the first decisions that boards of governors and senior administrators have to make when a faculty decides to seriously consider unionization is what attitude to take towards the move. It seems to me that the only sensible attitude is a neutral one. Though those people who are potential management might consider unionization to be a detrimental development for their institution, there is little if anything they can do to effectively oppose it if the faculty decides to move in this direction. This is one area where the prerogative for action is entirely the faculty's. If a faculty association wishes to apply for certification as a bargaining agent under its provincial labor laws, it has every legal right to do so regardless of what the employer thinks. The association as it is constituted may present some impediments to recognition as a bargaining agent under the appropriate labor legislation, but the faculty should not find it too difficult to remove these impediments. For example, the faculty association at University of British Columbia voted in February 1974 to proceed towards application for certification. The association found that it was necessary to amend its constitution, but the changes were easily effected, and a certification bid was made.[1] The main point here is that it is the faculty, and only the faculty, that has to decide whether to unionize.

When an attempt is made there appears to be little a board or administration can do—even if they wish to—to affect the chances of certification being achieved. When unionization was first seriously discussed a few years ago some mild reservations were expressed to suggest that faculty members would not be recognized as suitable for formation of bargaining units under the various provincial labor laws. It now seems that these arguments were without merit. In several provinces the question of appropriateness has been tested before labor relations boards and answered in the affirmative; and if university faculties in other provinces decide to unionize, there is little doubt that their labor legislation will allow them to be certified.

In short, when a faculty decides to unionize it seems to me that the board and administration would do well to leave them alone to proceed. And furthermore, on realization of certification, the most reasonable attitude for boards and administrators (nor management) to take is to accept the new relationships the unionization brings and attempt to ensure that the certification does not become a disruptive factor in the development of the university.

However, this does not mean that management should sit back and allow everything to go the way the faculty wishes—unless, of course, management happens to agree with the faculty viewpoint on the various details related to the setting up of a union. And it is rather unlikely that the union and management viewpoints will be coincident at this stage—if they were, there probably would not be any desire on the part of the faculty for unionization.

Appropriate Unit

One issue that immediately arises is the determination of the bargaining unit. This, of course, has been a very important, a very complex, and a very time-consuming question in the States. As Ralph Kennedy of the National Labor Relations Board remarked to this conference last year: "It is accurate to say that one of the most difficult and time-consuming responsibilities undertaken by the Board since its

assertion of jurisdiction over colleges and universities has been to develop a body of law which will provide guidance to the parties in resolving their differences with respect to faculty units."[2] The arguments regarding unit determination for Canadian faculties are not likely to be any less complex nor less demanding of the time of labor relations boards than they have been in the States. For example, the high degree of democratization of our universities has made, and in the future will make, the question of determining who has mangerial functions a very difficult one to answer. To exemplify the difficulties we can quote from the British Columbia labor act. Part of the definition of an employee excludes: "a person, who in the opinion of the board (i.e., the Labor Relations Board) is employed for the primary purpose of exercising management functions over other employees; or is employed in a confidential capacity in matters relating to labor relations."[3] This definition gives ample opportunity for management to argue for the exclusion of many administrators the faculty might wish to have included in the bargaining unit. And since the composition of the unit can have profound effects on the structures and relationships that develop after certification, management should give much time and attention to presenting its case.

At Notre Dame University of Nelson we petitioned for the exclusion of all administrators from department chairmen upwards. After what appeared to be very little serious consideration of the matter by our labor relations board—there was not even a hearing—the board ruled everyone into the unit except the president, the academic vice-president, and the dean of academic studies. (At Notre Dame University there is only one faculty with a single dean, though there are programs and schools outside the jurisdiction of the dean.) This was a highly unsatisfactorily decision. We did not seriously object to the inclusion of department chairmen in the unit—it is true that these people have few managerial functions in the industrial sense of the term; also, in other Canadian universities where the faculties are unionized department chairmen have in general been included in the bargaining units. However, we have a number of directors, as well as the chief librarian, who certainly have substantial managerial functions, and these were also ruled into the unit. This very unfortunate ruling of our labor relations board has already led to two very serious grievances that have proceeded right the way through our three step grievance procedure to the final arbitration stage.

Other recent decisions in Canada on unit determination have been more reasonable than ours. The Manitoba provincial labor board determined a unit for University of Manitoba that included department chairmen, but excluded the president, vice-president, information officer, deans, associate deans, assistant deans, and directors of schools, the extension division, the computer centre and libraries; at Saint Mary's University in Nova Scotia similar exclusions an inclusions were ruled—these seem to be more workable units than ours.

What Can Be Gained?

A very obvious question to ask is: What have Canadian university faculty members to gain by unionization? It is only very recently (in the last two or three years) that the question has had serious general discussion among Canadian university faculty members, so it is too early to give any sort of definitive answer. The same questions that are being asked, and in many cases answered, in the States are being asked in

Canada. How much of the American experience is relevant to Canada, considering the greater diversity of educational systems, methods of funding, and labor legislation south of our border? Some of this experience undoubtedly is relevant. As one observer has put it, the American experience will be useful to Canada "if only we can discern, among the richness and confusion of the American panorama, the relevant experiences which can fit our own unique background and present context."[4]

Collective bargaining in some form, but outside the full protection of certification under labor legislation, has been carried on by some Canadian faculties for many years. What more is to be gained by certification?

In the industrial sector, improvement in economic conditions is, or course, a major objective of unions. Can a faculty gain economically through unionization? Collective bargaining, at least as it has developed so far, is with boards of governors of the universities. It is the boards that are the employers under the labor acts. Yet boards do not hold the ultimate purse strings, since they receive the monies over which they have trusteeship from the provincial governments. In these circumstances it is very difficult for a faculty union to exert much economic pressure across the bargaining table because it is really the government that has to pay the cost of any concessions made, and not the employer. And with the present inflationary climate and the less-than-complete conviction of the public that the universities are operating satisfactorily it is likely that governments will be very reluctant to get directly involved in bargaining with university faculties. The only situation where unionization might effect considerable improvements in salaries and salary-related items is when economic conditions are very significantly worse than those at other universities. In this case the faculty union might be able to gain public sympathy for its case and indirectly pressure the government through negotiations with the board. But even in this case one can ask whether the same improvements might not be gained by means other than unionization.

In 1971 the Association of Universities and Colleges of Canada commissioned a study, the report from which was called *Collective Bargaining for University Faculty in Canada*. At that time the authors of the report, Adell and Carter, identified as the most probable single cause of faculty interest in collective bargaining the desire for greater participation in university government.[5] This seems rather paradoxical, for surely this is one area where the faculty could lose some of what they already have unless they are extremely cautious. Canadian universities are already very democratized. Following the publication in 1966 of the Duff-Berdahl report,[6] a report on university government in Canada, there was considerable faculty pressure for greater participation in university government—the Duff-Berdahl report had encouraged this move. The result is that, in general, there is now a high degree of collegiality in Canadian universities. Now there are very respected experts in the application of labor relations principles to universities and colleges who hold that unionism and collegiality are incompatible. Most faculty members and administrators in our universities would I think wish to resist the arguments to support this view; yet some of the arguments at least are quite compelling.[7] If faculty members are to retain after unionization the authority in the decision-making process they presently have, they will have to develop unionism with extreme caution.

Bargaining Models

Unfortunately, the conditions that have led a few faculties to unionize, and the conditions that undoubtedly will prevail when other faculties take the same step, tend

to promote the classic adversarial model of union-management relationships. Though the adversarial model is, in some part at least, a necessary outcome of unionization, the adversary nature will have to be rather mild if the degree of collegiality that presently exists is to survive. The development of the them-and-us type of relationship might well lead boards to retrieve, or at least attempt to retrieve, some of the authority in decision-making gained by faculty in recent years. As trustees of substantial amounts of public funds, boards may feel the necessity to protect their responsibilities to the public by claiming industrial-type management rights in collective agreements. And if the faculty then insists on a severe adversary relationship these management rights might become much more than mere statements on paper—the collegiality that has had a very beneficial effect on our universities will be seriously eroded, to everyone's detriment.

If we must urge caution on the part of faculty unions when developing their collective bargaining models, we must urge equal caution on the other side of the bargaining table. Most of those people in our universities who already are, or who could become, management in a union-management relationship would I think be almost as unhappy as the faculty members to see an erosion of collegiality. This applies especially to senior administrators who have traditionally identified much more closely with the faculty members than with their boards. With unionization they have no option but to become managers in an employee-employer situation, a role alien to most and one they are not very enthusiastic about playing. It is because of this reluctance on both sides of the bargaining table to destroy the results of the development of faculty participation in university governance that I think we can hope for the survival of collegiality, despite the pressures of collective bargaining that militate against survival.

Arbitration

Arbitration of disputes is another aspect of the organized labor movement that faculty members might well consider to be an important advantage of unionization. A general feature of the provincial labor legislations under which university faculties have been, and presumably in future will be, certified is their insistence provision for settlement of disputes during the term of an agreement. For example, the British Columbia labor act includes the clause: "Every collective agreement shall contain a provision . . . . for final and conclusive settlement without stoppage of work, by arbitration or such other method as may be agreed to by the parties, of all disputes between the persons bound by the agreement respecting its interpretation, application, operation, or alleged violation thereof, including any question as to whether any matter is arbitrable."[8] In effect what this means is that under unionization faculty members acquire a right to arbitration not previously held in most areas of operation of the university. This, I think is in general a good aspect of unionization.

If arbitration is necessary — and no doubt it is necessary in some cases — for disputes to be settled fairly and reasonably, then it must be considered to be a desirable procedure — and this regardless of the time and cost needed to process grievances through to the arbitration stage. Furthermore, if it is necessary—and here I think there is no question that it is often necessary—to provide for arbitration so that fairness and reason are *seen* to prevail, then the grievance procedures terminating in arbitration are well justified.

The problem with the use of traditional labor relations grievance procedures in the

university setting is that they can be considerably abused. And faculty members with their greater than average propensity for involvement in lengthy debate and disputatious discussion are particularly likely to abuse the procedures. Such a statement coming from someone on the management side is likely to provoke expressions of righteous indignation from faculty members, which leads me to hastily quote from someone on the other side of the fence: "with a formal collective agreement, it seems to me that the faculty members are encouraged to use very nit-picking detail to defend themselves, and it is hard to see how the local association can do other than assist them to exercise what have become their legal rights."[9] The consequence is a tremendous wastage of time and money, as some universities in the States have in recent years discovered.[10]

Right to Strike

Collective bargaining in Canada usually brings with it the legal right to strike to attempt to impose settlement on issues arising during negotiations. Of what use is this right to Canadian university faculties? It is difficult to see how it could be of much advantage to them. Since all Canadian universities are funded by governments, and in any case are non-profit organizations, very little economic pressure can be brought to bear on the employers (i.e., the boards). And only insignificant pressure can be applied to governments—the operation of a university whose faculty members have decided to walk out is hardly an essential public service during the period a strike could last. Presumably, in the event of a strike all the board would do is sit back and wait until the faculty decided to return. In 1971 the support staff of the University of Montreal went out on strike and closed the university—the closure didn't seem to put the university under any pressure to settle; in fact, from the strictly economic point of view the university was saving money during the strike.

The only real pressure on a board during a strike is a moral pressure to attempt to provide the services to the students. But even here, the greater moral pressure is surely on the faculty. Regardless of the validity of the faculty's case, it is the faculty, and not the board, that has to make the decision to withdraw services from the students who in most cases will be innocent bystanders. And in any case one wonders just how much the students would ultimately be affected by a strike. Most students seem quite capable of pursuing their studies independently for a rather long period—many already do, even when faculty services are readily available to them. To summarize, therefore, the strike does not seem to be a particularly effective weapon in the university setting, and there are indications that Canadian faculty members well realize this.[11]

I have commented here on a few of the important aspects of unionization of Canadian university faculty members. I think it is fair to say that there are yet few, if any, definitive answers to be gained by faculty members if they unionize, but there are also disadvantages; and in most Canadian universities it is now recognized that collective bargaining under labor legislation is not something to be entered into without much thought and discussion. It is not surprising, therefore, that unionization in the universities has progressed slower than was originally predicted. On the other hand, community college faculty members have been much less reluctant to move into the collective bargaining arena.

Community Colleges

Community colleges are rather new to the Canadian scene—most of the developments in this area of higher education have taken place in the last decade. Now, however, most Canadian provinces have well developed systems of non-degree-granting tertiary education institutions. For the purpose of this discussion all these institutions will be referred to as community colleges, though some of them are not community colleges in the strict sense of the term.

The nature of these colleges differs quite markedly from province to province, and the great diversity in function and structure makes it very difficult to generalize on a national level regarding any aspects of their operation. In particular, it is difficult to make general statements regarding the nature of collective bargaining in the colleges. Types of collective bargaining are more varied than those presently existing, or likely to exist in the future, in the unviersities. As for the universities, though, collective bargaining is under the appropriate provincial labor legislation. However, the patterns have developed quite differently in the various provinces. For example, in British Columbia, where almost all the ten college faculties are now unionized, bargaining is with the college governing councils and takes place on a local basis with each faculty bargaining separately with its council. On the other hand, many college faculty members in Canada are regarded as government employees and bargain on a provincial basis—this pattern exists, for example, in Ontario where the faculties of the twenty-two Colleges of Applied Arts and Technology are bargained for centrally by the Civil Service Association of Ontario. Regardless of the exact pattern, most of the college faculties in Canada now participate in some form of collective bargaining under provincial labor legislations.

Unlike the university situation, collective bargaining in the colleges has developed rather quickly. The difference between the university and college scenes is well exemplified by the activity in British Columbia. Of the four universities in the province only the smallest, Notre Dame University of Nelson, has a unionized faculty (unionization here was effected in spring 1973); two faculties do not seem, for the present at least, to be very seriously moving in the direction of unionization; and the fourth faculty, that at University of British Columbia, made an application for certification in fall 1974 but later withdrew it to allow for further study of the whole matter. It was in 1973 that the first unionization of a college faculty occurred; now, just two years later, eight of the ten faculties (including here the faculty of an institute of technolgy) are certified, one has applied for certification, and the other is seriously considering making application.

The greater enthusiasm for unionization among college faculty members is hardly surprising. Whereas many of the factors that have led university faculty members to look seriously at collective bargaining are also operative in the college systems, college faculty members would seem to have more to gain and less to lose than their colleagues in the universities.

For example, teaching loads in the colleges are, in general, much higher than in the universities. By collective action under labor legislation faculty members might well expect to effect considerable reductions in their teaching duties. In the Ontario system of Colleges of Applied Arts and Technology teaching loads are presently a major, and very contentious, issue in negotiations. In other provinces, teaching duties have been bargainable issues, and there is evidence, especially in Quebec, that collective

bargaining has indeed been responsible for reductions in teaching loads.

Participation in college governance is another example of an area where college faculty members might think they stand to make considerable gains through collective bargaining. There is not much evidence that gains in this respect have yet been secured in most provinces; however, Quebec is an exception to this general statement.

Improvements in salaries and salary-related items have, of course, been objectives of most college faculties. Collective bargaining has, in fact, probably effected certain gains in economic conditions in many colleges, gains that would not have been made had unions not existed. However, this latter statement has to be viewed with some caution since it is impossible to be very sure as to what would have happened in any particular institution in the area of economic conditions in the absense of a union.

With these few remarks regarding collective bargaining in the community colleges, I shall conclude the major part of this presentation. However, almost all the comments I have made concern the effects of unionization on faculty members. I cannot complete the presentation without making a few very brief observations on the effects on management personnel, because in many respects these latter effects can be more significant than the effects on the faculty.

Conclusion

Unionization creates additional problems for administrators, not the least of which is the additional time that has to be devoted to the new relationships between faculty and administration. Unionization can change the whole administrative life-style of a senior administrator. Part of this change will no doubt not be perceived as desirable, but part can be advantageous. For example, the metamorphosis of administrators to managers in the industrial sense of the term is not entirely a bad development. Though this might widen the academic gap between faculty and administration—which is not a good thing—it promotes better management principles in systems that have not been noted for their efficiency and clarity of administrative structures and procedures. Unionization also encourages administrators and members of governing bodies to be more concerned about the legal consequences of their actions. This can lead to a greater bureacratization of the institution, but it too has some advantages. When one has to take every action knowing that some day the action could be the subject of a story to an arbitration board, one is likely to be much more careful than some of us have sometimes been when accountability for actions was less severe.

It is possible to examine in great detail these and other effects of unionization on the jobs of management personnel. However, rather than extend this paper by doing so, I shall conclude by repeating a recent statement of Caesar Naples, because it seems to me that it sums up management's situation very nicely and is just as applicable to collective bargaining in Canadian higher education as it is to collective bargaining in the American institutions to which it was originally applied: "Collective bargaining has settled like a mist upon the campus, clouding and obscuring traditional roles and relationships. Management's challenge is to look through the mist, to perceive the opportunities offered by collective bargaining, to understand them—and to seize upon them."[12]

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10. See for example: Newton, D. "Management Structure and the Financing of Bargains in Public Universities." *Proceedings, First Annual Conference, National Center for the Study of Collective Bargaining in Higher Education* (ed. M. Benewitz) New York: Baruch College, 1973, p. 133.

11. Adell, B.L. and Carter, D.D. *Collective Bargaining for University Faculty in Canada,* p. 90.

12. Naples, C.J. "Collective Bargaining Opportunities for Management" in *Encountering the Unionized University* (ed. J.H. Schuster) San Francisco: Jossey-Bass, 1974, p. 59.

Faculty Unions and Academic Tenure: On A Collision Course

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I. Introduction

I would like to suggest today that faculty unionism threatens the traditional policies and practices that constitute academic tenure. Last November here at the Biltmore I presented a similar argument to a Conference sponsored by New York AFT and attended largely by rank and file union members. I considered the conference a unique occasion to test the basic proposition that unions and tenure may be on a collision course. After I had concluded, I was not exactly deafened by applause or hounded for autographs. On the other hand, I was not roundly denounced or targeted for missiles from the floor. The audience was obviously too civil and the price of tomatoes probably too high. At any rate, I was, perhaps misguidedly, encouraged by the generally neutral response, a few supportive statements and some comments afterward to hold to the contention that unions are on a path that will change the fundamental basis for employment security from the traditions of tenure to the language of contract. I appreciate the opportunity today to advance further and test again that contention.

Academic tenure stands as a well-established practice common to all four-year colleges and universities and about two-thirds of all two-year colleges. According to the most recent ACE survey by Todd Furniss, 85% of the nation's colleges and universities have a tenure system and these institutions employ about 95% of the nation's faculty.[1] Unionization, on the other hand, represents a relatively new force operative now on some 360 campuses.[2] While not as prevalent a practice as tenure, faculty unionization seems likely to grow not only because Albert Shanker recently willed it so, although that should not be discounted. If I had any doubts about the prospects for faculty unionism, those doubts were erased by two events last fall between Columbus Day and Thanksgiving. No, the occasions were not parades down Fifth Avenue with legions of CUNY faculty locked arm-in-arm with the ILGWU, though such scenes may soon be commonplace.

Instead, the first event occurred at the Ohio State University Football stadium where the Buckeyes, then the nation's top-ranked team, hosted the University of Wisconsin. At Ohio State, of course, intercollegiate football is a very serious matter. Given the University's fervor for football, I was stunned that Saturday as cheers and applause spread through the stadium while *Wisconsin,* the opponent, marched toward the Ohio State goal line on the very first possession. "What the hell's going on?" I wondered. The crowd's strange behavior could not be explained by events on the field. Rather the answer loomed overhead. No, there were no signs of the Goodyear blimp, not even any signs of sunshine or the return of Hopalong Cassidy to the backfield. Only a small prop plane with a streamer that proclaimed "Live Better, Work Union," circled the stadium. The local AAUP chapter had chartered the plane to kindle support for a movement afoot to organize faculty for collective negotiations. That the plane had diverted the rabid fans' attention and generated widespread applause would seem to bode well for unions.

In New Jersey faculty and students at the eight state colleges do not follow football quite as intensely as counterparts in Columbus. However, faculty unions have progressed well beyond aerial advertisements. In fact, on November 20th the state colleges assumed a new look never before adopted by any other multi-campus system. In many ways though, the new look resembled the old look common to the late 1960's except that the pickets were not students outraged by the war or institutional racism. The pickets were faculty and the placards decried Unfair Labor Practices. Angered by the State's apparent refusal to reopen salary negotiations for the second year of a two-year contract, the AFT affiliate authorized and conducted a work stoppage that idled some 2,700 professional employees.

As these two vignettes suggest, faculty unionism has developed quite a stronghold on some campuses and the practice seems en route to many others. In short, many unions are already powerful and soon unions may be plentiful. Certainly some faculties, especially those at the so-called upper tier universities, will reject unionization and certainly the growth rate for new certified agents and new negotiated contracts will slow.[3] Yet beyond doubt, unions will be a permanent part of the academic landscape. Why?

While permissive legislation and favorable NLRB decisions facilitate unionization, only one reason really explains unionization. Simply said, many faculty regard unions as effective, a contention at least partially supported by several recent studies. Robert Birnbaum's research on faculty compensation determined that unionized faculties earn more than colleagues at comparable, non-unionized campuses.[4] Although Birnbaum's conclusion applies to all institutional categories, the most dramatic disparity occurred at public four-year colleges where total compensation for unionized faculties advanced between 1968 and 1972 by $1157 more than total compensation advanced for comparable non-unionized faculties.

With respect to governance, there are some occasionally cloudy signs that unions have gained a formal right to fuller participation. Many contracts require that various issues once subject to voluntary or no discussion now be presented to faculty-administration committees for joint discussion. It should be noted, however, that these gains may be halted or even reversed should the NLRB ever adopt the official position recently assumed by the Board's regional director in New York that St. John's University need not negotiate with the faculty union on certain governance issues that "concern managerial rights and perogatives and not terms and conditions of employment."[5] While such a determination may limit the union's scope and expand the faculty senate's, separate studies by Joseph Garbarino and James Begin seem to suggest that faculty unions and academic senate's can at the least exist side-by-side with differentiated functions and indeed act cooperatively or cooptatively to strengthen the faculty's ability to effect policy or at the least thwart unilateral action, by the administration or the Board of Governors.[6]

While compensation and governance are central concerns, a stalled economy, enrollment declines and program retrenchments have redirected primary attention toward employment security. Here too unions appear to be effective. At CUNY last year, the Professional Staff Congress successfully martialed support to overturn a tenure quote that most faculty regarded as a direct threat to economic security. At Rhode Island College the AFT contract essentially disallows a tenure quota. Specifically, the contract stipulates "that no individual on a tenure-bearing line who is currently a member of the bargaining unit may be denied tenure solely on the basis of

the establishment of quotas.'' In Pennsylvania the state college contract negotiated by the NEA bars faculty retrenchment for two years. Although we lack empirical data on the interrelationships between faculty unions and employment security, these examples reflect the unions' successful efforts to safeguard the faculty's economic security.

II. More Protection for More People[7]

Due precisely to that success, I believe unionization threatens traditional tenure practices. The threat derives principally from the prospect that through negotiated contracts unions will establish more effective ways to ensure more employees economic security. More effective in what ways? Let me suggest three.

First, tenure draws distinctions that leave many outside the inner circle of protection. As outsiders, the untenured feel powerless and vulnerable vis-a-vis the tenured faculty as well as the administration. Unions address and, in fact, alleviate that deprivation. Through negotiated agreements, unions aim to protect everyone within the bargaining unit; tenure protects only the tenured. Small wonder then that unions generally derive greatest support from the untenured ranks.

Unions, for instance, seek to provide more immediate job security for all; tenure requires a probationary period with little protection for probationary personnel.

Under a traditional tenure system, the untenured live somewhat precariously from one term appointment to another with non-renewal the everpresent sword that dangles overhead. In contrast, most unions contend that initial appointments carry an implied promise of permanent status unless the faculty member proves incompetent. For example, in the 1972 contest to represent the faculties of the New Jersey state colleges, the NEA affiliate asserted that ''almost all new faculty should qualify for tenure,'' while the rival AFT unit proclaimed that ''tenure is the right of all competent and qualified faculty.''

As a logical extension of that viewpoint, unions strive to shift the burden of proof for tenure and related personnel decisions from the employee to the employer. Under a traditional tenure system, the employee must demonstrate worthiness for tenure during the probationary period. Often choices are made from among able candidates. Unions endeavor to shift the question from one asked by the university, ''Why tenure?'' to one asked by the faculty member, ''Why not tenure?'' Since faculty evaluations are often unsophisticated, impressionistic, and inconclusive, the new question may be difficult indeed for many colleges and universities to answer satisfactorily. Potentially vulnerable here, many administrations resist as union's push to require that written reasons be furnished faculty members not retained or denied tenure.[8]

Second, unions seek and usually obtain review and redress procedures applicable to *all* faculty. In most negotiated contracts, unions have gained fairly elaborate, detailed procedures to be followed en route to tenure, promotion and reappointment decisions. The materials to be considered, the committees to be formed and the steps to be taken are often standard contract elements. The emphasis here typically centers upon assurances that procedural due process will be provided for review and evaluation activities.

Where negative decisions ensue, unions usually grieve, a philosophically and politically logical posture for unions to adopt. After all, the right to grieve probably

represents the most effective means at the union's disposal to protect unit members, all unit members. Thus, four of every five negotiated contracts encompass grievance and arbitration procedures. As economic retrenchment, an unfavorable marketplace and union activism emerged, more and more grievances seemed to occur. Whereas the AAUP, for example, processed 380 cases and complaints in 1968-69, the number tripled by 1972-73 and remained steady thereafter.[9] In most cases, the charge focused on procedural due process and not a substantive judgment.

Faced with the very real fiscal and political costs attached to a grievance, a grievance that might be successful anyway, academic-administrators may incline to tenure more faculty, especially those close to the margin. In fact, given the historically loose and occasionally slipshod procedures many colleges and universities follow for personnel decisions, the likelihood that an arbitrator (or a court) may rule that full procedural due process was denied looms as more than a longshot. To the extent that unions are successful here, more positive decisions for permanent status will result.

Moreover, there are some signals that qualitative judgments may soon fall within the scope of grievance and arbitration machinery. At CUNY there are already circumstances where the arbitrator may question academic judgments and return the case for review. Although the arbitrator may remand a case for review only upon determination that an academic judgment was arbitrary or discriminatory, it is obviously difficult indeed to determine arbitrariness or discrimination without simultaneously considering the merits of the particular academic judgment at issue. Thus, while the nota bene principle still stands, the clause stands a little weakened and grievances over substantive due process may be imminent. If so, the unions may win for the rank and file protection once only accorded the tenured.

While due process and grievance machinery may be the thickets that ensnare many administrators, unions, and therefore union contracts, have not focused exclusively on process. About two-thirds of the contracts negotiated at four-year colleges define tenure, often with direct reference to the 1940 AAUP statement. Almost as many contracts specify the allowable reasons for dismissal and, perhaps most significantly, more than one-third enumerate the evaluative criteria to be applied for tenure decisions.[10] Many contracts simply absorb tenure-related policies already operative and legitimized by common practice, board policy or state law. To gain added leverage a contract such as SUNY's requires new negotiations prior to any action by the State to modify current tenure policies.

The shift from tenure as an institutional policy statement to tenure as a contractual element alters the fundamental relationship between the faculty and the college with respect to tenure. Whereas open and full debate, perhaps before the faculty senate, once sufficed to enable the administration or trustees to modify academic personnel policies, now the proposed change must be negotiated at the bargaining table. That proviso may limit an institution's flexibility to adapt tenure or related policies to new circumstances, a constraint some will regret and a protection others will welcome. As union contracts encompass tenure or employment security otherwise defined, faculty will rightfully conclude that unions provide more protection against unilateral academic personnel policy changes, or at the very least, policy changes without a quid pro quo.

Third, unions will offer not only more protection but more protection to more people. To that end, unions have, of course, historically attempted to organize more

campuses. In addition, unions have also pressed with considerable success to expand the bargaining unit to include staff professionals. Among lures such as higher salaries and lower workloads, unions add the promise of greater job security. At some unionized colleges, particularly although not exclusively community colleges, librarians, counselors, admissions officers and registrars are now eligible for tenure or permanent status. Elsewhere separate unions have been organized and certified to represent NTP's. Among these campuses are Suffolk County Community College (NY) where professional staff after six years enjoy continuous appointments terminable only for "reasonable cause" and Passaic Community College (NJ) where "no administrator shall be discharged, disciplined, reprimanded or deprived of any professional advantage or given an adverse evaluation of his professional services without just cause." Even Claremont College in California now has a contract with office and professional employees that provides permanent status after six months and opportunities to grieve through arbitration. Where unions have not won tenure or permanent status for NTP's term contracts, formal evaluation systems, and staff development programs have been achieved. Additional efforts to unionize staff and provide permanent security seems likely.

Success here will, I believe, overload already crowded tenure tracks and tenure ranks and also undercut tenure's special claim as a device to guarantee scholars academic freedom. We all recognize that tenure has been under increased attack from many quarters. Yet as bargaining units expand to encompass NTP's the more critical and, some may add, the more perceptive observers will ask, "do registrars really need academic freedom or does everyone want the security of permanent employment?" At most four-year colleges where the contract addresses both tenure and academic freedom, the issues are treated independently and not as directly related matters.[11] One might infer or at least suspect, therefore, that tenure was viewed, discussed and negotiated for reasons apart from academic freedom. Perhaps, for instance, for reasons related to employment security. To the degree that economic security and not academic freedom emerges as the central concern, tenure's special status vis-a-vis academic freedom will erode, reverence for tenure as a hallowed professional creed will dwindle, and opponents to tenure will gain new converts.

At least implicitly, unions propose to remedy this situation by developing a comprehensive definition of academic freedom that will protect all unit members. The new rubric will be terms and conditions of employment. As terms and conditions of employment, what is taught, when, where, and how it is taught (all issues traditionally but vaguely embraced by the term academic freedom) will become negotiable and hence contractual. It will then be but a small step to develop elements of academic freedom, newly defined, for staff professionals. As contract clauses, these issues will be protected as never before and the protection will spread wider than ever before.

To summarize, I expect that negotiated agreements will gradually supplant traditional tenure systems as the cornerstone for employment security and the bedrock for academic personnel policies. The transition will be due largely to the union's promise and ability to deliver more effective protection to more members of the campus community. Tenure may continue for some time as an element of the contract but the contract will be the key.

III. The Best of Both Worlds?

I would like to conclude with some observations about the prospects for double protection, that is the likelihood that traditional tenure practices and airtight union contracts can both prevail on a particular campus. Some union officers are quite optimistic, confident that tenure, a benefit already secured, will not be sacrificed through negotiations. After all, unions bargain to strengthen not weaken provisions for security. Across the table, university administrators such as William Boyd caution that tenure may be traded, sold or at least mortgaged through negotiations. In many ways, the debate may be peripheral for the greatest challenges to tenure may emerge from locations other than the conference room where labor and management bargain. Indeed, I doubt that tenure will be bargained away; more probably, like a good soldier tenure will eventually fade away. Why?

First, I wonder whether unions are philosophically compatible with the traditional tenure concept. Can an organization such as the AFT, pledged to "Democracy in Education," embrace and perpetuate a system with a privileged class that leaves some union members more equal and better protected than others? At the University of Hawaii the answer rather markedly seemed to be "no." When the faculty voted on a contract negotiated by the AFT that would have enabled the University to issue multi-year contracts rather than award tenure while those already tenured remained so protected, the contract was repudiated by a 5:1 margin. Although Hawaii admittedly presents a somewhat special circumstance, the vote nevertheless suggests that unions may not be able to offer some members security benefits not available to others. The simple answer—tenure for everyone—does not constitute a realistic answer. Moreover, with tenure now more difficult to achieve, a fact confirmed recently by an ACE survey, the union's answer may well evolve as tenure for none and airtight contracts for all.

Second, with a strong contract will anyone *need* tenure or will tenure be a superfluous second coat of armor? Suppose contracts provide: a detailed evaluative process, terminations only for reasonable cause, stringent grievance procedures, and the right for arbitrators to reverse adademic judgments and reinstate the agrieved. What more need be? Do athletes with no-cut contracts demand tenure too? Will anyone support protection beyond full due process procedurally and substantively?

Before long, I suspect state legislators will start to ask similar questions. As unions win full employment security at the table, legislators may rethink the need for tenure statutes. Why provide through legislation what can and should be achieved through negotiation? There are precedents such as court decisions that narrowly limit a grievant's opportunity to appeal an arbitrator's decision before a court or another governmental agency.

While the *removal* of relevant state statutes poses a third challenge to tenure's longevity, a fourth challenge may, perhaps ironically, emerge from federal legislation to enable all public employees to bargain collectively. As Myron Lieberman warns, state legislation on terms and conditions of employment may be pre-empted by a new federal law.[13] Under the proposed Thompson bill (H.R. 9730), the NLRA would extend to state and local government employees. If enacted, the law may require that many terms and conditions such as employment security, i.e. tenure, be

considered matters for negotiation. The bill as drafted may not be enacted or preemption may be selective or not even applicable here. Yet the possibility that the legal bulwark for tenure in the public sector may have to yield to collective negotiations warrants mention.

Finally, tenure's ability to guarantee economic security seems to have also been weakened by two recent court decisions that treated tenured faculty less kindly than the more celebrated Bloomfield decision. In June 1974 a U.S. district court upheld the dismissal of two tenured faculty members at Peru State College, Nebraska due to financial exigency, holding that tenure rights do not guarantee the continued right to public employment.[14] Nearby, at the University of Dubuque a state court ruled similarly.[15] More significantly, perhaps, the court held that "absent any consideration beyond the employee's promise to perform, a contract for permanent or lifetime employment is to be construed for an indefinite time, terminable at the will of either party."

It seems especially noteworthy that both courts explicitly observed that the respective contracts as negotiated did not govern dismissal. At Peru submission to grievance and arbitration on termination was permissive not mandatory. The Iowa court ruled that no contract or other evidence demonstrated that the University of Dubuque directly or indirectly agreed to be bound by the AAUP retrenchment guidelines cited by the plaintiff nor was the AAUP the recognized agent. One might properly infer, however, that had negotiated agreements been germane here, different decisions might have resulted.

In sum, I do not believe unions will be able to achieve simultaneously the best that both traditional tenure and negotiated contracts offer. Pressure within the union and pressure from legislators Administrators and the public will probably prove too severe. Faced with that possibility, unions will opt for strong contracts as a more effective means to achieve greater economic security for more faculty and more staff. As strong contracts are negotiated and others are renewed, tenure will gradually become obsolete and anachronistic. In a word; the union's successful efforts to obtain for all members employment security anchored by an airtight and ironclad contract may well spell the end to tenure's tenure in academe. Nevertheless, the dilemma and challenge for unions and universities alike will remain unchanged: the quest for a balance that respects both economic security and academic quality.

One last word. I hope these remarks will be viewed as necessarily speculative comments on the potential for a collision between faculty unions and academic tenure, offered by someone not equipped with radar or blessed with Jean Dixon's predictive powers. Not only can I not see the future, without glasses I can barely see the present.

Footnotes

1. *The Chronicle of Higher Education,* February 18, 1975, 9; See also, *Faculty Tenure, A Report and Recommendations by the Commission on Academic Tenure in Higher Education*-William R, Keast, Chairman, Jossey-Bass Inc., 1973, 215ff.

2. "Institutions with Current Collective Bargaining Agents and Contracts," The National Center for the Study of Collective Bargaining in Higher Education, November 1, 1974.

3. Faculty unionism spread rapidly from five campuses in 1966 to 359 campuses in late 1974. For some reasons why the growth rate will probably slow see, Kenneth Mortimer, "Research Data on Tenure and Governance Under Collective Bargaining," Speech delivered at the AFT Conference, New York, November 16, 1974.

4. Robert Birnbaum, "Unionization and Faculty Compensation," *Educational Record,* Winter 1974, 29-33.

5. *The Chronicle of Higher Education,* March 17, 1974, 1.

6. James Begin, *Faculty Governance and Collective Bargaining: An Early Appraisal,* Academic Collective Bargaining Information Service, 1974; (The Garbarino study has not yet been published. See, however, Joseph Garbarino. "Faculty Unions, Senates and Institutional Administrators." A paper presented at the ACE conference, October 10, 1974.

7. Many central arguments presented in this section were developed and refined in collaboration with Andrew T. Ford, Curriculum Coordinator, New Hampshire College and University Council. See, Richard Chait and Andrew T. Ford, "Affirmative Action, Tenure and Unionization," in *Lifelong Learners-A New Clientele for Higher Education,* Dyckman Vermilye, editor, Jossey-Bass, 1974, 123-130.

8. It may be noteworthy that the number of institutions that always provide written reasons for nonrenewal or denial of tenure has dropped from 43.1% to 36.6% between 1972 and 1974 while the number that never provide written reasons increased from 16.4% to 19.4%. ACE Survey, *The Chronicle of Higher Education,* February 18, 1975, 9.

9. "Report of Committee A," 1973-74, *AAUP Bulletin,* 60, No. 2 (Summer, 1974).

10. Daniel Julius, "An Analysis of The Tenure Clause in Four Year Contracts," unpublished monograph for the National Center for the Study of Collective Bargaining in Higher Education, October 1974.

11. Mortimer, *op. cit.,* 6.

12. *The Chronicle of Higher Education,* February 18, 1975, 9.

13. Myron Lieberman, "Memorandum Analysis of Preemption Problems with Proposed Federal Bargaining Legislation For State/ Local Employees," *Government Employees Relations Reporter,* February 17, 1975, E-1 ff.

14. *Levitt and Wininger v. Board of Trustees of The Nebraska State Colleges,* United States District Court for Nebraska, File No. 73-L-221, June 1974.

15. *Lumpert v. University of Dubuque,* District Court of Iowa, Dubuque County, Law No. 39973, July 1974.

Faculty Unions and Academic Tenure on a Collision Course?

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I'd like to begin by explaining that when Tom Mannix asked that I participate here as a reactor, he picked the proper word to describe what I am going to do. During the past couple of weeks I've spent a good bit of time outside New York talking to faculty audiences about collective bargaining. We've also been involved in negotiations with the Board of Higher Education at least twice a week, plus other regular meetings of the Professional Staff Congress, and some of you probably have been reading about the calamitous condition of the New York City budget, which has to occupy not only the Mayor of the City of New York and the Governor, but also the union leadership in the City of New York. Regarding Mr. Chait's paper, I would have preferred to have had more time to look at it and to prepare a better organized and substantial analysis respecting some of the subjects he raises. I say this by way of apology because I think some of the items he has raised in his provocative and speculative paper are worth much more attention. What I am going to do here is react to it and indicate where I think more time might be spent, possibly in another session or in another kind of analysis.

I think it is first worthwhile to pay a good bit of attention to the title of this paper, "Faculty Unions and Academic Tenure on a Collision Course?" The subject being considered here, in effect, is tenure and tenure-related matters and how they have been treated in contracts. But notice the way the proposition is phrased: "On a Collision Course?" The use of this term, and, in fact, the use of a variety of words and phrases throughout the discussion of this subject carry with them, in my view, value judgments about the nature of the union and the nature of its interaction with tenure in contracts. I think it carries with it value judgments that are essentially negative and pejorative.

The implication is that tenure and unions are incompatible; unionization threatens traditional tenure practices. Mr. Chait says this throughout his paper. I would ask you to consider this: What does the "threat" consist of? What does the "collision" consist of? What does the implication mean other than that the "collision" is going to produce some kind of disaster or some kind of destruction, or something terrible at some future, speculative time? I quote one summary statement from Mr. Chait's paper: "the *threat* derives principally from the prospect that through negotiated contracts unions will establish more effective ways to insure more employees' economic security." (Emphasis added.) Representing a union and being part of a faculty, I don't find that a very difficult proposition to accept, nor do I find it a threat. A union that is able to provide economic security to all of its members in a contract is a union that is doing an effective job and requires no apology regarding tenure and what might happen to it in any contract.

Consider this also in Mr. Chait's paper (page 13):

> Again, to reflect what this *threat* consists of and whether, in point of fact, it is a *threat*. Suppose contracts provide a detailed evaluative process with termination only for reasonable cause, stringent grievance procedures and the right of

> arbitrators to reverse academic judgment. What more need there be? Will anyone support protection beyond full due process procedurally and substantively? (Emphasis added.)

I think these were intended to be rhetorical questions, but I can answer them very simply. I, personally, would not expect more than that in a contract, and if that is what is going to replace tenure I don't think we have a great deal to worry about. Nor do I think the "threat" that is raised in this paper is really a threat at all. In fact, if we add to Mr. Chait's statement which I have quoted the words "probationary period of no more than seven years" and "tenure with dismissal only for cause after recommendation by a faculty committee" we have a formulation that is really and truly traditional tenure.

Let me do this. I'll take Mr. Chait's construction and place the words I have suggested into it. What results is traditional tenure in all but one respect.

> Suppose contracts provide a probationary period of no more than seven years; a detailed evaluative process; termination—a more neutral word would be "non-renewal" or "non-reappointment"—only for reasonable cause; stringent grievance procedures—from a union perspective I might like the words "effective grievance procedure," "stringent," maybe, only from the perspective of management, a right of arbitrators to reverse academic judgments; and tenure with dismissal only for a cause after recommendation by a faculty committee.

We have there, excepting the role of an arbitrator, traditional tenure, and I personally don't find the amended statement a threat, a problem or a difficulty.

In fact, I would suggest there is a misdirection in Mr. Chait's paper, probably growing out of an insensitivity to what unions are trying to achieve. Unions insist on contractual protections, not only because they are in the interest of their members, which is important to remember, but also because they are needed in view of the previous situation in which the administration exercised unilateral and total power over tenure. Yesterday, we heard Mr. Garbarino speak about consultative collegiality and consensus collegiality. The sum and substance of them was that when it came down to a dispute between the right of the faculty to control academic personnel decisions and the right of management ("administration" becomes "management" in these contexts) to make decisions which are final and conclusive, management always won. This is one of the reasons, I believe, we have collective bargaining to begin with. Unions want protection in a contract simply because faculty have no other protection. They want protection for their members because they represent their members in collective bargaining. The thrust of Mr. Chait's problematical construction, while valuable, in my opinion, in analyzing a topic of some significance, creates an uncomplimentary and negative impression which is not supported by either the evidence or the speculative reasoning; namely, that this "collision course" is something that we ought to be worried about. I might say too, that in a time of rapid change in education, particularly with regard to academic personnel practices, it's hardly surprising that whatever we are going to come up with at some future time will be different from traditional tenure. I can assure you that where students are voting on faculty appointments and promotion, where unions are beginning to become involved in collective bargaining which affects personnel decisions, and where a number of other changes are in progress, there is no question that whatever the future holds is

going to be different from the present. If we stand with the present without change, without adjustment, we are going to stand with a past that is death to the faculty and to the excellence of the faculty in the universities and colleges of this country.

There are a number of minor themes in Mr. Chait's paper which I think are worth calling to your attention, because though he uses them to buttress his principal argument, they are worth considering in their own right. For example, Mr. Chait suggests that there are difficulties within unions because some members have more rights than other members. Within trade unions sometimes, particularly the type of trade union that might be called an amalgamated craft union, there are members with superior rights to other members, whether it is seniority or function or what have you; it has been traditional in the trade union movement and it has been one of the characteristics of comprehensive unions in higher education, particularly the type of union represented by the Professional Staff Congress. There are problems between tenured and untenured people, which unions have to deal with. There are other kinds of difficulties, such as between higher rank and lower rank personnel, between voting faculty and non-voting faculty, between classroom and non-classroom professionals, and between full-time and part-time personnel. These problems reflect themselves, in my view, not so much in an attack on tenure, but in things like debilitating union politics, inconclusive collective bargaining or the inability to derive an effective contract from the negotiating process. Other problems involve the extraordinarily complicated legal arguments over collective bargaining statutes and all kinds of very difficult units determination hearings as to what is to comprise the unit that goes into collective bargaining. Each of these are subjects worth studying in their own right. But they are subjects that do not so much support the proposition you've heard as to indicate other directions of importance in higher education and unionism.

There are also tendencies, unquestionably, to create conditions in which less than excellent personnel may be reappointed because of union activity. It is understandable that a union is going to protect its members. I don't think that I have found in my experience a union which states that it wishes to protect incompetence or to insure incompetent people reappointment, so that, in this regard, we have a straw man to fight against in Mr. Chait's presentation. Unions have a problem in this respect, to guarantee excellence through an evaluation process that is contractually based and at the same to insure its members job security, due process, and fair evaluation over a lengthy period of time. What is at issue here is how are faculty unions to be distinguished in their evaluation process and in its outcome from other kinds of unions? I am convinced that over a period of time faculty unions will do this and do it successfully. They will do it not to insure incompetence, not to secure mediocrity, but to produce excellence in the university.

I think, too, in a minor way there are gratuitous attacks in Mr. Chait's paper regarding what unions have done. An instance is the mention of the question of a presumption of reappointment. I can comment more fully on that. It is an extraordinarily complicated topic. No union in higher education takes the position that once a person is appointed he is appointed forever, regardless of performance. Management has taken a somewhat different positon as to its interpretation of what the no presumption of reappointment should mean. Management wants the flexibility to reject a candidate for reappointment for any reason regardless of performance under the banner of "no presumption of reappointment." A union, on the other hand, may argue that it is entirely reasonable to say that one should presume the evaluation pro-

cess provided contractually with regard to academic personnel matters should provide the basis for the determination of excellence. This is why unions have so large a problem with management positions in collective bargaining that say there is no presumption of reappointment and add the provision that there need be no reasons given for non-reappointment, which, in point of fact means that management can have any reason for non-reappointment without concern for the result of the evaluation process. These are two interrelated subjects—reasons and presumptions—and I think to treat them lightly and negatively in this discussion is to provide a gratuitously negative kind of comment about unions, what they are trying to achieve, and where they are going.

I don't think it is entirely proved (and this was discussed in November when Mr. Chait first presented his paper, or at least a previous version) that unions are incompatible with affirmative action programs. During our tenure quota fight there was not a single group committed to affirmative action that took the position that the tenure quota was proper or that the union in any way had acted improperly. In my experience most of the affirmative action groups have been very favorable to our union and supportive of it in our struggles within the City University.

I think, too, the suggestion that somehow or other contracts limit institutional flexibility has a negative implication. Institutional flexibility is a code word, in my opinion, for management's position that it should have unilateral power over a variety of things. The point of a contract is to provide a limitation, to limit flexibility, if by flexibility is meant the right of management to manage without any control whatever.

I think the subjects of fiscal restraints and the economic conditions under which we live today and their relationships to faculty unions should be explored in some future conference. Mr. Shane from Maryland pointed out the other day that one of the reasons why a collective bargaining law did not pass the Maryland State Legislature was precisely because of the matter of cost, and the fear, unstated, that it would cost too much. Furthermore, the relationship between legislative tenure and contractural tenure is also worth discussing at another time. I could suggest other perspectives on this subject of tenure, tenure related matters and contracts.

The probationary period itself is a unique thing when you consider it. Unions in higher education have the problem and the challenge of reconciling an extraordinarily long and onerous probationary period with the traditional and legitimate union role of providing job security. There is nothing wrong with the union providing job security. On the other hand, in higher education the probationary period has been a lengthy time, and to make these compatible, to reconcile them, is the challenge faced by faculty unions in the United States. I think it is a challenge we will meet successfully. Furthermore, this whole problem of the probationary period has a relationship to the numbers involved. Where you have a massive number of people within a university under collective bargaining who are in probationary positions, you have a very difficult problem, not only for the union but for management itself. Management's problem is to provide—and be assured that the evaluation process, whatever it is, produces—excellence. The union's problem is to be assured that its members get services, protection and due process while they are being evaluated over a very long period of time. The numbers involved in the probationary period and probation itself are well-worth exploring at another time.

I think, too, there is a misunderstanding here of what academic freedom involves. The traditional formulation by the AAUP of academic freedom makes very clear that

academic freedom also requires job security, economic security, and it stated so unmistakably. Let me read from the AAUP's 1940 Statement on Academic Freedom and tenure just to remind you:

> Tenure is a means to certain ends. Specifically 1) Freedom of teaching and research and of extramural activities and 2) A sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence tenure, are indispensible to the success of an institution in fulfilling its obligations to its students and to society.

That's the traditional point of view, and I don't think unions have to apologetic about saying that tenure provides job security, because one consequence of the need to protect faculty members in their right to teach, in their right to do research, in their right to participate in the formulation of academic policy, one consequence of that, which we call tenure, is job security. They are interrelated and they are inseparable, and there is no need, in my view, to shrink back from that, and unions quite obviously find this totally compatible with their needs, their directions and their traditions.

Furthermore, academic freedom itself is a changing concept, at least as it applies to different parts of the academic community. The fact is that new groups within the university are now covered by academic freedom, and I take the AAUP here as an example, which has said that librarians must have academic freedom not because they teach, or not only because they do research, but because their particular role in selecting and collecting books, in making books available, in making knowledge available both to students and faculty requires that they be given academic freedom. I suggest further that there are other kinds of college personnel who have to be covered by the rubric of academic freedom because of what they do presently. For example, there are now counselors and technicians who are members of the academic community because of governance changes common in today's institutions. They sit in academic senates and vote on academic policy, participating in deciding what courses are to be taught, what programs are to be offered. Could you imagine the Registrar unprotected, but a member of an academic senate, standing up and opposing the view of the Dean? I would suggest to you that is precisely this kind of situation that requires the redefinition of academic freedom in order to guarantee the integrity of the process by which the academic decision-making in the university is made and the people involved are protected. In that regard I don't find it frightening to say that we are going to include in contracts, if not in statutes, more people under the protection of academic freedom. In fact, within the City University, College Laboratory Technicians who work in the classroom, who participate in the teaching process, have always been covered by statutory tenure. They have always been guaranteed academic freedom within the State of New York.

I can conclude simply by suggesting to you that the threat implied by the metaphorical collision of Mr. Chait is not something that worries me, at least, as I hear it described and as I read it described. If a union is able to provide job security to larger numbers of people there is nothing to be worried about in my view. Nor, in terms of the description that I have gotten from Mr. Chait's paper, is there anything to be worried about. If we are able to provide, by contract, something better than any other avenue of protection, and if we believe the protection is important and essential, as I do believe it is, then I think contractual tenure is one excellent way to secure our tradition. Remembering always that our tradition is something that changes and must

change as times change, and the tradition that stays still becomes stultifying, becomes difficult to administer, becomes dangerous to its members and to the people who are involved with it. Everything has to adapt to meet changing conditions. Collective bargaining is one of these changing conditions in the limitations it places upon management, and also in the obligations it places upon the instructional staff, and, in my view, there is nothing to worry about in that regard. I would suggest that Mr. Chait's paper raises a problem that really isn't the kind of problem that he envisages, though the subject is well worth considering and considering in all of its manifestations.

Collective Bargaining: Its Effect On Faculty At Two-Year Public Colleges

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Introduction

The growth of unionism and collective bargaining in the public sector has been characterized as the single most important labor market phenomenon to occur in the last ten to fifteen years.[1] While the effects of unionization on selected segments of the public sector have been the subject of considerable research the effects of unionization and collective bargaining on two-year public colleges (In this paper the term will be used synonymously with community colleges.) has received little attention.

The community colleges, aside from being the most rapidly growing sector of higher education, have been a public sector "industry" in which unionism has made considerable headway in recent years, and it appears will continue to make further inroads in the future. Even though the spread of bargaining in this sector has been significant and rapid, there are still a large proportion of community colleges as yet unorganized. This feature of the bargaining development—recent and rapid but not total—makes this sector an excellent vehicle for studying the impact of unionization on a segment of the public sector during the initial stages of organization. The concern of this paper is to determine the effects that unionization and collective bargaining have had on the compensation and selected working conditions of faculty in two-year public colleges.

Faculty in all sectors of higher education have been adopting the vehicle of collective bargaining as the mechanism by which the parameters of the work environment are to be determined. It is, however, the community colleges that have proven to be the most fertile area for unionization. An examination of the effects of unionization on community colleges should prove useful in modifying some of the extreme perceptions held by both faculty and administrators regarding the potential impact of unionization. Faculty members tend to look at collective bargaining as the panacea that will overcome the gloomy picture of stagnation that is facing academia. Administrators generally view collective bargaining as a disruptive force that will bring about considerable increases in costs as well as severely limit their ability to manage institutions of higher education. Thus, for purposes of both effective educational planning and effective collective bargaining it seems essential that the early years of bargaining in higher education receive an accurate appraisal. Equally important is the need to direct attention to the larger concern of whether collective bargaining is an inappropriate mechanism for determining wages and other conditions of work in the public sector as some have contended.[2]

Focus of the Study

One of the major limitations of virtually all of the earlier impact studies, both those of the private sector as well as those of the public sector, was their focus on wages. These studies inherently looked upon relative wage gains as being the basis *sine qua non* for determining union success or failure. This myopic focus on wage rate alone fails to consider the multi-dimensional aspects of unionization and the collective

bargaining process. Wage rates are by no means the sole negotiating item or necessarily the most important. The range of issues both pecuniary and nonpecuniary, discussed and agreed upon at the bargaining table are quite extensive and extend far beyond the question of wages.

At a minumum, if one were going to assess just the measurable pecuniary impact of unionism, then the total compensation package of both wages and employer expenditures for fringe benefits should be examined. There is no *a priori* reason to expect that the impact of unions on fringe benefits should be the same as that on wages. Thus, in examining the impact of unions it is important to determine not only how relative total compensation has been affected, but also what has been the impact on the various components of total compensation. This study will attempt to address the question of the impact of unionism on the total compensation package.

The lack of available measurement techniques for most of the nonpecuniary issues that arise in community college faculty negotiations makes it impossible to assess the "total" impact of negotiations. However, certain aspects of these non-monetary issues can be examined quantitatively. In the case of the community college faculty member we will, in addition to looking at the impact of unionization on faculty compensation, examine the effect of unionization on faculty workload, which will be defined simply as the ratio of full-time equivalent students to full-time equivalent faculty.

Determinants of Community College Compensation Differentials

The model used in this study to explain differences in faculty compensation assumes that compensation differentials arise due to compensating differentials, noncompeting groups and transitional differences. The examination of the impact of these factors on the component parts of compensation, salaries and fringe benefits[3], as well as total compensation allows us to gain significant insights into the way these forces affect the pecuniary returns to teaching. Since the literature is virtually void of any relevant analysis on the determinants of intra-industry fringe benefit differentials, it will be assumed at the outset that the factors affecting salary and total compensation are also those which affect fringe benefits. It will also be assumed, unless noted otherwise, that the direction of the relationships are the same.[4]

Differences due to compensating differentials and non-competing groups will be reflected by two aspects of the community college: (1) differences in the work environment; and (2) differences in the characteristics of the faculty. Differences in the demand for community college education will also be an integral factor in the model.

Differences in the Work Environment

One reflection of the work environment may be simply the size of the student body. It has been argued that larger educational institutions are less desirable places to work in than smaller schools.[5]

There may be certain nonpecuriary disadvantages associated with large institutions in that they may have a more impersonal atmosphere, a large bureaucratic structure with its usual encumbrances, and they may tend to have greater disiplinary problems. It has been noted by Albert Rees[6] that, in addition to the factors already cited establishment size might also act as a proxy for other factors. He suggests that other

things being equal, a larger establishment has to draw its work force from a wider geographic area than a smaller one, and must therefore at the margin offer workers a larger premium to cover the costs of getting to work. If these various disutilities associated with institutional size do exist and require a compensating differential we should expect to find a positive relationship between faculty compensation and the size of the student body.

At the same time one should not expect compensation and enrollment to be linearly related. While it is expected that the disutilities will grow with increased size it is not anticipated that the increase in disutilities will occur in a direct unvarying proportion with enrollment. More likely, there are thresholds such that once a school attains a given level of operations certain disutilities are associated with it. Further increases in size add other disutilities but with the marginal increase in one's disutility becoming less and less. To allow for this positive but nonlinear relationship the natural log of full-time equivalent students (log S) was used in the model. If the above hypotheses are true it is expected that log S will be positively associated with total compensation.

A major facet of the faculty's work environment is the teaching load. Faculty generally prefer fewer and smaller classes. *Ceteris paribus,* it is expected that in colleges in which the teaching load (as measured by the ratio of full-time equivalent students to full-time equivalent faculty (S/F) is relatively high faculty members will receive greater compensation for the additional work performed. It is thus anticipated that S/F and compensation will be positively associated.

Differences in the work environment are not limited to the internal differences that exist among institutions. In addition to the internal differences, there may exist significant variation in the climate, general economic activity, social atomosphere and numerous other conditions that determine the overall external work environment of different institutions. Differences in the external work environment are reflected by the opportunity cost or reservation wage of working in one area relative to another.

It is expected that the supply curve of labor to a particular institution would shift to the left if the value of alternatives to working in a given college increased. This would tend to increase compensation at the institution, *ceteris paribus*. The value of alternatives is in itself a function of a great number of local factors. Such considerations as the extent and mix of industry, the level of economic activity, the rate of price advance, the degree and impact of unionization and the accessibility or lack of accessibility between one area an another all affect the value of alternative employment. In an area where better alternatives exist, the reservation wage will be higher, so too will the level of compensation necessary to attract and retain faculty members. In order to capture some of these effects it was necessary to define a proxy variable to reflect the opportunity cost of teaching at an institution in a geographic area. The opportunity cost variable tested in this model was the average starting salary of a person with a master's degree in the public school systems located in the county where the community college is situated (OPP).[7] This variable was used for several reasons. We avoid the need for using other variables such as the CPJ and population which may have a high degree of multicollinearity not only with each other but with some of the other independent variables. Secondly, the master's degree starting salary was used in preference to that of a bachelor's or doctoral degree because the model degree held by community college faculty members is the master's degree. Third, the great majority of faculty members in community colleges either have taught in public school previously or possess the necessary training to teach in the public schools if they so desired. It should be noted that public school teaching in

many instances may not be the best alternative, but it is an alternative generally open to most community college faculty. This variable is expected to be positively associated with faculty compensation.

The final factor to be included as part of the work environment is the existence or nonexistence of a collective bargaining agreement (U). This factor influences the internal ambience of the college. It has been argued that the presence of a union can act in the same fashion as a licensing requirement in that it creates noncompeting groups. By prohibiting people form working for less than the agreed upon level of compensation, unions in effect eliminate a certain amount of competition. In this study an institution was considered as being unionized if it had a collective bargaining agreement with its faculty covering the 1970-1971 academic year. U is a binary variable reflecting the presence or absence of a collective bargaining agreement at the college. It takes on a value of 1 if the community college has signed a contract for the year 1970-1971, and is 0 otherwise. The basic hypothesis is that compensation will tend to be higher where labor competition is restricted, or more simply faculty with collective bargaining contracts will receive a higher level of compensation, *ceteris paribus*, than faculty who do not negotiate collectively with college administrators and boards.

Differences in Faculty Characteristics

Even though community colleges can be looked upon as being homogeneous in the sense that their clientele are high school graduates receiving post secondary education in a program designed to encompass two academic years, there are substantial differences between community colleges in the curriculum and emphasis of their programs. These differences may be reflected in the composition of the faculty.

Certain community colleges are primarily designed to provide a select number of specialized programs for students who intend to terminate their education with their degree at the end of two years. Other institutions are principally concerned with providing their students with the first two years of general higher education, that is expected to culminate eventually with the student receiving a bachelor's degree from a four year college or university. Almost all community colleges offer both types of programs, the differences being in the emphasis accorded one program relative to the other. Where the accent is on a broad-based background in many academic areas, the faculty needs are accordingly broader. A larger percentage of the faculty will necessarily have to be drawn from a very diverse set of disciplines. The faculty recruited will be expected to teach a wider variety of courses than those traditionally incorporated into the so called liberal arts core. In other words, the community colleges will not be recruiting from one labor market of academics or potential academics, but from a group of segmented labor markets that are distinguishable by their academic disciplines. Each of these labor markets is characterized by having different alteranatives. It is customarily the case that faculty in the sciences have better alternatives.[8] Given the higher reservation wage of scientists, it will be necessary to pay them a correspondingly higher level of compensation to attract and retain them. It is our contention that the greater the proportion of faculty who are in the sciences the higher will be the average compensation of the entire faculty.

Given that there may be differences in faculty compensation because of the need to hire from segmented academic labor markets, one will also find within these markets people possessing different levels of skill. This will be due to either differences in

innate ability or to variations in the embodiment of human capital or both. If it is assumed that the degree held is a measure of skill within a discipline, and if greater skills do in part reflect a greater will tend to get paid more. This is in fact one of the principles that is embodied in any salary schedule based on educational attainment and experience. One measure of the quality of the faculty at an institution is the percent of faculty possessing only the bachelor's degree %B.A. Since, most faculty at community colleges possess a master's degree, by recruiting and maintaining a relatively large percentage of the faculty members with only a bachelor's degree the institution may not be fostering a relatively low quality education. Or, by offering a low level of compensation, the institution may not be able to recruit people with advanced degrees and must be satisfied with a substandard faculty. An inverse relationship is thus expected between %B.A. and the average level of compensation at an institution.

There are other differences in the characteristics of faculty members that could possibly lead to differences in compensation. Such factors as the experience, sex and race characteristics of the faculty might be able to explain some of the variation in compensation between institutions, however, the data necessary to test the effects of these variables was not available for their incorporation into the empirical model. The exclusion of these variables could introduce a bias into the estimated parameters. Thus, for example, if any of these factors is positively associated with unionization and with the measure of compensation, then the union parameter would tend to overstate the true relationship between unionization and compensation (assuming that unionization has a positive effect on compensation).

Differences in Demand

The model can be expanded beyond the supply considerations already discussed by considering differences in the student and community ability to pay for the "product." We can briefly define the "product" as the purchase of a community college education. The demand for community college faculty is derived from the demand for the community college education. Clearly, the greater demand for a community college education the greater the demand for faculty to teach in a community college.

There are three basic components to the demand for the community college education: the demand of the state; the demand of the local community; and the demands of the students. It is generally the state government that will set the tone of the sources of support to community colleges. State support of community colleges varies widely. In some states the state government provides virtually 100 percent of the community college revenues. In other states, the primary source of revenue is the local community. While in others, the burden is shared in various proportions by the states, the local community and the students. Additionally, it would not be uncommon to find some community colleges within a state totally supported by state revenues while other schools within the state receive little state support. Because of the many possible variations in funding there is only one reasonable measure of community college demand—total expenditures per student (E/S). Expenditures per student reflect the total demands of all three groups and is standardized so as to account for differences in the sizes of the colleges. This variable is expected to be positively related to faculty compensation (i.e., better quality faculty are hired where demand is greater).

The expenditures per student variable covers only one aspect of the demand side. It

can be viewed as determining the budget constraint. College administrators must then allocate this budget to achieve desired output goals. Under a fixed budget college administrators can choose to hire a relatively small number of high quality instructors or a relatively larger number of lower quality instructors. There is no theoretical basis for postulating which alternative is preferable. However, there is some indication from the empirical literature that the extent of local involvement may have a bearing on the budget allocation decision.[9] The level of community involvement will be measured by the percent of college revenues that come from local sources (%LA). The empirical studies suggest that there may be a positive relationship between %LA and total compensation but since there is no theoretical basis for the direction of this association all that will be postulated here is that faced with the same level of local participation college administrators will tend to operate in a similar manner when making the allocation decision.

To summarize the above discussion, we have argued that compensation is a function of six supply variables—the log of full-time equivalent enrollment (logs); the student-faculty ratio (S/F); the average starting public school salary of a teacher with a master's degree (OPP); the existence of a collective bargaining agreement (U); the percent of faculty in the sciences (%Sci) and the percent of faculty possessing a bachelor's degree (%BA). In addition, total expenditures per student (E/S) and percent local aid (%LA) represent the demand variables in the model.

The model can be expressed in the following form:

(1) $Ci = b_0 + b_1 (\log S) + b_2 (S/F) + b_3 (OPP) + b_4 (U) + b_5 (\%Sci) + b_6 (\%BA) + b_7 (E/S) + b_8 (\%LA) + e_i$

C_i is the compensation variable (C_1 = salary; C_2 = fringe benefits; C_3 = total compensation) ei is the error term; and the other variables are as defined above.

Compensation Model—Regression Results

Results from the cross-sectional analysis of the compensation model, using 1970 - 1971 data for 263 community colleges, throughout the United States are displayed in Table-1. The model explains nearly 67 percent of the variation in total compensation, 66 percent of the variation in salaries and 30.9 percent of the variation in fringe benefits.

Only one independent variable, log S, was significantly related to all three dependent variables. This variable as expected was positively associated with each of the dependent variables. This set of coefficients indicates that as enrollment increases, *ceteris paribus*, compensation, salary and fringe benefits increase but at a diminishing rate.

As was indicated above it was expected that total compensation would be higher, the higher the incidence of faculty in the sciences. The regression results bear this assumption out. Both salary and total compensation were positively and significantly associated with changes in %Sci. The level of fringe benefits was not significantly related to changes in this independent variable. Thus, changes in the distribution of faculty who are in the sciences affect total compensation mainly by changing average salaries (presumably the salaries of those in the sciences).

The fact that this variable did not have a significant impact on fringe benefits, is in retrospect, not surprising. An institution that wishes to attract more scientists by

TABLE 1

Regression Coefficients for the Determinants of Faculty Compensation (1970-1971)

Dependent Variable **Independent Variable**	**Salary**	**Fringe Benefits**	**Total Compensation**
% B.A.	−3.735	2.224	−1.1382
	(5.2181)	(2.2556)	(5.7749)
% SCI	14.46*	5.257	20.843**
	(7.9789)	(3.4489)	(8.8302)
OPP	1.38***	0.0211	1.38***
	(0.12169)	*(0.052603)*	*(0.13468)*
*Log S***	302.93***	202.85***	502.72***
	(94.290)	(40.757)	(104.35)
S/F	69.56***	−5.694	67.65***
	(17.091)	(7.3878)	(18.915
U	362.77	694.5***	1074.3***
	(242.29)	(104.73)	(268.14)
E/S	0.44572**	0.087742	0.5467**
	(0.19489)	*(0.0844242)*	*(0.21568)*
% L.A.	14.14***	2.126	12.08***
	(4.1485)	(1.7932)	(4.5911)
Constant	−4746.3	−933.95	−5709.7
R^2	65.92	30.90	66.65
Standard error of the estimate	1226.9	530.32	1357.8

*** Significant at $p<.01$
** Significant at $p<.05$
* Significant at $p<.10$

Note: Standard Errors are in Parenthesis

paying higher salaries can limit the group that receives the higher compensation. If fringe benefits were raised, so as to increase the attractiveness of the institution to a prospective or current faculty member, they would have to be increased for all faculty and would therefore be far more costly than raising wages for a select few.

The opportunity cost variable was also positively associated with both salary and total compensation. With all other factors held constant, a one hundred dollar increase in OPP would cause an increase in salary and total compensation of $138. This relationship suggests that when competitive salaries rise, college administrators adjust the compensation of their faculty by increasing the salary component of compensation.

The student-faculty ratio was significantly and positively associated with variations in salary and total compensation. These results support the hypothesis that colleges pay faculty a compensating differential to overcome the unattractiveness of teaching larger loads. Holding all other factors constant, it is estimated, that for each unit increase in S/F total compensation increases by $67.65.

It also turns out that the demand variable, percent local aid is directly and significantly associated with salary and total compensation. It was noted earlier in the discussion of the model, that the sign of the relationship between %LA and the compensation variables could not be specified *a priori*. The results of the regression analysis suggest that the greater the financial involvement of the local community in the operations of the college, the higher will be the level of salaries and consequently total compensation, all other factors being equal. The value of fringe benefits was not significantly realted to %LA.

One of the more interesting results of this set of equations is the relationship between the binary unionization variable and the compensation variables. Unionization and salary were not significantly related, but unionization and fringe benefits were directly and significantly associated. The unionization effect on fringe benefits was so pervasive that total compensation was also found to be significantly and positively associated with unionization. These results suggest that in community colleges one of the major effects of unionization has been a significant relative increase in the level of fringe benefits. Percent of faculty with a B.A. was designed to reflect the variance in the skill mix of faculty from one institution to another. The lack of a significant relationship between this variable and any of the compensation measures indicates either that differences in skills are an unimportant determinant of compensation or that this variable is not truly measuring the intercollege skill variation.

In light of our results it is of interest to put the changes inherent in the regression analysis into perspective. Table-2 shows the mean levels of salary, fringe benefits and total compensation separately for the colleges in the sample that were unionized and those that were not unionized. The table indicates that salaries in unionized colleges were 14.6 percent higher than those in the nonunion institutions. However, much of this differential can be explained by factors other than unionization. As was indicated in the regression analysis differences in the work environment, principally reflected through the alternative wage, enrollment and the student-faculty ratio explain a large part of the difference between salaries in the two groups. In addition, differences in the characteristics of the faculty and differences in demand were also able to account for some of the differential.

Employer contributions to various fringe benefits were substantially different at the two types of colleges. As can be observed from the table, fringe benefits in the unionized colleges exceeded those in the nonunionized institutions by over 96 percent. The only variable, other than unionization, that significantly affected the level of fringe benefits was the log of enrollment. This variable probably acts as a proxy for the price of fringe benefits. The larger the size of the group receiving benefits, the lower are the administrative costs and the lower is the risk in providing a given fringe benefit. It is possible taking account of the influence of enrollment and other factors to estimate the union, nonunion differential in fringe benefits. This can be done simply by dividing the union regression coefficient by the average level of fringes in the nonunion colleges. Using this method we would then estimate that unionization has raised fringe benefits nearly 80 percent over those prevailing in nonunion colleges.

A similar approach can be taken with total compensation. Table-2 indicates that without taking account of any factors other than unionization, the difference in total compensation between the union and nonunion colleges is over 20 percent. After

TABLE 2

Differences In Salary, Fringe Benefits, And Total Compensation Between Community Colleges With and Without Collective Bargaining Contracts 1970-1971 Academic Year

Compensation Measure	Colleges With Contracts (N = 38)		Colleges Without Contracts (N = 225)		Percentage Differences (1) − (3) / 3
	Mean (1)	Standard Deviation (2)	Mean (3)	Standard Deviation (4)	
Salary	11993.6	1266.3	10463.5	2098.5	14.6%
Fringe Benefits	1665.7	934.3	849.2	469.6	96.1%
Total Compensation	13659.6	1840.3	11311.3	2215.7	20.8%

SOURCE: Based on a sample of institutions from the Higher Education General Information Survey, U.S. Office of Education, 1970.

these other factors are taken into account the difference is under 10 percent and obviously a large part of this differential can be explained by differences in fringe benefits.

Faculty Teaching Load Model

Pecuniary matters are by no means the sole concern of negotiators in higher education. Numerous facets of the work environment have become the subject of negotiations. One of the more frequently discussed areas of concern is faculty teaching load. College administrators would generally oppose proposals by the faculty that would serve to lower the number of classes taught and/or the number of students placed in a class. Each of these issues has been the focus of negotiations, and an area of conflict between labor and management.

The teaching load model combines institutional considerations with assumptions regarding the behavior of college administrators. The model argues that teaching load, measured by the ratio of full-time equivalent students to full-time equivalent faculty (S/F), is a function of the percent of faculty with a B.A. degree (%BA); the number of full-time equivalent students (S) and its square (S^2), the change in the size of the student body over the previous academic year (Δ S), percent of revenue from local sources (%LA), expenditures per student (E/S) unionization and the level of compensation (C_3). The model would thus take the following form:

$$S/F = b_0 + b_1 (\%BA) + b_2 (S) + b_3 (S^2) + b_4 (S) + b_5 (\%LA) + b_6 (E/S) + b_7 (C_3) + e$$

Where the bi's are the estimated parameters and e is the error term and the variables are as defined above.

The student-faculty ratio was expected to be inversely related to %BA. Since B.A. degree holders are generally considered to have substandard credentials, they are usually hired at lower salaries than their collegues with more advanced degrees. The

greater the willingness of an institution to accept faculty with substandard credentials, the larger will be the size of the faculty that it can afford to hire for a given budgetary outlay.

A positive association was expected between the student-faculty ratio and the percent of an institution's revenue that was provided for by local governmental sources. Since %LA was positively associated with faculty compensation in the earlier model, it was assumed that where %LA was high, college administrators would prefer to hire a relatively small but higher paid faculty.[10] Thus the higher %LA the greater the likelihood that college administrators will choose to have larger classes and/or have faculty teach a greater number of classes. A positive association was, therefore, anticipated between S/F and %LA.

Since physical facilities and faculty contracts are usually fixed in the short-run (at a minimum an academic year) marginal adjustments of faculty to changes in student population becomes a cumbersome and expensive undertaking. It seems reasonable to assume that college administrators will adjust to increased enrollments by either expanding the number of students sitting in a classroom or increasing the number of classes faculty members teach rather than by adjusting the size of the faculty to meet increases in the size of the student body. By the same token, it will also be assumed that for short-run decreases in enrollment the reaction will be to reduce class size and/or the number of classes taught per faculty member. The change in enrollment, as used in the analysis, was calculated by taking the change in full-time equivalent students between 1969 and 1970 and dividing it by enrollment in 1969. This variable (ΔS) was hypothesized to be positively related to the student-faculty ratio.

It is also assumed that college administrators and college boards will build a physical plant that is designed to accommodate a given level of students. The larger the expected level of students the more appropriate it becomes to plan larger classrooms that easily facilitate the use of the mass lecture technique. This is especially useful where the majority of the students are expected to take a set of basic courses. Where this is the case, mass lecture halls become not only feasible but also practical. Bigger classrooms will tend to encourage large student-faculty ratios as faculty are asked to teach more students per class. Large enrollments also make it feasible to offer specialized courses that could not be accommodated without some minimum expected enrollment. The offering of specialized courses would have the effect of lowering the student-faculty ratio. In order to capture this possible non-linear effect of enrollment on the student-faculty ratio, full-time equivalent enrollment(s) and its square, (S^2) were used in the model.

Institutional expenditures per student (E/S) was anticipated to be inversely correlated with the student-faculty ratio. Since smaller classes are usually preferred to larger ones (even by administrators), the college was expected to translate higher expenditures per student into smaller classes.

On an *a priori* basis the expectations with respect to the impact of collective negotiations is unclear. Faculty associations normally include as part of their demands a reduction in the number of teaching hours and/or a smaller number of students. On the other hand, college administrators who are faced with compensation demands and relatively fixed budgets may be willing to trade off pay increases for larger teaching loads. Or they may possibly be willing to reduce teaching loads if compensation demands are reduced. The sign of the relationship thus is a function of what and how much faculty and administrators are willing to trade and cannot be determined *a priori*.

The student-faculty ratio was expected to vary positively with the level of total compensation (C_3). For a given budgetary expenditure per student and for a given number of students, the higher the level of compensation the smaller will be the size of the faculty that could be hired. Consequently, the higher the level of compensation the higher will be the number of students per faculty member.

Teaching Load Model: Regression Results

Table-3 displays the regression results obtained from equation 2. The independent variables were able to explain nearly 54 percent of the variation in the student-faculty ratio.

The number of full-time equivalent students was positively related to S/F while as anticipated enrollment squared was negatively related to S/F. This indicates that class size tends to increase with the number of students but after a point increases in students result in smaller classes as more specialized course offerings are made available.

TABLE 3

Regression Coefficients for the Determinants of The Student-Faculty Ratio

Independent Variable	Dependent Variable S/F
% BA	−0.047***
	(0.01788)
S	0.001511***
	(0.000427)
S^2	−.0000000912**
	(0.0000000455)
ΔS	4.74***
	(1.5777)
U	−3.93***
	(0.83123)
E/S	−0.0033***
	(0.000653)
% LA	0.0398***
	(0.014565)
C_3	0.000832***
	(0.000166)
Constant	12.376
R^2	53.72
Standard Error of Estimate	4.3149

*** Significant at p<.01
** Significant at p<.05
* Significant at p<.10

Note: Standard errors are in parenthesis

The change in the number of students was also positively associated with changes in the student-faculty ratio. This result suggests that administrators react to increases in enrollment by simply raising the number of students in a class and/or increasing the number of classes taught by the faculty. It also suggests, however, that if there are short-run declines in enrollment there is no corresponding reduction in the size of the faculty.

The variable %LA as expected was positively related to changes in the student-faculty ratio. A one percent increase in the share of revenues that come from local sources would increase the student-faculty ratio by 0.04, all other factors held constant.

Increases in the level of expenditures per student, *ceteris paribus,* result in a decrease in the student-faculty ratio. For each $10.00 increase in expenditures per student the student-faculty ratio is estimated to decline by 0.03.

Holding all other factors constant, increases in total compensation would lead to a positive change in the student-faculty ratio. This suggests that where the budget line and other factors are fixed, an increase in compensation will lead to a smaller number of faculty per student. This result is totally consistent with basic demand theory. In this case compensation represents the price of the good and the number of faculty per student can be viewed as the quantity measure. Increases in price (i.e., compensation) result in a decrease in quantity demanded (i.e., faculty per student).

Finally, the existence of a collective bargaining agreement was associated with reductions in teaching loads. When all other factors are held constant the existence of a collective bargaining agreement was associated with a 3.93 reduction in the student-faculty ratio. Thus it appears that collective bargaining has had some impact, not only the compensation of faculty, but also their working conditions as reflected in the student-faculty ratio. The results suggest that additional compensation gains might have been possible if unions were willing to trade off some of the improvements made in faculty teaching loads.

Concluding Remarks

This paper has attempted to detail the characteristics of community colleges and the impact of bargaining in the community colleges. A cross-sectional regression analysis of the type used in this study is by no means definitive. It does not separate out cause from effect, nor does it show changes over time, however, it is suggestive of possible initial effects of unionization in this sphere.

Unionization appears to have raised total compensation primarily through its impact on increasing the value of employer contributions on fringe benefits. The fringe benefit area has provided a very attractive focal point for unions because of the generally low level of such benefits in the community colleges and the tax advantages inherent in purchasing some of these items through group employer plans rather than individually with after tax income.

While unionization did not have a significant effect on salaries, it did appear to reduce significantly the relative teaching load. These results suggest the possibility that in the initial years of bargaining the faculty have been willing to trade off potential salary gains for increased welfare and better working conditions. In the future one might expect the type of relationships shown here to change as bargaining matures and certain concerns become less paramount. No attempt has been made here

to distinguish between colleges who have negotiated one contract versus those which have negotiated two or more agreements. It may well be that there is a difference between the type and level of demands and offers in the first contract as opposed to subsequent contract bargaining.

As the academic labor market has shifted from a sellers to a buyers market the community colleges have begun to attract a larger percentage of their faculty directly from graduate schools and from teaching positions at four year colleges and universities. This influx of faculty may have resulted in a change of focus of the community college from the secondary school systems to the colleges and universities. The decline in relative teaching load seems to be an indication of this change in focus.

Bargaining has not been limited to the matters addressed in this paper. There are numerous other matters such as tenure policies, faculty participation in academic decision-making that have been the subject of bargaining. To the extent that these so-called nonpecuniary matters are of concern to faculty, this study has only begun to touch upon the impact of bargaining on faculty. There is clearly a need for a detailed assessment of the impact that bargaining has had on these other aspects of working life in the community colleges.

Footnotes

[1]Robert J. Thornton, "The Effects of Collective Negotiations on Teachers' Salaries," Quarterly Review of Economics and Business, 11, 4 (Winter 1971):37.

[2] H. Wellington and R. Winter, *The Unions and the Cities* (Washington: The Brookings Institution, 1971), pp. 15-21.

[3] As used in this study fringe benefits refer to employer contributions to retirement plans that are vested and not vested, hospitalization, surgical and medical plans guaranteed disability income protection, tuition plans, housing plans, social security taxes, unemployment compensation taxes, group life insurance and other benefits in kind with cash options.

[4] Since linear transformations of least squares estimators are also least square estimators it follows that the estimators of the salary and fringe benefit equations will satisfy the restrictions imposed by the compensation equation (e.g., the estimates of the union parameter in the fringe benefit and salary equations will add to the estimate of the union effect on compensation). Thus, we may obtain separate estimates of the union/nonunion effects on salary, fringe benefits and total compensation. See Orley Ashenfelt "The Effect of Unionization on Wages in the Public Sector: The Case of Firemen," *Princeton University, Indistrial Relations Section,* Working Paper #21 (July 1970), pp. 15-16

[5] See David B. Lipsky and John E. Drotning, "The Influence of Collective Bargaining on Teacher's Salaries in New York State," *Industrial and Labor Relations Review,* 27, 1, (October 1973): 18-35. The Lipsky and Drotning argument and findings are consistent with the more general results of other authors who have found that large establishments pay higher wages on average than small establishments in the same industry. See for example, Richard A. Lester, "Pay Differentials by Size of Establishment *Industrial Relations,* 7 (October 1967): 57-67

[6] Albert Rees, "Compensating Wage Differentials," *Princeton University Industrial Relations Section,* Working Paper #41 (January 1973), pp. 17-18

[7] If two or more colleges are located in the same county they are assumed to have the same external environment as reflected in the value of alternatives, but they are not precluded from having a different internal environment.

[8] The dependence of various disciplines on the academic labor market is indicated by the percentage of Ph.D.'s who enter college teaching. Cartter has noted that for most humanities disciplines, between 85 percent and 95 percent college teaching; the percentage is about 70 percent in social sciences, 50 percent in life sciences and 35 percent in physical sciences. See Allan Cartter, "The Academic Labor Market," in Margaret S. Gorden, ed. *Higher Education and the Labor Market,* (New York, McGraw Hill, 1973), p. 301.

[9] See, Robert N. Baird and John H. Landon, "the Effects of Collective Bargaining on Public School Teachers' Salaries—Comment," *Industrial and Labor Relations Review,* 25 (April 1972): 410-417.

[10] See Robert F. Carlson and James W. Robinson, "Toward a Public Employment Wage Theory," *Industrial and Labor Relations Review,* 22, 2 (January 1969): 243-248. Carlson and Robinson discuss the basic choice between quantity and quality of inputs that faces public administrators. Absent the earlier results on the relationship between compensation and %LA, the *a priori* relationship between the S/F and %LA could not have been specified.

Private Colleges and Collective Bargaining: A Chance For Experimentation

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I had a dream that at a small college entering its first collective bargaining session — where both the administration and the faculty were not a little apprehensive — the following scenario occurred:

The faculty members demanded that they be more involved in the recruitment of students, and that they be allowed to spend time away from the campus in order to recruit students.

They demanded that the entire curriculum of the college be re-examined in order to determine if the objectives of the institution were actualized in the classroom and outside the classroom and whether there were new ways to teach what they were currently teaching.

They urged that some of their colleagues be involved in various remedial programs for students who did not have an adequate high school background.

They demanded that new systems for evaluating the faculty be developed which would be more explicit as to their criteria and which would emphasize excellence in classroom teaching.

They demanded that various faculty members work with members of the State Legislature to further the state tuition grant program for private institutions.

They demanded that a faculty committee begin working immediately with the administration to formulate projections regarding the economic and educational environment of the 1980's.

They indicated that there was a need to enter into new forms of interinstitutional arrangements with neighboring colleges, and urged that negotiations proceed immediately.

They urged that development of a program that would facilitate sabbatical leaves for the purpose of undertaking policy research, and leaves of absence for faculty members to have non-academic experiences that would enhance their teaching and enable them to work more effectively with students.

The faculty members indicated that they had written to the NEA, the AFT and the AAUP, several professional organizations in various disciplines, and faculties at other institutions to gather information on these demands.

As they handed these demands across the table to the administrative team, they indicated that in addition to these demands, they hoped that the two sides might embark on a program of trust building. The faculty urged the administration to develop a code of administrative standards; in turn the faculty indicated its recognition of the fact that administrators also were professionals in their field.

Struggling mightily to conceal their astonishment at the nature of the demands, the members of the administrative team gulped and asked for a twenty minute recess to caucus and regroup.

I suspect that this scenario has not been played out on many private college campuses that have experienced collective bargaining. How refreshing it would be.

Collective Bargaining and the Private Sector

I suggest to you that if real creativity and experimentation is to develop in collective bargaining, it is most likely to develop at the small private college. Ironically, it is the small college that is least able to cope with collective bargaining and marshall the resources to negotiate an imaginative contract.

My topic today deals with collective bargaining at private colleges and most of my comments focus on the small institutions which make up the greatest number of the institutions in the private sector. I believe there are a number of factors which differentiate the private sector from the public sector in collective bargaining. First, private institutions have only recently come under the jurisdiction of the National Labor Relations Board and become subject to collective bargaining. Thus, the experience with collective bargaining in the private sector is much more limited than in the public sector. Second, since most private institutions are small, bargainers are much less likely to encounter large bureaucracies and consequent communication subject to such bodies as legislatures and state coordinating boards and thus are free to conduct their collective bargaining wholly within their own environment. Fourth, the financial situation for private institutions tends to be more precarious than for public. Most of the institutions which have been forced to close their doors are private. This facts lends a particular urgency to the bargaining. Fifth, the private colleges are especially dependent upon their various publics. A college has no guarantee of existence if those publics, including students, alumni and donors, decide that the college's offering is not worthy of support.

Sixth, the issues relating to the composition of the bargaining unit are, I believe, more complex at a private institution because of its smallness. Almost no one at a private institution wants to be classified as a "supervisor." Should, for example, department chairpersons be outside the bargaining unit because of their supervisory functions? The question is not easily answered because, in a small department, collegiality must be taken into consideration. On the other hand, if department chairpersons are included in the unit, a small administration will find its first line supervisors on the opposite side of the bargaining table. Seventh, there may be greater opportunity at small private colleges to carry out the terms of a contract once it has been negotiated. There may be less bureaucratic inertia to be overcome.

Finally, the most critical distinguishing factor which has substantial impact on collective bargaining is money. While it is true that public institutions are being forced to take a hard look at their budgets, it seems to me that public institutions, because of the political environment in which they operate, are much more likely to be able to produce the goodies demanded at the bargaining table than are private institutions. A private institution does not have a state legislature to which it can ultimately turn to undergird its financial concessions at the bargaining table. This fact is all important. Although the faculty can, in the short run, argue for the internal reallocation of resources, very few small colleges have substantial resources to reallocate. Additional resources have to come from external sources.

House-Divided House Together

Let me suggest a number of initiatives which, I believe, any institution should undertake now, if it has not done so already and if it does not have collective

bargaining. A small college needs to get its house in order, particularly if it is divided, in order to cope with the steady state model that we now anticipate for the predictable future. Since a substantial portion of our resources is allocated to personnel, we should bend our creative efforts to developing policies and programs relating to personnel.

A good starting point is a complete review of its existing personnel policies as they are officially articulated in faculty handbooks and other policy statements and as they are unofficially practiced. There are several reasons for doing this. First, dissatisfaction with personnel policies frequently is the factor that triggers collective bargaining in an institution. If an institution has policies that are clearly articulated and impartially administered, it is less likely to encounter collective bargaining. Second, it most cases, collective bargaining starts from the point where the institution is, and any institution will be in a better position at the bargaining table if it has developed a clear-cut set of policies which can then be taken to the bargaining table as a point of departure.

A second initiative for a private institution is the development of a long-range planning document, in which there is clear cut statement of mission, and a projection of the political, economic and educational environment in which that institution will be operating for the next five to ten years. I think if something like this is not done, then bargaining will be looked upon as a process to deal with the here and now — which is the natural tendency — with resulting neglect of attention to concerns that may develop at the institution in the future. Specifically, long range planning is essential if the bargaining process is to address itself realistically to faculty development and renewal, tenure, financial exigency and academic bankruptcy.

On Your Own

The process of bargaining itself presents new demands on private colleges. A small administration may not have staff and financial resources to allocate to bargaining. The members of the administration bargaining team may not have a wide network of staff expertise to draw upon and may, at times during the bargaining, feel extremely isolated. The local attorney may not be knowledgeable about collective bargaining and there are few other administrators with whom to exchange ideas.

Likewise, bargaining sorely taxes the energies of faculty members who serve on bargaining teams. A faculty may be misled by a national bargaining considerable staff assistance during the process of organizing, but once the long and tedious bargaining process begins that staff assistance may dwindle. Few national organizations can afford to allocate much staff time to a small institution during the long bargaining process. And if the national organization does lend assistance, there is a fair chance that the organization will operate to further its own national objectives and goals which, in my opinion, may be inapplicable to the environment and mission of a small private institution.

Specifically, I suspect that as the competition for the education dollar intensifies, the NEA and AFT, which have substantial elementary and secondary teacher memberships, will throw their weight on behalf of those constituencies. Very simply, when the crunch comes, both groups can be expected to press legislators for resources for elementary and secondary education, at the expense of higher education. If those organizations represent faculties at public institutions of higher education, we can

resonable expect that the NEA and AFT will have minimal concern for private higher education.

Let me cite an example of my point. In two recent cases challenging state tuition grant programs for private institutions, the NEA or representatives of the membership were involved in the challenge. The litigants argued that these programs violated the requirement of the first amendment regarding state establishment of religion since some of the aid would go to church related private colleges. However, one can suggest that another real concern was that state education funds were being diverted from public elementary and secondary education. Thus, I question how adequately these groups represent the interests of faculties at private institutions in the public policy arena because of competing loyalties.

The Challenge

I think we all tend to believe and to argue that the "industrial model" of collective bargaining is not appropriate to an institution of higher education. The industrial model was developed in a specific context in response to specific needs, and has evolved to meet those needs. It has been argued, and I agree with that point, that the model is not responsive to the mode of an academic institution. However, despite the rhetoric rejecting the industrial model, I see very few examples of new models that can help those of us who are drawn into collective bargaining. In some important respects, some of the collective bargaining agreements that have been negotiated at small colleges, are at best holding actions, unresponsive to the kinds of problems that small colleges will face in the 1980's.

Yet clearly the small college can develop new models consistent with its educational mission and responsive to the question of survival with integrity in the 1980's.

Specifically, contracts ought to reflect the following realities: a declining population in the college age sector of 18-21; inflation which is frequently more damaging to educational institutions than to other sectors of the economy; an intensified fight for allocation of state funds by the public education sector; and an intensified effort by state institutions of higher education to garner not only state dollars, but students and private funds. However, the language of contracts seldom reflects these realities.

The provisions, for example, found in many collective bargaining contracts relating to the reduction of personnel, seem to suggest that such reductions are temporary in nature. The suggestion that things will get better in two or three years, and that the dislocation from a position is only temporary, simply denies the economic reality of the next ten years. Understandably, faculties will be concerned about due process and economic security. Yet it is possible that exclusive attention to these concerns may miss the mark in terms of the issues facing the faculty and the institution. I think that collective bargaining ought to provide a forum at which faculties and administrations openly and honestly share their problems. I think if this approach is not taken, then the contract that emerges, will speak to the here and now. More importantly, we will begin to take on more and more of the baggage of the "industrial model."

Private colleges can, I believe, avoid replicating the industrial model which, when applied to college situations, is deficient in several respects. The first is the heavy emphasis on working conditions — office hours, classroom hours, number of class preparations—to the neglect of attention to program. Another is adherence to rigid salary schedules that do not take into account differing supply and demand factors in

the various disciplines. Another is the seniority principle. Obviously if last-in-first-out is applied rigidly to higher education the institution is left with little program flexibility — which may be essential to its survival. Finally, the industrial model typically sweeps everything into the contract leaving little role for the faculty. Historically one of the strengths of private institutions has been the ability of faculties to experiment in programming — a strength that should be protected in any collective bargaining contract.

The challenge, it seems to me, is for private higher education to develop collective bargaining models which are responsive to the steady state and which allow institutional flexibility innovation. I do not think that a contract that focuses solely on due process and economic security can accomplish what needs to be done.

The scenario at the beginning of this paper is suggestive of the kinds of items that could be talked about at the bargaining table — although clearly not all of the items should be included in the contract itself. The bargaining process can be, at its best, a taking off point. We need to dream and we need to share our dreams. Why not at the bargaining table? This is our challenge.

Dispute Settlement Techniques

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Preface

Arbitration is a great deal older than labor law, than strikes, than collective negotiations. We in postsecondary education have used arbitration for professional employees only since 1966. There is evidence that it has been used for K-12 and classified employees since the early 1950's, even in absence of public employment laws. In fact, I participated in a case at the University of Detroit in 1962 between a power house stationary engineer and the University, and I know Bill Lemmer at the University of Michigan had cases earlier than 1966, dealing with postsecondary classified employees. Some research into this area is clearly called for soon.

I felt like so many other "new" but very old in history labor traditions, that I might today take this audience of postsecondary labor specialists back into history — a favorite approach of mine — before I make some comments on the contemporary scene and problems in arbitration for postsecondary education. Arbitration has a great deal of history and rather than write a long essay on the subject, I am going to place that history in outline form as a guide to my remarks and hope that you will follow such a method with ease as well as have this data for your own future explorations into history, should you get the urge. One has to ask on reading it what's so complex or new about this device. It would seem that arbitration goes back in ancient history with higher learning and both of these traditions are clearly the only place where the issues of higher educational process and dispute settlement process have such a parallel history.

The World Scene

I. Ancient History — Process old as civilization itself.
   A. Ancient Egypt — 3500 B.C. used outside of regular courts
   B. Homer's Greece — 9th Century B.C.
   C. Ancient Athens — 400 B.C. to relieve congested courts

II. Age of Enlightenment
   A. 1609—Lord Coke reference — Vynioers—Case 4. Co. Rep. 302-305 (K.B. 1609) "Arbitration Agreement is revokable by either party"
   B. Society of Friends usage

The American Scene

III. American Colonial Period
   A. Quakers in America used at meetings to resolve marital and commercial disputes — no belief in courts.
   B. 1786—New York City Chamber of Commerce dispute over wages of seaman.

Note 1 — In the late eighteenth and up to mid-nineteenth century with overtones into the pre-World War II era, arbitration was thought by many to mean in

labor disputes that a tribunal of representatives of the parties would meet to negotiate disputes of a very specific nature. It had a lot of the overtones of collective negotiations as we know it.

IV. Mid-Nineteenth Century

A. First case (under above definition) Pittsburgh (Puddlers) Boilers, 1865.

B. Formation of National Labor Union (1866)—first Congress calls for use of arbitration — Baltimore, Md.

C. Formation of Noble Order of Knights of Labor — 1869 — called for arbitration so strikes would be unnecessary.

D. Modern definition of arbitration — Terrance V. Powderly — Grand Master Workman Knights of Labor, September 1892—*North American Review* — based on homestead strike. He called for panel of two from each side to select a fifth—have open access and to arbitrate in our modern sense of the word. No strike or lockout without award. Award not final or binding.

E. State Laws — No agency setup.

1. 1878—Maryland. First law providing for arbitration in labor disputes — no agency — voluntary.
2. 1880 — New Jersey. Tripartite system established.
3. 1883 — Pennsylvania. Only case of it being used in coal industry.
4. 1885 — Ohio
5. 1886 — Kansas, Iowa

F. Permanent State Boards Established

1. Massachusetts and New York - 1886 State Board of Arbitration title. Word mediation added and activity was in the main there, e.g., 1886-1900 — 409 cases, only 21 were arbitration.
2. 15 states set up Boards.

G. Federal Policy Begins

1. Cleveland's message of 1886 — Railroad industry need.
2. Arbitration Act of 1888 — Establish ad hoc Boards on agreement of both parties.
3. Erdman Act 1898. Set up mediation and voluntary arbitration of disputes.

V. Early Twentieth Century

A. Public outside pressures for arbitration usage.

1. 1900-1901 National Civic Federation Conferences in New York (New York fittingly for this talk seems to be the home of arbitration).
2. T. Roosevelt—1902. Advocate in Anthracite Coal Strike—Board of

Conciliation 3-3 plus umpire setup. Dawn of "umpire concept in industry."

3. Brandeis "Protocol of Peace" in Lady Garment Workers Industry—1910—tripartite board model.
4. Newlands Act — 1913. Set up Railroad Board of Mediation and Conciliation. Also an act which set up United States Conciliation Services and Department of Labor.
5. Transportation Act of 1920 — Set up Railroad Labor Board.
6. Railway Labor Act — 1926. National Railroad Adjustment Board. Heavy federal usage of arbitration in that industry as well as mediation.
7. Confusion of Boards in World War I — Wilson's decision to centralize.
8. January 1918, National War Labor Board.
9. Wilson's 1919 conference on voluntary arbitration. Strong industrial resistance, labor resistance through whole of period 1865-1920.
10. New York State Arbitration Law 1920.
    a) Repealed Lord Coke's Vyniors Case (1609).
    b) Closed courts to parties until arbitration agreements were completed.
    c) Courts allowed to enforce arbitration and apparent arbitrators.
11. February 12, 1925. U.S. Arbitration Act amended 1947, 1954, 1970.
12. Formation in 1922 of Arbitration Society of America with vast educational program to have public understand arbitration.
    a) 1926 name changed to American Arbitration Association.
    b) 1937—AAA sets up voluntary arbitration panel. Cases until 1950's mainly commercial, now mainly labor disputes.
    c) 1940 — Tennessee Valley Authority binding arbitration of blue collar employees — early instance.
13. Passage of Wagner Act 1935 set up NLRB.

Note 2— A very good point to make note of is that arbitration is not just used in labor disputes—a fact overlooked by postsecondary personnel. AAA handles, for example, five tribunals: 1) Commercial, 2) Labor, 3) Accident Claims, 4) Construction and 5) Textiles. The Catholic Church, for example, uses this procedure in clergy disputes and marital cases, for example, which are highly specialized. This perhaps gives us a clue for the future of postsecondary dispute settlement as well!

VI. World War II

A. F. Roosevelt. National Defense Mediation Board, March 1941. Voluntary arbitration in critical industries where mediation fails. Tripartite

board ineffective—no way to enforce decisions. CIO walkout died in 10 months.

B. National War Labor Board—1942. Not exactly compulsory, but most complied in decisions 4-4-4 tripartite.

VII. Post World War II Developments (Private and Federal Sector)

A. Foundation of National Academy of Arbitration—1947—grew out of the National War Labor Board. Just arbitrators.

B. 1947-Management Relations Act—set up Federal Mediation and Conciliation Service (FMCS) Taft-Hartley Act.

C. 1950 TVA extends *binding* arbitration to white collar employees.

D. 1959—Landrum Griffin Act—union accountability procedures.

E. 1962—Executive Order 11491, President Kennedy allowed arbitration in grievance procedures.

F. 1969—Formation of National Center for Dispute Settlement American Arbitration Association for public sector disputes.

G. 1969—Arbitration procedures adopted by the National Conference of Roman Catholic Bishops.

H. Increased use of grievance and arbitration procedures in non-union organizations—late 1960's.

I. 1970 AAA begins *Arbitration in the Schools* publication.

J. Development of expedited arbitration procedures 1971-72 Steel industry AAA—expedited labor arbitration tribunal established.

K. 1971—AAA begins *Labor Arbitration in Government* publication.

L. The Kagels and Mediation-Arbitration 1970-71 techniques.

Note 3— To show the post World War II growth or arbitration in recent years the following statistics are of interest:

Federal Mediation and Conciliation Service

	Number of Arbitrators	Panels Submitted	Requests	Appointments Made	Awards
1972	1200	13,842	13,005	6,263	2,840
1963	500	4,497	4,279	2,757	1,618

By 1974 the number of panels submitted, according to its director, reached a little over 18,000.

1973	40,000[1]	18,380[2]	in labor arbitration area cases handled.
	1,500[3]	8,000[2]	awards made.

[1]In various panels all sectors; [2]Labor management area alone; [3]Arbitrators involved on list.

Note 4— One of my favorite subjects, as you know, is public employment laws at the state level, and as consultant to the Education Commission of the States in this matter I have access to some fairly current data coming in from each legislature. Thus, I shall, in this final background section, give an up-to-date 1975 analysis of state activity re public employment laws and arbitration in the public sector.

VIII. The States

A. Pre-Public Employee Law situation after World War I.
   a) New Jersey mediation act 1941—State Board of Mediation created.

B. *Mann* vs. *Richardson* (1873) case in a highway dispute, court in Illinois stated that *binding* arbitration could not be used on a damage suit case.

C. Prior to 1950 state courts in case after case stated "that binding arbitration for public employees was unlawful delegation of authority by the government, e.g., "sovereign immunity."

D. Break through case *Norwalk Teachers Association vs. Board of Education* 1951 Connecticut case, and City of Detroit Charter 1951 for Firemen and Street Railway Workers (DSR).

E. Advisory arbitration in public disputes had early advocates based upon World War II experience at federal level, e.g., Cleveland 1946—transit workers, 1950, New York City—transit workers, 1954, Philadelphia, some even earlier—examples in smaller towns and cities with AFSCME locals. Break through for binding was 1951 year, however.

F. States with arbitration or mediation codes voluntary or binding prior to 1959. The first public employee law:

(1) Arkansas	34:501-34:510 (1947)
(2) California	1280—1294 (1947) (1961)
(3) Connecticut	52.401—52-424 (1958)
(4) Hawaii	188:1—188:15 (1955)
(5) Louisiana	4201—4217 (1951)
(6) Massachusetts	1—10 (Supp.) 1961—back to (1866)
(7) New Hampshire	542: 542:10 (1955)
(8) New Jersey	2A:24—1 to 2A:2Y:11 (1941)
(9) New York	C.P.L.R 7501 as amended by N.Y. laws 1962 308 (back to 1886)
(10) Ohio	2711:01 to 2711.15 as amended 6/30/55 Vol. 126. p. 304, 1961 Supp. p. 46

(11) Oregon	33.210 — 33.340
(12) Pennsylvania	Stat. Ann. 1 to 181 (Purdon)
(13) Rhode Island	10. 3-1 — 10-3-20 (1956)
(14) Virginia	Code Vol. 28.503 — 38.507 (1950)

It should be noted these codes were in the main applied to the private sector of industrial relations.

G. Passage of Wisconsin Public Employment Law (MERA) 1959. First state law to govern public employees (municipal) including K-12 teachers in labor relations matters under state law.

H. Passage of Michigan's Public Law 379-1965. First public employee law to cover professionals in postsecondary education on labor relations matters (PERA).

I. Michigan Landmark Case *International Union of AFSCME Local 953 and AFSCME Council 55 vs. School District of Benton Harbor.* 10-30-67, allowed binding arbitration of items agreed to in a contract.

J. Wisconsin Landmark Case *International Union of AFSCME Local 1226 Rhinelander City Employees vs. City of Rhinelander* (6-6-67) Case granted for public employees 1) that grievance arbitration claims are binding on the city, 2) that courts can so enforce such a clause, 3) an employees discharge is an arbitrable issue under the agreement.

K. First contract grievance cases for postsecondary professional employees are heard in Michigan 1967-1968, Henry Ford Community College, Michigan.

L. First grievance cases in four-year institutions, St. John's U., 1-22-70 and CCNY, 6/23/70. Sam Gates and Tom Christensen acting as arbitrators.

Note 5— The bulk of the cases reported in the first five years came from Michigan, New York, Illinois and New Jersey and Washington, with Pennsylvania, Rhode Island and Massachusetts being late bloomers.

M. States with arbitration or mediation codes, voluntary or binding, after 1959. The first public employment law.

(1) Alaska	9.43.01 to 9.43.180 (1968)
(2) Arizona	12.1501 to 12.1517 (1962)
(3) Florida	682.01 to 682.22 (1969)
(4) Illinois	101 (1962)
(5) Indiana	3-201 — 3.220 (1968)
(6) Maine	881 — 960 (1964)
(7) Maryland	CH 231 (1965)
(8) Michigan	27:2483 — 27:2505 (1963)
(9) Minnesota	572:08 — 572:30 (1961)
(10) Nevada	Vol. 2, Chap. 38 38.010—38.240 (1967)
(11) New Mexico	22-3-9 — to 31 (1971 supp.)
(12) S. Dakota	21-25 A-1 to 38 (1971 supp.)

(13) Texas	Art. 224-238 — 6 Vernn (1966)
(14) Washington	7.04-010 — 7.04-220 (1967)
(15) Wisconsin	298.01 — 298.18 (1959)
(16) Wyoming	Chapter 37 (1963)

This totals 30 states with arbitration codes in 1974. Oklahoma and Montana also have arbitration procedures in their laws (citation not available) and North Carolina provides a list of arbitrators if needed as a service.

N. Status of Public Employment Laws

1. No Laws
   Arizona
   Arkansas[1]
   Mississippi
   Tennessee
   Utah
   West Virginia

[1]Arkansas almost passed a law in 1975. All of these states have had some activity in the legislature since 1970 except Mississippi.

Note 6— These states have no legislation covering public employees and no defacto bargaining of public employees at any level. No private college in these states is currently under an NLRB election or contract although Tusculum College in Tennessee voted no agent in 1972.

2. Law Forbidden
   Texas and North Carolina have laws on the books which prohibit collective negotiations for public employees.

Note 7— Public employees in Illinois bargain under court and executive order and in New Mexico under attorney generals and civil service procedures that are recognized.

Defacto collective negotiations are taking place in Ohio (Youngstown, Cincinnati U.) among public employees in lack of law. There are also isolated instances of this in other states in particular for postsecondary employees, e.g. Maryland (Towson State).

A few states have under NLRB elections private institutions with contracts or had bargaining where no postsecondary public employee laws exist, e.g., Colorado — Loretto Heights, Regis; Connecticut, U. of Bridgeport, Mitchell College; Ohio — Ashland College; New Hampshire — Franklin Pierce, New England College; Virginia — Marymount College; California — U. of San Francisco Law School; North Dakota — Jamestown College.

O. Current 1975 Data. State Public Employment Law for Schools

1. 32 states have laws covering K-12 professional teaching employees. Not covered in 18.
2. 28 states cover classified non-professional public postsecondary employees. Not covered in 18.

3. 22 states cover community college, vocational technical institute professional teaching employees. Not covered in 28.

4. 20 states cover four-year college and university professional teaching employees. Not covered in 30.

5. 31 states cover some level of K-12 or postsecondary employees under public employment laws, 5 other states cover some employees under special attorney generals opinions, executive or court orders.

Note 8— We can expect some action in the following states during 1975 and 1976 legislative cycle on C and D levels:

State	1975 Status	Projection
California	In legislature	+
Colorado	In legislature	even
Connecticut	In legislature	+
Illinois	In legislature	+
Indiana	In legislature	to +
Maine	In legislature	+
Maryland	Rejected	−
Missouri	In legislature	− to even
Nevada	Regents study approved	even to +
North Dakota	Rejected	−
Ohio	In legislature	even to +
Virginia	Rejected	−
Washington	In legislature	+
Wisconsin	In legislature	+

Note 9— There is also some active discussion in Idaho, Kentucky, Oklahoma and West Virginia for a 1976 bill in legislative circles. A bill in Arkansas not predicted earlier in 1975 was defeated, but interest is on the rise there, and 1976 may bring a law.

Note 10— At this point, a small set of definitions is necessary for the further understanding of the background to my remarks and challenges that I intend to ask the audience to consider. First, are terms which deal with how it comes about and the nature of its impact, often confused.

TERMS: Binding arbitration: both parties have to agree to outcome and award of arbitrator.

Advisory arbitration: an award by an arbitrator which is not binding but only advisory.

Mandatory arbitration: parties who by law, by previous contract agreement, by court decision or confluence of political pressures are forced to arbitrate, this is mandatory.

Non-mandatory or voluntary arbitration: mutual consent or agreement of the two parties confronted with impasse.

You thus can have:
1) voluntary and binding arbitration
2) voluntary and advisory arbitration

3) mandatory and binding arbitration
4) mandatory and advisory arbitration

They all can occur as possibilities and some confusion clearly exists even among the practitioners.

P. States which currently allow arbitration for postsecondary public employees:

Grievance Arbitration	Interest Arbitration	Limited Right to Strike
1. Alaska	1. Alaska[2] (PERD)	1. Alaska
2. Delaware	2. Hawaii[5]	
3. Florida	3. Iowa[3]	3. Maryland[7]
4. Hawaii	4. Maine[1,5]	4. Minnesota
5. Iowa	5. (Michigan)[4]	5. Montana[8]
6. Kansas	6. Minnesota (PELRA)	6. Oregon
7. Maine[1]	7. Montana[5]	7. Pennsylvania
8. Michigan	8. Nebraska[3]	8. Vermont
9. Minnesota	9. New Jersey[5]	
10. Montana	10. Oregon[5]	
11. Nebraska	11. Pennsylvania[5]	
12. New Jersey	12. Rhode Island[3]	
13. New York	13. Vermont[5,6]	
14. Oregon		
15. Pennsylvania		
16. Rhode Island		
17. South Dakota		
18. Vermont		
19. Wisconsin		

[1]Classified employees; [2]Voc/tech employees; [3]Binding by law; [4]While not in law has been used on a voluntary basis at Oakland University in public sector; [5]Voluntary; [6]Binding if both parties agree; [7]Baltimore County-Prince George's County classified employees only; [8]Nurses only.

Note 11— Obviously a group such as is attending this Third Baruch Conference is clear on the definition of grievance or rights arbitration as opposed to interest arbitration. I propose then to discuss interest arbitration in postsecondary educational dispute settlement as the bulk of my oral presentation, and I am deeply indebted to the following for background information that went into this pre-paper on arbitration history. The books listed made an excellent background for one interested in more in-depth research on this ancient topic.

Keller, Francis—*American Arbitration—It's History, Functions, and Achievements,* New York, Harper and Row, 1948.

Staudadar, Paul D. —*"Voluntary Binding Arbitration in Public Employment." The Arbitration Journal,* Vol. 25, No. 1, 1970.

Staudadar, Paul D. — *Public Employment Disputes and Disputes Settlement,* Industrial Relations Center, University of Hawaii, Honolulu, 1972.

Tanimoto, Helene S. —*Guide to Statutory Provisions in Public Sector Collective Bargaining: Impasse Resolutions Procedures,* Industrial Relations Center, University of Hawaii, Honolulu, 1973.

Trotta Maurice S. — *Arbitration of Labor-Management Disputes,* AMACOM, a Division of the American Management Association New York City, 1974.

My appreciation also to Ken Lau and Ray Howe for their input from materials we have jointly edited in the past few years which have dealt with this subject, to Terry Tice of the Univeristy of Michigan who has been a researcher in this field, as well as to Ed Kelley and George Angell of the Academic Collective Bargaining Information Service, and Doris Ross of the Education Commission of the States, all of whom labor in the area of state public employee relations for education employees and are a wonderful team.

Management Rights Issues In Collective Bargaining In Higher Education*

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In one large multi-unit college system these views were expressed concerning the status of management rights after collective bargaining was instituted:

> *The administration:* "Educational collective bargaining represents a unique effort to wrest control from management. The industrial union member doesn't want to run the plant, but the faculty union demands control over mergers, closings, and even the structure of a new campus."
>
> *The Faculty Association:* "Management should have the exclusive right to order the supplies and maintain the buildings, but that is all."

This administration saw itself as beleaguered, and its faculty association agreed that is should be. How typical is this picture? Has there been a faculty association takeover of management rights? To what extent has collective bargaining altered the picture of control in colleges and universities?

The academic tradition of the community of scholars or collegiality has served to obscure the true nature of management rights in higher education prior to collective bargaining. Traditionally professors have had a much greater voice in running their institutions than, say, the blue collar industrial worker. But this is because the situation of the professor is closer to that of the craft worker. Both have considerable voice in the work of their craft. Professors have served with the administration as joint determiners of curriculum and they have even exercised complete control over related matters.

However, beyond the concerns of the teaching craft, professors have never held much real power. Professors might be consulted or asked to make recommendations, but the final say has rested with the administration. The administration has had the last word in basic personnel decisions such as hiring and firing and in the governance of the institution — planning, budgeting, organizing and controlling.

The research described in this paper focussed on the changes in the sharing of authority that took place after collective bargaining was initiated in institutions of higher education, stressing especially the points where sharing has proved difficult and rights issues have emerged.

Naturally, all available contracts in the files of the National Center for the Study of Collective Bargaining in Higher Education were analyzed with respect to the management rights issue and the extent of faculty association influence in crucial rights areas. In addition an interview study was conducted at selected institutions. As the situation in the East has been rather well documented, we concentrated our efforts in the Midwest. Insofar as possible, interviews included the entire roster of individuals

*This report is the second and final report based on a study supported by a grant from the Ford Foundation. The preliminary findings were reported at the National Center's First Annual Conference, April 1973, and appear in the *Proceedings* volume of that Conference (pp. 58-66).

involved in a given bargaining relationship, Board members, college presidents, Board attorneys, arbitrators, association leaders, association attorneys and professor-activists. I was surprised to find that in many cases I was the first person to make a study of a particular relationship. Although the period for this research was rather short, 1973-1974, I attempted to follow changes in each relationship during that time, and I have continued to study selected relationships during 1975.

In this paper we will first set forth the results of our measurement of association influence in management rights areas. Next we will report on the interview survey concerning decisions which should and which should not be shared by association and administration. Areas of increasing agreement will also be identified. Then we will report on how and why rights issues arise. Finally, we will move from rights issues per se to consider the impact of association influence on the management function—on management style, management decision processes and strategies.

Management Rights and the Contract

The Management Rights Clause

Academic collective bargainers might have abandoned the management rights clause as a ceremonial gesture, part of a best-forgotten heritage of industrial collective bargaining. But tradition prevailed. In 1973 at the beginning of our study when the total number of available contracts was 91, 68% of the contracts, 70% of the two year colleges and 62% of the four year had such clauses in their agreements. By June of 1974 when the number of available contracts had grown to 142, the proportions of those with management rights clauses had increased rather than decreased. Now 74% of the contracts contained such clauses, with the two year colleges still in the lead with 77% and the four year at 70%.

Association officers were not strongly opposed to this clause. Some expressed the opinion that they might be ahead if they could "slip in" a counterbalancing "past practices" clause to protect established conditions of employment and areas where formerly faculty participation was the norm.

In rating these clauses, we found that one-half were very general in nature, as if designed to serve as a warning to an adventurous arbitrator, e.g., "management reserves all rights not specifically conveyed." However, one-fifth contained strong and very specific statements seeming to stress that the administration was still very much in control. Those favoring such precise language seemed to be concentrated in two year colleges in the Midwest in the size class, "under 6,000"

Extent of Association Influence

The other side of the management rights coin is the extent of faculty association influence. As noted above, there has been an historic tendency to overstate the extent of faculty influence in so-called management areas. Moreover, the two year colleges, which constitute three-fourths of those organized to date, have, with some notable exceptions, been the weakest group in this respect. Still to properly assess the extent to which faculty associations have penetrated managerial functions, some means of measurement was required.

As a first step we selected seven crucial areas, all of which are at the center of power struggles in academic institutions. Two are the core of the administrative or

governance function, long range planning and budgeting. Five involve the management of human resources, more popularly known as personnel: appointment, evaluation, nonrenewal, promotion and tenure. We used a five point scale for measuring the extent of association influence in each area. The lowest rank was assigned when there was no contract provision. Increasingly higher ratings were given as agreements moved from the mention of vague decision criteria or provision for discussions with faculty, to the setting forth of specific procedures that give the faculty a consultative voice in the decision process. The highest ranks were assigned when faculty members either were part of a joint faculty-administration committee that had to reach consensus or when faculty members were given unilateral decision-making power.

Governance. Gains in this area were predictably few in number. In the case of long-range planning, six of the 91 contract sample had joint faculty-administration committees, and in the later 142 contract sample this number had increased to nine. In both samples there were eight contracts that provided for faculty participation in budgetary committees.

Pressures to change this situation may well be building as the economic crisis in education deepens. In normal times enthusiasm for participation in management is limited by other demands on faculty time. The only exception is the faculty "committeeman" who eagerly seeks this activity.

Retrenchment certainly has aroused increased faculty interest in discussions concerning the budget. As one dean noted:

> "After we announced a reduction in the number of faculty positions, they demanded a key role in the allocation of resources."

In this case the administration held firm in its refusal, maintaining that the faculty association was not a part of the governing structure of the university. For its part, the leadership of the association felt that exclusion from budgetary matters was unacceptable and vowed to continue to fight:

> "On the matter of retrenchment, we wanted to see the whole budget, not just this business of letting us decide who gets the axe. But they said it's a management matter and refused to negotiate. The battle then and now is for participation in governance."

The current small amount of faculty participation in budgetary matters is not surprising in light of our finding that college administrators also did not take easily to "after the fact" disclosure of budgetary details to bargaining faculty members. Of course the budgets of taxpayer-supported institutions are public matters, but the general type of information provided by such documents did not satisfy the appetites of faculty members who ran into opposition when they sought to learn details sufficient to defend retaining a particular program or individual.

A few administrators admitted that they did show association officers departmental level budgetary details during the course of bargaining because they felt that this was the easiest way to clear up some completely erroneous beliefs. However, all expressed concern that they may have been surrendering "rights" in the process.

A college president noted that retrenchment could open a veritable Pandora's Box when the parties begin to debate the criteria for financial exigency:

> "With retrenchment you have to get into budget approval to gain shared respon-

sibility. Both sides have to see that a state of emergency really exists. Now the association wants full veto power on the budget. We will probably give them consultation."

One administrator who was in the midst of a retrenchment battle was violently opposed to the association's having access to the college's financial data, but on reflection he said he believed he now could tolerate real self-government with mutual faculty-administration responsibility for decisions:

> "As it is they want to be on the outside. They want to study our books in order to criticize. We are given the total responsibility for proving our case."

Thus this administrator preferred total joint involvement to the defensive posture that he felt had been thrust on him by the collective bargaining relationship.

In the current era of cutbacks, clauses dealing with employment security under retrenchment have been proliferating. They are now found in roughly half of the two and four year college contracts.[1] Over 80% have the traditional industrial union's "layoffs on the basis of seniority" provision, but in addition the language definitely moves into the heart of the management rights area, placing controls on the decision regarding the need for retrenchment. The phrase, "termination of a continuous appointment because of financial exigency should be demonstrably bona fide," is a good example. In order to show cause, the administration must bring out the books and demonstrate how it arrived at its decision.

Personnel. The contracts have much more to say about the personnel area. Without a doubt, the employment status of the faculty member is receiving new emphasis as a result of collective bargaining. The need for contractual challenges to management's right to hire and fire reflects the fact that the concept of a faculty as a self-governing professional group is more an ideal than a reality, especially in terms of the composition of the present population of organized colleges.

Appointment and Promotion. About one-half of the agreements said nothing about appointment or promotion. Our field work indicated that contractual silence on hiring and promotion generally reflected a situation in which faculty inputs were minimal. On occasion faculty assistance in identifying candidates might be enlisted or individual faculty members might receive information when candidates were brought around for interviews, but there were no regular procedures and no limits on managerial discretion.

Faculty members rarely were satisfied with this situation. They felt that hiring was a critical process, and most wanted more voice in this area. However, with some notable exceptions such as the Chicago Junior Colleges, appointment tended to be a management right at the two-year level. As one Michigan association president put it:

> "The deans hire the faculty. We originally asked to narrow down their authority, but we had to let it go."

At the first level of association influence, we found the specification of some conditions, e.g., according to university policy, and some rather vague criteria to guide the decision. Stronger clauses established procedures. One fourth of the

[1] Daniel Julius, "The Retrenchment Clause in Higher Educational Contracts," May 20, 1974. (Unpublished paper)

contracts specified that faculty committees were to be set up to make recommendations on appointments. A very small group, 3%, had a very strong clause stating that the final appointment decision is to be made by the departmental committee. Strong gains in this area seemed to be concentrated in large (over 6,000 students) four year colleges in the East.

With regard to promotion, 30% of the contracts spelled out specific procedures that included the formation of a joint administration-association promotion committee. Again, four year institutions in the East made the strongest gains.

Evaluation. The question of faculty evaluation presented a different picture. At the university level according to tradition,the professional is to be judged by his peers and not by the administration which often gladly leaves this troublesome problem to the faculty. However, in junior colleges, institutions modeled after the public school system in many cases, administrators are more apt to become involved in this function. Thus, it is not surprising that we found the greatest push for faculty voice in the evaluation process at this level. In the first sample, about half the contracts were silent in this area, but in the second, almost two-thirds contained some language.

For example, a Michigan college included in our interview study had a contract clauses that affirmed the right of the administration to visit classes as an accepted evaluation procedure, but it required three days' advance notice to the teacher. An evaluation procedure also was established at the divisional level, and the contract stipulated that the teacher be informed of this evaluation. This agreement was fairly typical and reflected actual practice at the school.

About 10% of the cases, all two year colleges in the Midwest of West, had achieved strong voice in this area. Evaluation committees were established, and the criteria they were to use were specified. Surprisingly, some of the specified criteria took the decision out of the area normally considered to be academic judgment. In one case about two-thirds of the items dealt with outside activities and community participation. A second block concerned the faculty member's ability to get along with students, staff and secretaries. Activity as a student group adviser held third rank, and finally, professional preparation took last place, with a weight of about ten per cent. As one faculty member noted, "They are serious when they call this a *community* colleges."

Nonrenewal and Tenure. The present economic slump has caused great faculty concern about nonrenewal and tenure decisions. Exclusive management control in these areas is considered highly threatening, especially in the light of some recent well-publicized attacks on the tenure system.

All sectors seemed to be equally active with regard to the question of nonrenewal. Only 25% had no contract language. In such situations faculty members are simply told that there will be no contract next year. One of our weakest cases had this type of "termination without cause" language during the first contract, and the association membership pressured very hard to gain some improvement in the second round of negotiations. After a bitter fight, the Board finally agreed to a "just cause stated in writing" provision. Thirty-seven per cent of the faculty associations had achieved this level of job protection. However, the faculty association in the case cited above, like many others, planned to campaign for stronger provisions including binding arbitration and faculty participation in nonrenewal decisions. Thirty-eight per cent of the contracts did have stronger provisions which included faculty participation in the procedure and an appeals mechanism.

In this era of minimal hiring and strong pressure for firing to create new openings, tenure has become a torrid management rights issue. Administrators seeking "flexibility" have become the champions of the rights of nontenured faculty and students, while tenured faculty decry attacks on tenure as a challenge to a basic American institution.

Thirty-five per cent of the agreements had no language concerning tenure. As one association member noted, "The Board said tenure infringes on their prerogatives." On the other hand, 20% had strong provisions. A typical clause provided for recommendation for tenure by the tenured members of a department. If the administration rejects this advice, it must submit its reasons in writing to the department.

The greatest gains in the tenure area were made by the larger Eastern four year schools, although in 1974 a small four-year eastern school, Bloomfield College, became a prime opponent of the tenure system when it fired 11 tenured members of its faculty in a retrenchment drive. The AAUP successfully challenged this action in the first round of a court battle, and apparently this is but one of a whole series of future tests of the rights issues surrounding the tenure question.

The Management Rights Issue: What Must Not Be Shared

The contracts drawn up by our informants in the field were far from being exciting and innovative invasions of management rights. In fact, some were little more than recitals of the faculty handbook. Some could hardly be called association achievements because a number of provisions were administration rather than faculty oriented. On the other hand one must keep in mind that these are the initial stages of academic collective bargaining, and very real struggles over rights are taking place.

Every administrator included in our study discussed with us the decisions he felt should not be shared with the faculty's bargaining agent. Each one proved to have reservations about sharing. Management resistance centered about governance and personnel decisions.

Governance

Planning and budgeting often were mentioned in conjunction with resource allocation as decisions that must be left to management. A top university administrator remarked:

> "We must preserve the right to determine resource allocation and hence a whole structure of decision-making that does not put the faculty on both sides of the bargaining table, determining what it will get and what it will make available to give."

The small number of contractual gains in this area did not accurately reflect the growing controversy stimulated by cutbacks and retrenchment. Faculty associations reacted strongly and raised questions that strike at the very heart of traditional management decision territory.

The new sense of urgency about this matter is well illustrated by the contrast between my initial visit to a campus in early 1973 and a follow-up two years later. On the first occasion association leaders assigned rather low priority to voice to resource allocation and budgeting. Their major demand was a cutback in classroom workload

from 12 to 9 hours a week. On my return visit I found an entirely different situation. Declining enrollment had led to a termination of programs and cutbacks in faculty positions. The former low priority item moved to the Number 1 spot. The association president noted:

> "We haven't noticed any administrators losing their jobs. The faculty has been taking the brunt of the cuts. We have been demanding that they discuss the whole budget with us. When our jobs are at stake, we have a right to have a say. The administration says they don't have to do it, that it wouldn't be legal. We may have to take them to court."

Personnel

As some aspects of the personnel area are accepted as legitimate labor union concerns, it was surprising to note the very halfhearted acceptance of an association role in this area. In contrast to governance, contract provisions concerning personnel matters are not a novelty. Most clauses are quite mild, but administrators often suspected the existence of a hidden time bomb. One Midwestern university administrator commented:

> "Hiring, dismissal, renewal and tenure are administrative responsibilities. Association participation is deceptive. Inevitably we are bootstrapped into getting them what they want. Participation is parlayed into a demand for re-employment and the setting aside of my decision to not recommend. Like any union, the association feels that it must keep the worker's job for him or lose out politically. Next week the AFT could be on the doorstep."

The feeling that this process cannot be controlled—that a little association participation quickly becomes a lot—seems to be behind the rather universal view on the part of administrators that basic employment decisions and the determination of performance standards should not be shared with the faculty association.

A top administrator in a college with less than 1,000 students expressed the feeling that management control of the personnel field was essential in small institutions:

> "Not enough stress is placed on the problems of the small college. We are more fragile. There are fewer variables to play with when a crisis arises. The administration must be able to make the final decision on initial appointments, tenure and termination. The faculty can make recommendations, but faculty determination of these matters is intolerable. We must be able to adapt quickly, to develop new programs for students."

A "line" administrator serving under this man agreed that management should have sole control of final personnel decisions. But he noted that in reality management retained only the right to make initial appointments:

> "The association is happy to have the administration play a large role in initial appointments. They don't want to approve in advance. They say, 'That's your prerogative.' But once they're here, they want to take over. Then they tell us, 'Don't you dare touch them.' "

We found that the battle over contract provisions and specific personnel decisions

does not refect the whole story of the rights struggle in the personnel area. Some administrations are moving in the direction of restructuring the organization to achieve their objectives. For instance in one college system, sizable numbers of departments were being grouped into divisions that hopefully would be less militant because they represent a cross-section of interests and can be headed by an administrator without the close faculty ties often found in department heads.

In other cases new management systems were being introduced as a means for achieving orderly control. One community college had "continuing employment," which is somewhat weaker than tenure, but even this status was being put to the test by a new management planning, budgeting system that would have the final say in determining the allocation of human resources.

What Should Be Shared

Not surprisingly, the areas delineated by management as essential unilateral decision territory were also those that association officers felt should be opened to greater sharing. From the standpoint of the association, job security was the key issue that in turn stimulated the demand for voice in a host of governance and personnel matters.

For the most part, administrators wanted to share with the association only the bread and butter aspects of collective bargaining. A top university administrator remarked:

> "The faculty union should be a body representing the employment interests of the faculty. What is a fair increase? What are the best fringes to serve their needs? It can assure that there are procedures to protect faculty members rights against capricious actions. These are helpful inputs. Collective bargaining has introduced an overdue corrective at the university, but it is not desirable to bargain everything."

We also asked administrators if there were any functions they would like to turn over to the association completely. Only one group of items was mentioned with any frequency. There seemed to be a desire for standards enforcing, self policing and developmental activity on the part of the association. Administrators expressed the view that it was difficult for them to criticize teaching methods, that most faculty members will reject such attentions. On the other hand, they felt that the association, in its role as the champion of the faculty, could be effective in this regard. Although administrators appeared most willing to give this function to the association, they indicated that it seemed to have an almost zero priority with the faculty's bargaining representative.

Areas of Increasing Agreement

The extent to which management rights issues are still alive is well reflected in the responses of the parties regarding areas of increasing agreement in the collective bargaining relationship. We had assumed that there would be quite a variety of responses, with the militant associations and strong rights administrations reporting, "no progress," and more harmonious groups listing a fair number of areas of mutual agreement.

However, as far as increasing agreement is concerned, the sole and universal response was, "Money." Moreover, it often was seen as a trade-off, a means of keeping the association out of management questions. The President of the association at a large university commented:

> "The administration keeps saying, 'you really only want money,' and they try to restrict us to that. The deans think they can run a sloppy administration and get away with it by pitching up for good raises."

In a large multi-unit system, the head of the association negotiating team reported:

> "The administration has learned not to be hard on money. It is a buy-off and increasingly used as such. Money affects everybody. Here rapport has increased. It is hard to muster broad support for an issue such as voluntary transfers."

Administrators confirmed this picture, although they put less stress on the trade-off aspect. The president of a small Midwestern college noted:

> "At first money was a hot topic. They made wild salary demands. We resisted, but we found they were willing to forget about everything else if the money would come. Now they have their increments and their salary grid, and money is no longer the prevalent concern."

The chief negotiator for a multi-unit system reported:

> "Strange as it seems the money issue is becoming the easiest of all. We have all but lost our ability to reward merit, and we wish we could do something about that. On the other hand, we are freed of a great deal of difficult decision-making. The question of relative merit is always a headache."

Of course, the favorable judgments about developments in the economic field may simply reflect the existence of truly strong disagreements in other areas. Money involves no debate over principle.

How Rights Issues Arise

Severe struggles over management rights are not found on all organized campuses by any means. Moreover, truly substantial struggles over rights rarely stemmed from debates about specific issues such as tenure. In the background of major rights battles one usually finds a relationship that either began with or developed structural problems. We have identified three major structural problems that tend to promote these confrontations:

1. Upward mobility on the part of the institution, such as the jump from teachers' college to state university. This upward mobility leads to reorganization which is often done quickly and on a large scale. Moves of this type create large numbers of insecure groups and individuals who after years of possibly passive existence suddenly feel the need to challenge actions and changes that are perceived as extremely threatening. At the same time the response of the administration is colored primarily by its concern about successfully fulfilling its new mission. As the parties move increasingly further apart, communication takes place largely via statements of rights and principles, with each party attempting to claim his maximum rights. We observed a number of such cases in our field work.

2. Situations in which true bargaining never really commences, blocked by a combination of inexperience and high ego involvement in the institution. (On one campus each building bore the name of a particular member of the Board of Trustees.) The administration may be fairly inept, and the faculty, while quite militant, also knows little about bargaining. Under these circumstances, rigid rights positions are readily adopted and stiffened by the involvement of the local community and local politicians. Newspaper headlines do not exaggerate the emotional character of the advent of collective bargaining. This type of entry into negotiations fosters only negative sentiments. As one association president noted:

> "We've gone backwards. There is no say for the faculty any more. The policy is to intimidate those who want to speak up. We've had no faculty meeting this year. Committees meet when the opposition can't attend."

His counterpart in the administration commented:

> "If teachers want to run things, they should get jobs in the administration. With all this messing around, I can't administer properly, and they can't tend to their teaching."

During the course of this study we observed a number of relationships that began in this highly emotional, personalized manner, and none of them seemed to move toward a more positive relationship. In fact, all seemed to move in the other direction. The parties began their relationship in a polarized state so that every issue naturally becomes a matter of principle. The Board and administration become increasingly rights hard-liners, and the faculty militants become increasingly militant in their little groups. They have no interest in becoming effective negotiators and some concentrate on the courts as a means for communicating with management.

3. Situations in which collective bargaining leads to a rapid shift in the balance of power, especially when the association makes exceptional gains after years of strong management control. Management's attempts to reassert itself then serve to bring on a major rights struggle.

In one case the initial round of bargaining produced an excellent contract from the standpoint of the faculty. It notably contained strong provisions for faculty voice in governance and personnel matters. As one observer noted, "In the first contract the faculty took away the store."

However, this "model" agreement came under fire because it was completely out of line with others. The administration was put under pressure, and it began to stiffen up. It tried to recoup its power, and in part it was successful. In response, the association resorted to strikes and arbitration cases by the carload. Of the equilibrium that then developed, an association official remarked:

> "The Board and the Chancellor have the Pullman Company policies of the 1800's, and the teachers have developed a type of 1930's C.I.O. unionism."

The association attorney was pessimistic about the future quality of this relationship:

> "The parties are not moving toward a more fruitful relationship. At one time they had a significant basic understanding, but now they are simply manager and managed. Control has become the major issue."

The relationship gradually moved toward conditions that were more in line with others in the environment, and in this new situation every move of either party was carefully judged in terms of its impact on rights and control.

Academic Collective Bargaining and Management Strategies, Decision-Making and Style

How have the coming of the faculty association and its pressures for influence in the institution affected management strategies, decision-making and management style? A manager is an active person. He has a job to do. An assessment of his rights is in reality an assessment of his freedom of action. How has collective bargaining affected his functioning in the institution?

Management Strategies

The advent of faculty unionism and its pressures on management rights has stimulated management thinking about its proper responsive role in the academic institution. Three major strategies for coping with the new situation have surfaced:

1. The first might be called, "Run Past Them." This is the most agressive strategy, for it involves the development of competing management systems and basic structural changes:

   a. The introduction of new planning, budgeting systems that employ such concepts as student enrolment driven models.

   b. The creation of separate corporations for the funding of new programs.

   c. Development of the Senate as a competing faculty body that will deal with management matters and thus serve to curb the influence of the faculty association.

   d. Restructuring the organization of faculties, generally by grouping departments into large heterogeneous divisions, headed by a full-time administrator.

   e. Changing the structure of the employment relationship.
      1. Moving from the traditional tenure system to more flexible systems such as rolling contracts.
      2. Expanding with built-in flexibility via the hiring of part-time, temporary faculty members.

2. A second strategy might be termed, "Recoup." It is based on the conviction that excessive concessions were made in previous negotiations. As one junior college administrator noted:

> "We are not going to start bargaining on the basis of the present contract. We would just keep giving things away. We plan to get back things we gave away, and for every future concession we are going to demand something in return."

There are two major components of this strategy:

   a. Testing the current contract, challenging via arbitration and legal suits.

b. Quid pro quo and productivity bargaining. For example, association voice in tenure decisions will be exchanged for a quota on the number of tenured individuals in each department.

3. The third strategy is entitled, "Holding Operation." The administration has little or no conviction that anything can be regained from the association. Instead there is a firm resolve that there will be no further yielding of management territory. In return for holding the line, the administration is prepared to make concessions in the traditional economic area.

Logically, there should be another strategy entitled, "Cooperation." We found no such cases, but surely some must exist. Perhaps academic collective bargaining is simply too new for this type to be plentiful. It may represent a later stage in development.

Management Decision-Making

How has the academic collective bargaining process affected management decision-making? Administrators reported both positive and negative effects as well as some changes that were neither clearly positive or negative.

Obviously when an administration is engaged in a pitched battle with its association, the entire management decision process is drastically affected. One college president in this situation reported:

> "Everything I do has to be checked with four attorneys. I feel like a traffic cop."

Another chief officer in the same school noted:

> "For us the result of collective bargaining has been a complete halt to everything. There is no more management. The association has taken over, but even they aren't doing anything."

Aside from such extreme cases, there have been a number of fairly common developments affecting management decision-making.

On a very obvious level there was another set of variables to think about. A Dean of Faculties noted:

> "Well, I hesitate to make a decision in the personnel field. It is much harder. Before I could come up with some explanation to justify my action. Now I have to be more reflective in my decisions. It results in a lack of forcefulness and a time lag."

Another top administrator at a large university remarked:

> "Collective bargaining has changed this job so much. It enters everything we do. Now I make my decisions more with an eye to the future, the arbitrator or judge who may hear the case. Tenure may be given to a professor in a declining field for which student demand is almost zero just to avoid the loss of an arbitration."

Observations such as, "The harm to the individual is given greater weight in all decisions involving career opportunities," "The institution no longer gets the benefit of the doubt," and "If you don't reappoint, a grievance is inevitable," reflect a general feeling that collective bargaining has introduced new constraints on decision-making.

In addition, there is evidence that collective bargaining has changed the way in which decisions are made. Sad experiences have led to better coordination. The faculty association serves as a monitor, and mistakes that once went unnoticed now become the basis for a grievance. In one instance of this type notices of nonrenewal were sent to three English professors, all citing low student enrolment as the reason. At the same time another office on the same campus announced a new program that would require the hiring of at least six new English teachers.

Academic institutions unquestionably are moving toward better management in terms of planning, organizing and controlling. The economic crunch has played an important part in this development, but collective bargaining also has served to stimulate some improvements. The institution that blundered into a grievance in the English teacher case later developed a system for coordinated manpower planning.

On the positive side administrators reported that collective bargaining introduced greater explicitness into the decision process. One dean commented:

> "We've moved a long way toward greater explicitness. Judgments must not be fuzzy, and many of us were guilty of that very thing. There we are indebted to collective bargaining."

Some administrators even saw collective bargaining as a sorce of innovative ideas:

> "The association was opposed to merit pay, and we favored it. For a while neither side would yield, but then we jointly came up with the idea of giving the most deserving faculty members awards to be spent "improving their teaching." Of course that might mean a ski trip."

If collective bargaining occupies a substantial part of a manager's time and attention, new priorities have in effect been set for the institution. The size of the institution seemed to be a crucial variable in this respect. Small college presidents often found themselves becoming glorified labor lawyers. Collective bargaining literally dominated their lives. Some said that as much as 80% of their time was devoted to a never-ending involvement in grievances, strategy meetings, off-the-record meetings with members of various factions, sessions with legal counsel and of course formal bargaining.

At least some presidents of large universities experienced the reverse effect. One noted:

> "So much decision-making is done once and for all. The contract settles a matter like compensation for from one to three years before it was a continuous process. Of course our new personnel and industrial relations specialists have to use enormous quantities of energy. There is new work and new people are doing it. It is easier for the top manager to manage since collective bargaining. Now I actually have time to talk to people."

Management Style

After the entry of collective bargaining there is an inevitable effect on management style, a term which connotes the organization's system for managing human resources with the goal of inducing effective performance. Association officers often expressed the feeling that a new style of management was needed. Some described their ideal as a manager who would listen to others' solutions and who would be less

concerned about asserting his authority. (This description closely approaches what is known as the subordinate-centered style.)

As collective bargaining is a relatively recent happening in the academic world, one cannot find as yet any dramatic changes in management style. Rather there now seems to be a transition period in which old approaches are losing their effectiveness, but new approaches are not clearly perceived.

For instance, the paternalistic management style (with authoritarian overtones) has been quite common in academia. What has happened to it? We talked to a number of administrators who obviously were attempting to cling to this style, but found that the reactions it had formerly evoked were no longer forth-coming under collective bargaining. Unfortunately, many of those facing this problem were not aware of alternate styles of management or of how to effectively implement them, e.g., subordinate-centered, participative, objectives-centered, or systems-based.

In attempting to adapt, some hit on the seemingly simplest style, participative management. A college official commented:

> "I decided to change my approach and hold regular meetings with the association leaders. We talked about the curriculum, and everyone agreed on that so I felt encouraged. We weren't so far apart after all. Then we began to discuss some personnel matters. I told them about our plan to hire some new people, and they got excited and said we should use those slots for promotional opportunities for inside faculty members. If everyone agrees it is fine, but when disagreement takes place, there is no easy way to resolve it."

This official had learned what industrial managers also know from experience, that being a good participative manager is no simple task. Controlling the process requires great managerial skill, for participation involves much more than holding meetings and listening to what people have to say.

Thus in a number of cases adapting to management under collective bargaining was extremely difficult. If the former style of management was no longer "operational," the administrator thrust into collective bargaining had problems in developing an attractive alternative. The head of a modern community college who had been a charismatic, paternalistic leader expressed his dilemma as follows:

> "I used to feel I could lead the faculty and do things for them. Now I feel somehow estranged from them. My main concern is administration. I worry about my right to make decisions."

It is clear that collective bargaining already has had a substantial effect on the management of educational institutions.

Conclusion

We have examined management rights issues in academic collective bargaining from a number of viewpoints. Our contract analysis revealed only modest inroads into the management fields of governance and personnel. For those who have accepted uncritically the notion of college faculties as self-governing professional groups, these results may come as a surprise. Even with collective bargaining, strong faculty voice in core teaching areas such as curriculum does not carry over into institutional planning, organizing and controlling or into decisions regarding the allocation of human and financial resources.

Our survey concerning which decisions should not be shared revealed rather strong management resistance to association participation in anything other than strict bread and butter matters. Even the modest contract provisions and practices of today caused concern because it was felt that it is difficult to place limits on the extent of association participation in decision-making. On the other hand, today's key issue of job security serves to explain the association's strong interest in governance and personnel matters.

Sensing the onrush of association pressures, administrators have been resorting to nonbargaining strategies such as restructuring and reorganizing to achieve more politically manageable units and greater administrative control. However, this formerly well accepted management right has come into question as its exercise impacts the strength of the assocation.

Administrators see a fine unilateral role for the association in policing its members' performance and enforcing standards, but the enthusiasm is not mutual. For both sides, increasing agreement was found in only one area, salary, an item which involves no debate over principle.

In studying how major rights struggles arise, we found that the major cause was structural in nature, and we were able to identify three major structural problems that served to promote these confrontations. Structural problems, such as those caused by rapid institutional upward mobility, can if allowed to do so, determine the character of a relationship and set it on an extremely negative course. The parties faced with various types of structural imbalance need to develop an awareness of the likely consequences in terms of the development of major rights issues.

The entire management process including strategy formation, decision-making and management style has been profoundly affected by the coming of collective bargaining. We are now witnessing a search for new effective management styles adapted to the requirements of the bargaining relationship.

A new set of employment status variables have been introduced into decision-making, and all agree that the process has become more complex and more time-consuming. On the positive side, some see that institutional management has improved as the result of having to face the test of collective bargaining.

We also found that a number of management strategies have emerged to cope with collective bargaining, ranging from aggressive "Run Past Them" operations to concentration on "Recouping" and finally on defensively "Holding the Line." However, the aggressive overtones in the first two strategies foretell a promising future for rights issues.

What is the future of management rights issues in the academic world?

The results of this research indicate that there is little administration and association agreement about the sharing of decisions in key governance and personnel matters. Thus, the stage is set for a vigorous rights struggle, and on the basis of events thus far, we can predict that rights issues in the academic world will have a different history from those in industry. While it may not always be true, industrial issues tend to be fairly clear-cut. The parties test a matter and accept the result.

Academic issues are tougher, more subjective. There is much more desire and opportunity to ask for clarification, to reopen issues and retest them so that a matter need never come to a final conclusion. In the academic world, the rights issues of today most probably will live on as the rights issues of tomorrow.

Disparities Between University And Private Sector Collective Bargaining

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When we discuss labor relations and come to conferences such as these there are sometimes terms used that not all of us understand in the same manner. Which, in turn, brings to mind a very favorite story of mine. There was a man arrested in Ireland and charged with an assault upon a lady. When the matter came up for trial his Worship when he learned the nature of the trial made the announcement, "This trial shall be held in camera" at that point the defendent rose and said, "Your Worship, what does in camera mean?" His Worship looked down and said, "I know what in camera means, the Prosecutor knows what in camera means, and so does the defense counsel. Sit down." Well, the trial went on and the defendent took the stand, and he was relating the events of the evening, and he said he left this dance and he met this charming women and he went with her for a walk in the park, and the first thing you know it was la-de-da-de-da. And the Judge said, "What do you mean la-de-da-de-da?" "I know what it means," he says, "The defense counsel knows what it means and the prosecutor knows what it means, and if you had your bloody camera, you'd know what it means."

When you come from a regulatory agency it has been the fashion for the speaker to say that the views that will be expressed in the presentation do not reflect the views of the agency. For those of you who read the PERB decision in the Board of Higher Education in New York know I do not reflect the views of the agency.

My title aside, disparity between collective bargaining in higher education and the private sector would seem to assume that there is a disparity, and further a disparity of such significant proportions as to warrant its inclusion on the program. Rather than accept this assumption I would suggest, in this brief postpradial period, that we probe the validity of it in stages. The initial question to consider is whether there is a disparity such as the title suggests. I do think before this question may be answered that we should briefly consider whether or not there is a disparity or difference in kind between collective bargaining or negotiations in the public sector generally, from collective bargaining in the private sector. If one were to set forth, briefly, the essentials of the collective bargaining relationship in the private sector, it would be first the grant of rights to employees to form or join organizations and to select or designate an organization for the purpose of dealing with their employer, and second, the requirement that the employer meet and negotiate terms and conditions of employment with the designee of the employees, and third, the right to engage in concerted activitives in furtherance of collective bargaining goals. Now, in the public sector the majority of jurisdictions, to date, which have granted such organizational and collective bargaining rights have not sanctioned the right to engage in concerted activities by way of a strike. Here, of course, we see a substantial difference in the kind and character of the collective bargaining process between public and private sectors. However, the question of the utilization of a strike weapon is a subject for another time and is not within the area allotted to me today. Suffice it to say that there are many such as my brother Kheel who maintain that the grant of right to bargain collectively without the concomitant right to strike is an illusory grant. In fairness

though, I must point out that there are significant countervailing arguments.

Absent the strike issue — is there a disparity or difference in kind or character, with respect to collective bargaining between the public and private sector? From my vantage point, as a member of a regulatory agency in the public sector, there is a difference in the nature of the disputes involving the obligation to negotiate in good faith. Generally, charges alleging the failure of an employer to negotiate in good faith can be divided into two broad categories: A) The first, dealing with the tactics or strategy in the bargaining process, giving rise to claims of service or dilatory bargaining such as the General Electric case; B) The second, dealing with the scope of bargaining such as the refusal to negotiate on a mandatory subject, or the insistance of bargaining on a permissive or voluntary subject such as we saw in the Borg-Warner case. In the public sector, the overwhelming percentage of charges relating to failure to negotiate in good faith deal with the second category. That is, questions as to the scope of negotiations, as to whether or not a particular subject is a mandatory one for the purpose of negotiations. Admittedly, there have been, over the years, many scope questions in the private sector, but I submit that the number and intensity of the scope questions in the public sector is markedly more and thus different from the experience in the private sector. This difference between public and private collective bargaining is highlighted by the approach of various states to the questions on scope or limitations on the scope of bargaining.

Basically the approach of the various state jurisdictions to the question of scope of negotiations can be placed in one of the three categories. The first, I call the Hawaiian approach, wherein the enabling legislation granting rights to public employees provides a long laundry list of subjects as to which bargaining or negotiating is prohibited. I do not believe that this approach is realistic or condusive to the establishment of a meaningful and stable bargaining relationship. The second approach, I would term the Pennsylvania approach which, while it does not proscribe specific subjects from being the subject of negotiations, it does remove from the negotiating table subjects involving the determination of policies of a government such as the mission of the agencies and the means and manner of accomplishing such mission. The third approach may be denominated the New York approach wherein the legislature did not provide for any specific or general limitation on the scope of negotiations. This approach parallels most closely that of the Federal legislation in the private sector in that there is no expressed limitation on the scope of bargaining. However, in the private sector the absence of such expressed limitation does not, as observed by Mr. Justice Stewart in the Fiberboard Case, require the conclusion that every act of the employer affecting a term or condition of employment is a mandatory subject or bargaining. As Justice Stewart pointed out, there are enterperneural decisions of an employer which will and do affect a condition of employment, namely job security, and which decisions are not subjects of mandatory negotiation. The approach of Justice Stewart has been followed in some degree in New York, as indicated in the decision in the matter of the New Rochelle City School District. Thus, we see, at least today, that there is a difference between the public and private sector both as to the legislative approach to limitations on the scope of negotiations, and as to the very substantial preoccupation in the public sector with disputes involving the scope of negotiations.

This difference becomes even more significant when we limit our consideration to professional employees in the public sector. Obviously, professional employees have

the same basic interests which they share with all employees whether public or private, interests such as the rate of compensation, fringe benefits, working conditions and a desire for job security. But, further and beyond these basic interests as would be expected, professional employees have a concern for the maintenance for certain professional standards in their endeavors and with their own continuing development in their profession. This latter concern, while not at all absent in the non-professional employees, is certainly far more evident among professional employees and particularly among professional employees in the public employment. This concern has manifested itself in collective bargaining by professional employees to a great degree. That is, in my opinion, without any meaningful parallel in the private sector. For example, as has been pointed out by Arvid Anderson on many occasions a labor organization in the private sector in the automotive industry would find it extremely difficult to gain management's acceptance of negotiations over the policy of the development of the automobile and as to what form such development should take. But in the public sector we have seen professional public employees such as teachers, nurses, social service workers seeking discussions and negotiations with their employers on educational policies, standards of health care and, indeed, the level of benefits to welfare clients. Now, this desire of public professional employees is understandable. They are professionals. They do have expertise in their field, and thus, feel that they should have an input of the development of the goals to be sought and how best these goals can be achieved. This desire in intensified when the public employer with whom they deal is not within their respective professions. The shock felt by some public employers in the face of these demands by public employees is also understandable.

Collective bargaining in the public sector is relatively new. It has only come into being in most jurisdictions within the last ten years, and there is an obvious reluctance on the part of public managers to share what always has been within their exclusive authority. Further, public management is quite different from private management. In the later, there is a direct line of authority from stockholders, to directors, to the managers. In the public sector a concept of public management is more complex. The interrelation and interraction between executive branches and legislative branches and the ever-presence of things political give rise to such complexity. Thus, we see as we probe our basic question, there is a disparity or difference in kind or character between collective bargaining involving public professional employees and collective bargaining in the private sector.

Now, we reach the specifics of our inquiry collective bargaining in higher education. In the discussion of the concept of collective bargaining in higher education I will, of course, limit my considerations to faculty in the negotiating process. As to the presence of a disparity, the most obvious difference is that between university faculty and other employees generally. Such faculty are truly *sui generis* in that prior to the advent of collective bargaining faculty did have a role and participation in some of the decision-making processes of a university in matters such as curriculum, admissions, degree requirements and in the selection, retention, promotion of their faculty brothers and sisters. A role not possessed by employees in elementary and secondary education. Thus, we see university faculty did have outside a collective bargaining relationship an input in some educational policy determiniation which their professional colleagues in elementary and secondary education are seeking to achieve in the bargaining relationship.

There were those who decry the introduction of the collective bargaining process to university faculty on the ground that it would errode this participation by the faculty in university governance. In substance the concern expressed was that the concept of collegiality in university governance would fade in the face of the adversary nature of the collective bargaining relationship. There is, of course, some basis for the concern as I shall discuss in a moment. But since the faculty in both private and public sector have been accorded organizational and collective bargaining rights the decision as to whether or not these rights are to be exercised is for the body of the faculty to decide. As we know, many have elected to exercise those rights, and a number of faculties have declined. Now, in the light of the above as collective bargaining has developed what has been the affect to date on the faculty participation in university governance? University faculties obviously do have the same basic interests as all employees who have organized with respect to compensation, fringe benefits and other related economic items, and certainly negotiations in this area would not seem to impinge upon established university governance.

In fact, in some collective bargaining relations in universities the scope of negotiations has been limited to the so-called economic and related issues and they have shied away from issues involving governance.

Is this then, a resolution of the problem raised by the issue of collegiality versus advocacy? I do not think it is a realistic solution. It is not realistic in the sense that it lacks stability, because this approach does envision a dual system with faculty participation in a bargaining process dealing in economic and related matters and faculty participating in governance as a Faculty Senate or on academic committees dealing with educational matters. It is not the presence of this dual system that of itself presents a problem. Rather, the problem arises in the defining the scope of jurisdiction or responsibility of each body. As a member of PERB I am not here today to indicate which one should yield or where the jurisdiction or responsibility should lie, but simply to state the problem.

In some collective bargaining relationships, on the other hand, matters formally within governance structure have been included in bargaining agreements, such as promotion procedures. It does seem likely, just as an observer, that further inclusions may be sought which, perhaps, may be resisted by university administrators giving rise to disputes as to the scope of negotiations, not uncommon experience as we have noted in the public sector. There is also the possibility that younger faculty may seek to challenge aspects of peer evaluations and may seek to achieve this change through the collective bargaining process. Further, such probing of governance by faculty bargaining groups may result in an attempt by administrators to reserve to themselves all policy determinations in which faculty heretofore had participated. All of the above would tend to conform university faculty realtionship to what has been described by many as the industrial model. Whether this will result or not is up to the parties in the relationship. The fact is, at the moment, many faculty participate in the governance of the university in a manner and to a degree not found in any industrial model or in any area of public employment. Therefore, to preserve this, if that be the desire of the parties, there would have to be some efforts to achieve some accommodation of governance to the negotiation relationship and some accommodation of the negotiation relationship to the unique structure of university governance. It will be a new model. Not the industrial model whatever that is, but one suited to a university.

Thus, to answer our initial inquiry. Yes, my brothers and sisters, there is, for the

reason stated aforesaid a difference in kind and character between collective bargaining in higher education and the private sector, primarily because of the status of faculty as they come to the collective bargaining process, but whether that disparity is desirable and should continue and to what extent is a decision that, hopefully, will be made at the bargaining table.

Collective Bargaining and Affirmative Action

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Although collective bargaining and affirmative action both are concerned with conditions of employment, they have not yet proven to be entirely compatible. This has been true in the past, and they are likely to be even less compatible during periods of retrenchment such as we are now experiencing. The scene on those campuses which have chosen collective negotiations mirrors that found in industry and some of the unresolved issues involved in collective bargaining vis a vis affirmative action have now reached the Supreme Court.[1] The lower court decisions already handed down have had direct and often contradictory implications, not only for unions in industry, but for those in higher education.

The issue of "last hired, first fired," although it is not the only issue where major differences occur, has brought the dichotomy into its sharpest focus. Controversies over race and sex discrimination are not new to unions. It appears that, in the main, unions through their contracts have countenanced and continued many of the aspects of discrimination found in the broader community. True, women in the garment district might still be working for lower wages in sweat shops if it were not for the persistent efforts of the unions,[2] but past experience also indicates that most blacks would still be in all-black locals if unions had not been confronted by firm Federal intervention.[3] In education, men, women and minorities usually belong to the same union, but union contracts have, in some cases, institutionalized discriminatory practices which previously existed. In other words, unions tended to accept the prevailing social climate and, as a result, little conflict existed between affirmative action and collective bargaining until the first Civil Rights laws in 1964.

Collective bargaining is concerned primarily with salaries, job security, fringe benefits, grievances, hiring, promotion, seniority, and procedures for discharge, recall and discipline. So are Title VII of the Civil Rights Act of 1964, the Fair Labor Standards Act, as amended, Executive Orders 11246 and 11375, and Title IX. All of these laws have impacted or will impact upon educational institutions and their collective negotiation process. Even now, women and minorities who have been subjects of collective bargaining but not involved in the negotiation process on their campuses are becoming aware of their contracts, the laws and the potentials for change.

Although the effects of affirmative action, aided by new enforcement measures and court decisions are rapidly spreading, the social patterns of discrimination are so deeply imbedded in our societal activities that substantial progress can hardly be expected overnight; nor can we expect that the collective negotiation process, emotional and complicated as it is, especially on a college campus will expend its energies to eradicate discriminatory attitudes and practices unless such eradication helps unions and institutions achieve their broader goals. To understand current conflicts between these two social movements and the fact that the unions are but one segment of a total society undergoing a cleansing self renewal, let us take a look at the laws, their enforcement mechanisms, and the resulting and administrative and judicial rulings.

Title VII of the Civil Rights Act of 1964, as amended, has the broadest implications of the laws in this area, as evidenced by numerous court decisions.[4] Although the Civil Rights law was passed in 1964, it was not until March, 1972, that it was extended to cover educational institutions, public and private, having more than 15 employees. We are only now beginning to see an influx of Title VII cases involving educational activities. Title VII forbids employment discrimination on the basis of race, color, national origin, religion and sex. Employers are required to refrain from discrimination, and individual as well as pattern and practice charges may be filed against them. Discrimination by unions is also specifically prohibited.[5] Subject to the same conditions, unions are libable to charges of discrimination, not only in their organizational and operational practices, but in the contractual agreements which they negotiate. A collective bargaining agreement provides no immunity from liability under Title VII. It is important to note that a union and employer share liability for damages resulting from certain types of discrimination in employment; and in fact, both have been found liable for back pay, punitive damages and other extraordinary relief.[6]

The Supreme Court in 1974 stated that: ". . .Title VII rights are independent of and supplementary to any other laws and institutions concerning job discrimination . . ."[7] Enforcement for Title VII is the responsibility of the Equal Employment Opportunity Commission, appointed by the President.

Practices which have become issues under Title VII include some policies still prevalent among unions and institutions. In its guidelines issued in April, 1972, EEOC set down a strict mandate for the eradication of discrimination. The following guideline provisions are under review in the courts:

1) Maternity leave. Maternity leave is to be treated like any other temporary disability, such as heart attack, gall bladder, or prostate surgery.[8] Thus, a woman taking leave for childbirth and complications of pregnancy is to be treated in the same or equivalent manner as a man taking leave for medical reasons.[9] Interestingly enough, City University of New York's contract provides temporary disability coverage for women and childrearing leaves for both women and men; a union contract milestone, the merits of which are still being questioned by many segments of our society.

2) Retirement. The question of equal monthly retirement benefits for men and women finds two Federal agencies issuing differing guidelines. The Department of Labor's Office of Federal Contract Compliance subscribes to the "either/or" approach: either equal contributions by employers, or equal periodic allotments.[10] The EEOC, on the other hand, states that only an equal periodic benefit is acceptable.[11] To confuse the matter further, HEW, within Title IX, is currently proposing a unisex actuarial table. It is difficult to determine which of these approaches will eventually be recognized as the national standard, but at least each is moving toward the basic concept of equity.

3) Position Classifications and Bona Fide Occupational Qualifications. Positions either limited to one sex or requiring credentials that are in no way relevant to the performance of a job have been found to be illegal, consequently requiring that all hiring and promotion be based on objective, job-related criteria.[12] A notable example is that of Micky King, Olympic diving champion, who has successfully taught diving at Yale. However this issue may create difficulties for institutions in defining faculty positions.

Both Title VII and collective bargaining open new avenues of redress for employees who believe they are victims of discrimination. As an example, the National Labor Relations Act provides for fair representation which, if violated, may be rectified by placing a charge of unfair labor practice before an appropriate administrative board and/or by filing a complaint under Title VII. It should be noted that a grievance arbitration procedure established under a union contract may, as in Michigan, be found to be discriminatory, as the union, like any employer, is subject to investigation by the EEOC and can subsequently be sued in court.[13] Congress is presently considering a bill which would provide for the extension of the NLRA to public employees (public institutions); however, at this time, only private institutions are covered.

As collective bargaining spreads among more public and private institutions, charges of discrimination against union under Title VII are likely to increase as well.

The *Fair Labor Standards Act,* passed by Congress in 1938 to establish minimum standards for employment, is still in effect. In the area of discrimination, the section dealing with equal pay is of greatest interest. The Equal Pay Act of 1963, as amended in 1972, includes professional, administrative and executive employees. Unfortunately, here again, some labor-management contracts still maintain some of the classifications[14] which have caused inequities in pay. Discrimination on the basis of sex in the establishment of wage scales is illegal, and individuals must be evaluated on the basis of equal work, defined as that requiring substantially equal "skill, effort and responsibility" and which "is performed under similar working conditions."[15]

Interestingly enough, when reviewing the issue one discovers that in the primary and secondary schools many problems inherent in determining equal pay have been successfully removed. For example, teachers are generally paid according to their years of service and education. On the other hand whether a teacher teaches 20 or 40 students and whether the subject matter is English or physics have been considered by many institutions and unions as being irrelevant to pay scale. This approach may cause grave problems for the higher education community as the Wage and Hour Division of the Department of Employment Standards of the Labor Department begins to develop new guidelines. How can one union support fundamentally different positions for teachers in elementary, secondary and higher education? Of course, women would benefit if the K-12 policies were adopted (pay based on education and service) for higher education, as they are more numerous in the lower-salaried social sciences than in the physical sciences. Furthermore, the earliest cases of discrimination on campuses were found in the non-faculty areas, i.e., custodial and service employees, in the same manner as had been true in industry.

Provisions of a collective bargaining agreement which permit discriminatory wage rates are not defensible under the Equal Pay statute, since statutory requirements of this type override contractual agreements. Unlike a Title VII case, the union may not be held liable for damages in an equal pay case awarded by the Department of Labor whose policy has been to seek redress from the employer and not from the union. Only if the union, as an employer, has been guilty of paying discriminatory wages, can it be included in such a suit.

Executive Order 11246, as amended by E.O. 11375, specifically requires that institutions receiving Federal contracts practice equal opportunity employment, and a condition of these Government contracts is that the recipients take "affirmative action to ensure that nondiscrimination and equal employment are being practiced."

Affirmative action actually mandates institutions wishing to hold Federal contracts to take "positive result-oriented steps toward the elimination of barriers for minorities and women in employment."

The extent to which implementation of this mandate has been accomplished in institutions with collective bargaining agreements has yet to be assessed. We do know, however, that in industry, goals can be established by employers whether or not the union contract allows for it.[16] Obligations imposed under these orders cannot be bargained away or compromised by negotiation.

Title IX of the Education Amendements of 1972 provides for extensive incursion into institutional autonomy. It relates to every aspect of institutional life, ranging from student recruitment and admissions, to coursework, student and institutional activities and residences; furthermore, it expands and reinforces Titles IV, VI, and VII of the Civil Rights Act by establishing parameters for recruitment, hiring, benefits, rates of pay and any other term, condition or privilege of employment.

Title IX affirms the fact that institutions have affirmative obligations under Executive Order 11246. Specifically, it provides that, "No person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, with certain exceptions."[17] Thus, although it parallels Title VII and the Equal Pay Act, and re-emphasizes the institutions' obligations to file affirmative action plans, it also makes specific reference to the institutions' relationships with their unions. For example, under the "terms of any collective bargaining agreement", it states that:

> "A recipient [institution] shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting individuals to discrimination prohibited by this subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient."

Thus, more so than ever before, institutions and their respective unions, or those seeking to establish unions on campuses, should be cognizant of the ramifications of legal regulations affecting a union contract in order to screen out all possible discriminatory clauses, whether overt or covert. Title IX makes an important distinction between affirmative action and remedial action in its attempt to achieve nondiscrimination, permitting affirmative action but not requiring it in overcoming the effects of conditions which have resulted in limited participation in all or part of a recipient's program.[18] Remedial action is required only upon a court finding of previous discrimination. Affirmative action is a preventive, not remedial, measure. Both, however, are aimed at reducing discrimination.

After reviewing the laws and decisions applicable to both collective bargaining and affirmative action, there appear to be at least three basic areas of possible conflict: the union practice of seniority rights, negotiated grievance procedures, and the union responsibility to represent all of its unit members fairly.

I. The Principle of Seniority Rights

In reviewing the issue causing the greatest consternation at this time—"What to do about 'layoffs' "—the challenges to collective bargaining can be readily seen.

Inasmuch as the courts have not provided a clear-cut approach to the issue, we must be aware that an institution's decision which is eventually judged to be discriminatory, may be quite costly when one considers the potential for the award of back pay and damages. Although the Supreme Court has agreed to hear the *Franks v. Bowman Moving Company* case, which involved the issue of seniority, the *New Jersey Central Power and Light* case[19] is of greater interest. N.J. Central Power asked the Federal court to decide which took precedence, its collective bargaining agreement (with strict seniority privileges), or its December, 1973, conciliation agreement with the Equal Employment Opportunity Commission, in which the company agreed to bring up to 15% its minority and female work force representation. The judge ruled that the EEOC conciliation agreement would be frustrated if the company were to reduce the hiring percentages it contemplated. A suggestion was made that three seniority lists be established, one for minorities, one for women, and one for all others.

Upon appeal, the Circuit Court in Philadelphia reversed, ruling that there was no conflict between the EEOC and layoffs by seniority. The Appeals Court recognized that such layoffs would have a disproportionate effect upon the more recently hired minority and female employees, but said that the conciliation and labor agreements were neither conflicting nor inconsistent; both could be given full effect. The judges ruled that affirmative action hiring should continue, but that once hired, all such employees become subject to the terms of the collective bargaining agreement, including the layoff procedure. The employer was to make every reasonable effort to bring its minority and female work force up to parity as openings became available over a five-year period.

However, in *Watkins v. Continental Can Company,*[20] a District Court stated that the minority's higher incidence of layoffs was the result of prior discriminatory hiring policies. The judge ordered reinstatment and back pay for seven blacks, as well as the institution of a formula to maintain the minority's steady percentage representation in the work force.

And yet, the Court of Appeals, in *Waters v. International Harvester of Wisconsin,*[21] held that instant seniority could not be granted, that a "last hired, first fired" seniority system was neither racially discriminatory in its own right nor a mechanism to perpetuate past discrimination. Past discrimination was the fault of the employers, and minority workers were to be reinstated to the same percentage of representation they had enjoyed prior to layoffs. The company could neither displace non-minorities nor reduce their pay or the numbers of hours worked.

Other cases involving this principle have cropped up numerous times in the last few years. The case of the *Savannah Printing Company v. Union Camp* is of interest[22] as under the terms of the existing contract, unit seniority was in practice; however, when charges of discrimination, in lay-offs, appeared, the judge stated that affirmative action is not subject to arbitration. "The Federal government's mandate for affirmative action supersedes any collective bargaining agreement."[23]

Thus, we sit and watch decisions being rendered on both sides of the issue. Until the Supreme Court finally and clearly decides, some institutions will be experimenting, much like industry, with separate departmental seniority lists, or trying to develop institution-wide seniority listings, if that is possible, or just trying to wait out the dilemma until a clarifying decision is made. Many looked to the Supreme Court to do much the same thing in the issue of "pregnancy as a disability" and were

dismayed when the Supreme Court said that it was within the Constitution not to treat pregnancy as a disability[24]—leaving us with no firm policy.

In the *Bowman* case, the idea of a seniority system per se was not being questioned; rather, the attempt to assign seniority credit to individuals became the issue. The cases outlined above and others raise even more difficult questions. The decisions in those cases, in light of statements made by the Supreme Court in *Alexander v. Gardner Denver*, that "The Courts retain broad powers to remedy job bias even where the administrative agencies find no reason to believe that bias is being practiced . . . .", and a letter sent by EEOC to the largest private employers in the U.S., which contained a request to go easy on minorities and women if the companies must lay off employees,[25] lead us to believe that the full powers of Title VII will eventually be invoked in cases where layoffs disproportionately affect minorities and women. However, at this time the combined efforts of the Department of Justice, the Civil Service Commission and the Department of Labor have succeeded in keeping EEOC from publishing their guidelines for lay-offs.[26]

We are therefore confronted by a serious question as to how seniority as a system can be accommodated to the implementation of these various anti-discriminatory laws and regulations without destroying the very equitable purpose for which they were intitially inaugurated.

II. Complaint Procedure—Grievances

Most collective bargaining agreements include grievance procedures which are applicable to equal opportunity complaints. The existence of grievance procedures in a union contract does not prohibit an employee from using Title VII. As the Supreme Court stated in the *Alexander v. Gardner-Denver* case, "when an individual voluntarily submits a claim of race bias to the arbitration machinery under a union contract, he does not lose his right to ask a federal trial court for relief," and "although the collective bargaining agreement stated that both the employer and employee were bound by the arbitrator's decision and that Federal law favors arbitration, Title VII rights are independent of and supplementary to any other laws and institutions concerning job discrimination."

Of note is the fact that in the yet-to-be-finalized Title IX Guidelines, a section has been added which provides that "a recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part."[27] Of course, those institutions which already have chosen collective bargaining have grievance procedures. In the contract at the City University of New York, "a grievance alleging discrimination cannot be processed by the union on behalf of any employee who files or prosecutes, or permits to be filed or prosecuted on his behalf in any court or governmental agency, a claim, complaint, or suit, complaining of the action aggrieved, under applicable federal, state or municipal law or regulation."[28] Although recognizing sex discrimination as a valid complaint, this provision has effectively kept women from filing simultaneously a complaint in more than one place at a time. The intent is to exhaust the internal machinery prior to going outside the university (or it may be to protect the university from double jeopardy). The pros and cons of this procedure have yet to be examined carefully in light of the Title IX directives. And, in fact, it might be argued that this restrictive provision in the CUNY agreement could

be invalidated under an extension of the Court's position in *Alexander v. Gardner-Denver*.

The question of the qualifications of arbitrators who are called upon to mediate issues involved in sex discrimination cases has been discussed recently by Dean Richard Lester in his book, *Antibias Regulation of Universities*.[29] He suggests that educational institutions develop a cadre of trained arbitrators capable of responding to institutional needs throughout the nation. As long as their procedures and decisions are open to judicial review, this approach may very well be acceptable to women, minorities and institutions.

III. Fair Representation

Although the National Labor Relations Act is a labor statute and not specifically an equal opportunity guarantor, the NLRB can withhold union certification if there is a violation of constitutional principles. Since the Board's certification establishes the union as the exclusive bargaining representative for unit employees, a special duty is imposed on the union to represent fairly all employees within the bargaining unit.

Negotiating a contract that is discriminatory violates the union's legal obligation to ensure fair representation and "good faith" bargaining; thus, sex or race bias can be the grounds for de-certification. A union which systematically excludes minorities or women from membership may be denied certification.[30]

Unfortunately, although the Board recognizes constitutional restraints on its actions, it has not seen fit to address more than perfunctorily the sex and race discrimination issues, stating that these problems should be dealt with by the federal agencies established for that purpose. Thus, although this additional avenue exists to eradicate discrimination, it is unlikely that the NLRB, even with a new chairman, will seek to establish a basic role for itself in this area. The NLRB has two statutory roles: that of determining the representation of employees and promoting the efficacy of collective bargaining. Of interest is the fact that the Congress is currently considering legislation which would extend the Act to cover public employees, thus expanding the purview of the NLRB to unionized employees at all levels, both public and private.[31]

Inasmuch as the collective bargaining movement is still relatively new to higher education and the laws prohibiting sex discrimination are but three years old, the role that unions can play in eliminating discrimination in higher education has yet to be delineated. NEA, AFT, and AAUP have all made strong efforts to explain their positive positions on the nondiscrimination issue, NEA and AFT through their national organizations, AAUP through its campus chapters. The AFT's *AFT Negotiates Change for College Women,* states that "AFT college locals insist that their collective bargaining agreements contain provisions which insure equitable professional status for all faculty members, regardless of sex, or any other characteristic. . . ."

As enumerated above, the questions involved in the interrelationship between collective bargaining and affirmative action are not easily answered. Many institutional responses must rely on forthcoming decisions by the courts. However, there are many internal considerations that need clarification:

1) Who is the designated employer for contract vs. affirmative action declarations? The situation differs between public and private institutions. In contract negotiations, public institutions are often represented by a variety of people outside the institution's

structure (i.e., the Governor's office, etc), whereas private institutions are usually represented by the President of the institution. When an affirmative action declaration is submitted to the Federal Government, the institution's chief executive must sign it as the employer. How can we reconcile the responsibility of the campus president as an employer in eliminating discrimination when he (particularly in public education) may not even be a party to negotiations?

2) How are rank, promotion and tenure decisions made and how are they applied on the unionized campus? Is it justifiable for minorities and women to allow merit to be dispensed with, thus eventually penalizing the meritorious within their own groups? How are promotion possibilities affected by a contract?

3) Faculty governance and its relationship to affirmative action presents an interesting question on those campuses which have seen historical discrimination (virtually all institutions have at one time). Can faculty governance be accommodated to a union setting, and can it be employed in a nondiscriminatory manner?

4) Part-time employment is a crucial issue for many women and minority union members. Evidence of discrimination in the past has been the maintenance of large numbers of minorities and women in part-time or lowest level positions. A real conflict has developed between women wanting a union which would improve their status as part-time employees by including the benefits of full-time employment or perhaps even a future guarantee of full-time employment, as opposed to those women who want part-time employment in order to allow time for other activities, including childrearing. In this situation, in many instances, women in part-time positions may not be a result of discrimination, but because of voluntary circumstances. The conflict may be complicated in those situations where unions have sought to cover only full-time employees in the collective bargaining units.

5) Grievance procedures, although mandated under Title IX, must be developed and applied internally. We must be concerned, not only with the structure of a grievance procedure, but with its operators also. As discussed earlier, Title IX states that an internal grievance procedure does not establish an exclusive remedy; however, if Federal and State agencies defer to internal grievance procedures, (or vice versa) and those procedures consume so much time as to make the individual ineligible for alternative remedy, then the contract is helping to perpetuate discrimination (and inviting lawsuits).

6) In addition, all of the following equal opportunity issues must be resolved on the campus under affirmative action principles, with or without the presence of a union: recruitment, salary inequities, nepotism regulations, women and minorities in administrative positions and on decision-making committees, employee credit unions that may discriminate against women seeking loans, and finally, the newly-arising question of child care.

In summary, the objectives of collective bargaining may be frustrated and subverted unless the parties at the collective bargaining table recognize the crucial importance of paying more than lip service to the Federal mandates governing equality. Otherwise, unionization may merely serve to institutionalize many aspects of our present-day discrimination.

Footnotes

1. *Alexander v. Gardner-Denver,* S.C. No. 72-5847, February 19, 1974. *Franks v. Bowman Transportation Company,* S.C. No. 74-728.

2. Georgina Smith, "Faculty Women at the Bargaining Table", "Unladylike and Unprofessional: Academic Women and Academic Unions."

3. The construction unions must, by order of the Courts, admit a quota of minorities into their union - Philadelphia Plan.

4. *Quarles v. Philip Morris, Inc.,* 279 F supp 505 (E.D. Va. 1968). *Hicks v. Crown Zellerback Corp.,* 319 F Supp 314 (E.D. La. 1970).

5. As of June, 1974, Guidelines were published which also prohibit discrimination on the basis of age.

6. LeBeau v. Libby Owens Ford Co. 484 F 2nd, 798 (CA 7, 1973).

7. *Alexander v. Gardner-Denver,* S.C. No. 72-5847, February 19, 1974.

8. Title VII, Sex Discrimination Guidelines, issued April 5, 1972.

9. However, *Geduldig v. Aiello,* S.C. No. 73-640, June 17, 1974 takes a less positive position neither approving nor disapproving Title VII's pregnancy guidelines.

10. The Department of Labor, in the *Federal Register* of December 19, 1973, requested responses to two proposal (and subsequently held hearing): (1) Total disregard of actuarial tables; establishment of a policy to pay men and women equal monthly allotments. (2) Maintenance of the current either/or approach, either equal contributions or equal periodic pay-out. The Department of Labor has issued no final statement or regulations as a result of these hearings. However, the largest insurer of educational institution employees, Teachers Insurance Annuity Association, has currently been examining possible alternatives to their present approach of equal contributions/unequal distributions.

11. The American Nursing Association filed a complaint with EEOC against the University of Iowa, charging that the insurance carrier it chose (TIAA) discriminates by paying unequal benefits.

12. *Griggs v. Duke Power Company* 401 U.S. 424 (1971).

13. *Stamp v. Detroit Edison Co.,* F. Supp. (E.D. Mich. 1973).

14. Serious questions are raised by: (1) the practice of "red circling" heretofore accepted; that is, to single out one individual, red circle his wage, thereby allowing it to remain outside a system of equal pay; (2) the practice of paying women less as a result of market conditions.

15. *Shultz v. Brookhaven General Hospital* 305 F Supp 424 (N.D. Tex., 1969).

16. *Carter v. Gallagher* 452 F 2nd 315 (8th Cir. 1971).

17. Title IX of the Education Amendments of 1972 (20 U.S.C., Sections 1681 et seq.).

18. Title IX of the Education Amendments of 1972 Section 86.3(a).

19. *Jersey Central Power and Light Company v. Electrical Workers,* 1/30/75.

20. *Watkins v. United Steel Workers of America* (D.C. La., 1974) 7 EPD.

21. *Waters v. Wisconsin Steel Works of International Harvester* (CA-7 1974).

22. *Savannah Printing Specialities and Paper Products v. Union Camp Corp.* (D.C. Ga., 1972).

23. *IBID.*

24. *Geduldig v. Aiello,* S.C. No. 73-640, June 17, 1974.

25. *N.Y. Times,* January 29, 1975, "Special to the New York Times".

26. *Washington Post,* April 16, 1975, "EEOC urged to Delay Action on Lay-Off Rules".

27. Title IX of the Education Amendments of 1972, Section 86.7(b).

28. Charlotte Croman, "Woman and Unions". "Unladylike and Unprofessional: Academic Women and Academic Unions."

29. See both Richard Lester's book, *Antibias Regulation of Universities,* (McGraw-Hill Book Co., 1974) and Jan Vetter's report for the Administrative Conference of the United States, entitled: *Affirmative Action in Faculty Employment under Executive Order 11246.*

30. *Bekins Moving and Storage Company v. National Labor Relations Board* 12 R.C. 4352, 1974.

31. H.R. 77—Congressman Frank Thompson introduced this bill in January 1975 to extend the National Labor Relations Act to include public service employees.

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