

Academic Collective Bargaining: Status, Process, and Prospects*

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Abstract

The authors provide a perspective, as scholars and practitioners, of the organizational, demographic, legal and contextual variables that inform the past and the future of faculty unions in U.S. colleges and universities. They ask how to best conceptualize and evaluate the impact of faculty unions; from the inception of academic unionization in the 1960's to the present, and further, what is known and not known about collective bargaining.

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Abstract, cont.

Issues examined include: factors that influence negotiation processes; governance; bargaining dynamics; the institutional and demographic factors associated with faculties who vote in unions; compensation; and the legal status of graduate student unions. Collective bargaining with faculty is viewed through a wider lens of “craft unionism”, as it is known in the industrial labor relations context. An effort is made to review contemporary subjects and challenges engaging the parties during negotiations in the second decade of this century. The paper offers an analysis of the impact of collective bargaining on changes in decision making processes and forums and offers insight into the kinds of management strategies most effective in organized environments. Finally, the authors ask what is new about negotiations, and what has remained the same during their experiences over the past 45 years.

Collective bargaining involving faculty has reached the seventy-year mark, from its nascent beginnings at the New School for Social Research and Howard University, at community colleges in Michigan and Wisconsin, and at the City University of New York in the 1960s.¹⁵ Given this history, it seemed timely to consider two salient sets of questions for those interested in collective bargaining in higher education. The first focuses on how to conceptualize and evaluate the impact of academic collective bargaining. What do we know and what is still unknown about faculty unionization? What contextual, institutional, and demographic variables should practitioners focus on in order to evaluate the past and predict what might be in store over the next 50 years? As but one recent example to highlight this question, legal and legislative frameworks, among the most important predictors of bargaining behavior, appear to be undergoing a fresh examination. For example, legislative change through diminishing union rights has been headline news in Wisconsin for some time. A former cradle of faculty unionization, Michigan is now a right-to-work state. Is this a developing trend for years to come, or a political aberration to be nullified in due course?

The second issue, closely related to the first, is the contemporary subjects and problems engaging the parties at the bargaining table. In other

¹⁵ Timothy R. Cain, “Campus Unions: Organized Faculty and Graduate Students in U. S. Higher Education. ASHE Higher Education Report,” *Special Issue: Campus Unions: Organized Faculty and Graduate Students in U.S. Higher Education* 43, no. 3 (2017); William A. Herbert, “The Winds of Change Shift: An Analysis of Recent Growth in Bargaining Units and Representation Efforts in Higher Education,” *Journal of Collective Bargaining in the Academy* 8 (2016). Available at <http://thekeep.eiu.edu/jcba/vol8/iss/1/1/>.

words, given the changing organizational and political environment in which bargaining has occurred, is there an identifiable set of bargaining topics? Is there something new, something unique about the scope and context of negotiations today—or is it déjà vu all over again? In answering these questions, we have tried to offer a picture of the organized and organizing post-secondary landscape and examine it for new themes or general trends. We look at conceptual ways to understand faculty unionization and areas of contention at the table. We make an effort to compare what we are witnessing today to our personal experiences as practitioners and scholars commencing in the mid-1970's.

The Context: Trends in Unionization

Collective bargaining in higher education has been studied from a variety of disciplinary perspectives which have focused on different aspects and issues associated with industrial labor relations in post-secondary institutions. Although the roots of collective bargaining for faculty date back nearly 70 years, unionization took a firm hold during the 1960's. The phenomenon spread as select states enacted legislation permitting public sector employees to unionize. Today, faculty unions are primarily associated with large public schools/systems in approximately 15 states where there is (or was) enabling labor legislation. Roughly half of the unionized professoriate works in New York or California (states with the largest two-year and four-year systems).¹⁶ This movement, which began in the public sector, continued to grow following the 1970 decision¹⁷ by the National Labor Relations Board (NLRB) which asserted jurisdiction over private colleges and universities for the first time.

Few industries are as organized as higher education, particularly if other than faculty employees are considered. Craft and trade unions, for example, trace their roots back to the 1930's at various Ivy League institutions, although data regarding non-faculty employees has not been systematically collected.¹⁸ As "services" in colleges and universities are contracted out, unions may become less prevalent. However, in many instances, certain types of work contracted out (for example, to adjunct or

¹⁶ "Regional Conference at California State University, Long Beach," *National Center for the Study of Collective Bargaining in Higher Education and the Professions*, 2019, <http://www.hunter.cuny.edu/nscsbhep>.

¹⁷ Cornell University, 183 NLRB 329 (1970).

¹⁸ At one time, the National Center for the Study of Collective Bargaining, now at Hunter College, CUNY, collected this data. Research on staff other than faculty personnel was also collected by the College and University Personnel Association, now CUPA/HR. This information may also have been collected by scholars at the ILR School, Cornell University. Daniel Julius, *Collective Bargaining in Higher Education* (Washington, DC: College and University Personnel Association, 1985).

contingent faculty teaching part-time) have become growth areas for unionization. In a number of public systems, part-time faculty are included in units with full-time faculty. In other cases, in both the public and private arenas, part-time faculty have organized into separate bargaining units.

While the labor movement in the U.S. may be declining based on union membership in the private sector, select industries in both the private and public sectors remain heavily unionized, such as professional sports, entertainment, the U. S. Postal service, post-secondary education, and the like. Of course, it is only in certain sectors of higher education where full-time faculty unions flourish: in the larger, public two-year and four-year systems and institutions in labor friendly states. The overwhelming number of full-time faculty working in private higher education remain unorganized, although non-faculty employees, such as service and maintenance workers, in these institutions may have been organized for years. Interestingly enough, in the most prestigious institutions and systems is where we are seeing the growth of unionization among part-time faculty, graduate students, and post-doctoral fellows.¹⁹

As noted above, the NLRB took jurisdiction over faculty in private colleges and universities in 1970, and over the following decade faculty in a number of private institutions, primarily in the northeast and Midwest where public sector colleagues had already joined unions, organized. Organized activity in the private sector slowed considerably, particularly for full-time faculty, following the Supreme Court's *Yeshiva* decision²⁰ in 1980 where the court found that faculty at "mature" colleges and universities were collectively found to be "managerial" employees and therefore not afforded coverage under the NLRA.²¹ In other words, due to

¹⁹ Nicholas DiGiovanni Jr., "The New Focus of Academic Organizing: Private Institutions Now Face Academic Collective Bargaining," *Journal of Collective Bargaining in the Academy* 7 (2015). In past years' data (a faculty directory was published by the National Center at Hunter College, identifying the entire university of academic unions by individual units, by state, institution, bargaining agent, initial contract year, etc.). While the Center still publishes an informative newsletter, unfortunately a directory has not been published for nearly 8 years, making current generalizations difficult. The major bargaining agents, AFT, AAUP, and NEA know which units are operative, but a comprehensive directory is no longer available.

²⁰ *NLRB v. Yeshiva University*, 444 U.S. 672 (1980).

²¹ The Supreme Court wrote in the decision: "Unlike the purely hierarchical decision-making structure that prevails in the typical industrial organization, the bureaucratic foundation of most 'mature' universities is characterized by dual authority systems. The primary decisional network is hierarchical in nature: Authority is lodged in the administration, and a formal chain of command runs from a lay governing board down through university officers to individual faculty members and students. At the same time, there exists a parallel professional network, in which formal mechanisms have been created to bring

their considerable collective power through institutional governance systems, they were the “management” of the university and were therefore ineligible to negotiate as unionized employees. The decision is complex and does not apply to faculty in public jurisdictions.

In the wake of the *Yeshiva* decision, many faculty units were dissolved and further unionization among private sector, full-time faculty slowed considerably. But it is also of interest, perhaps, that nearly forty years after that decision there are nearly double the number of academic employees under contract in private institutions, primarily due to large increases in the numbers of adjunct, part-time, and graduate student employees seeking representation. In addition, many private schools with unions prior to *Yeshiva*, opted to continue these relationships for a variety of reasons. While *Yeshiva* University remains the law of the land, the NLRB must adhere to its holdings.

The *Yeshiva* decision did not touch adjunct faculty, whose collective power in governance is largely non-existent at most, if not all, colleges and universities, nor did the decision address graduate student workers whose bargaining status hinges more on the question of employee status versus student status. (The situation involving graduate students remains particularly fluid as we shall see later in this article.)

The Growth of Unions Representing Adjunct and Contingent Faculty

The growth areas for faculty organizing since the late ‘90s, and in the immediate years ahead, will undoubtedly continue to be among contingent faculty, which includes part-time/adjunct faculty and full-time, but non-tenure-track faculty. In addition, there has been, and may continue to be, increased unionization among graduate teaching and research assistants. Recent data supports this reality, particularly for contingent faculty. In 1998, the National Center for the Study of Collective Bargaining in Higher Education and the Professions reported in its *Directory of Faculty Contracts*²² that a total of 75,882 adjunct and part-time faculty were represented by unions. By 2012, that number had risen to 147,021, almost double the number in 14 years.²³ While there were 107 free-standing units of adjunct, part-time faculty members, not counting the units that include part-timers along with full-time faculty, some five years ago, at least 40

the expertise of the faculty into the decision-making process.” 444 U.S. 672, 696-697.

²²Richard Hurd, J. Bloom, and Beth Hillman Johnson, (1998) “Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education,” *The National Center for the Study of Collective Bargaining in Higher Education and the Professions* 24 (1998).

²³ Joe Berry and Michelle Savarese, *Bargaining Agents in Institutions of Higher Education*, ed. R. Boris (New York: National Center for the Study, 2012), vii. This is the last year the directory was published.

new adjunct bargaining units have been added over the past several years, particularly because of a surge in organizing activity by the Service Employees International Union (SEIU), which has dedicated enormous resources to their Adjunct Action and Faculty Forward campaigns. The SEIU's recent successes at major and prestigious institutions, including Duke, Tufts, Washington University, Northeastern, George Washington, and Boston University (to name but a few) have been noteworthy. And there is no sign that these efforts will slow down. New units are being added on a regular basis, and these numbers are likely to climb, as attention is being focused on the increased use of adjunct faculty, as well as the relatively lower compensation and troublesome working conditions for many such faculty around the country. While some adjuncts in the professional fields or in applied graduate disciplines are working in postsecondary institutions because they desire to teach, most of the focus of union organizing has been centered on adjunct faculty trying to make a living teaching part-time. These faculty are, in a number of schools, a generally neglected group with little compensation, no benefits or job security, and, some may argue, a lack of respect from full-time faculty. Adjuncts may see unionization as a road to better pay, more security, and the beginnings of campus respect. As their numbers have steadily grown to the point where they teach more than half of the credit-bearing courses at many institutions, this under-class of academia has become a prime target for union organizing in both the public and private arenas.

While organizing adjuncts in the public sector will continue, it is also true that in the private sector union organizing of adjuncts will be easier than organizing full-time faculty, because union organizers will be unencumbered by the *Yeshiva* decision. Private sector institutions will find it virtually impossible to make a credible argument that their adjunct faculty—like their tenured faculty—are managerial employees under *Yeshiva*. Adjuncts simply do not have the managerial involvement in running their institutions that full-time tenured and tenure-track faculty have. Indeed, the NLRB's 2014 decision in *Pacific Lutheran University* (discussed below) opined that, for the most part, the Board will not look favorably on any managerial exclusion arguments for contingent (i.e., non-tenure-track) faculty, whether full or part-time. The lack of security for contingent faculty compared to that held by tenured faculty was deemed to be a major factor for the NLRB, as it laid out its new approach to determining whether or not a petitioned group of faculty are managerial or not.

New Life to Graduate Teaching Assistant Unionization

Currently, over 64,000 graduate student employees are represented by unions, distributed among 28 institutions of higher education, almost all in the public sector.²⁴ Over half of unionized graduate students work in

²⁴ Berry and Savarese, *Bargaining Agents in Institutions of Higher Education*.

three states: New York, Florida, and California. Most of these are either teaching assistants or research assistants at their universities. While such units have been around for many years, the private sector has been largely immune from graduate student unions, as the NLRB, except for a brief period in the first years of the century, has not been favorably disposed to finding that such individuals were students. Its 2004 NLRB decision in *Brown University* found that such individuals were primarily students and had no right to unionize under the National Labor Relations Act.

However, all this changed in August 2016 with the NLRB's decision in *Columbia University*.²⁵ In that case, the Board was comprised of a majority of Democratic, pro-union members, and reversed the 2004 *Brown University*²⁶ case while holding that, despite the fact that graduate teaching assistants and research assistants were students, they were *also* employees, and, as such, they enjoyed the full protection of the National Labor Relations Act. In the wake of this decision, organizing efforts increased and petitions for NLRB elections were filed at many institutions.²⁷ Unions such as the SEIU and United Auto Workers (UAW) were certified as bargaining representatives of graduate student workers following NLRB-run elections. Collective bargaining agreements for graduate student workers were negotiated and concluded at such private universities as Tufts, Brandeis, American University, and The New School. As of this writing, negotiations are ongoing at Harvard and Columbia in units of teaching and research assistants. As with the adjunct faculty units, certification of graduate teaching and research assistant units may be the first time many private institutions have had to consider academic collective bargaining of any type.

However, whether this trend in the private sector continues remains to be seen. In May 2019, the NLRB—now dominated by Republican appointees under the Trump administration—announced:

The National Labor Relations Board will be engaging in rulemaking to establish the standard for determining whether students who perform services at a private college or university in connection with their studies are "employees" within the meaning of Section 2(3) of the National Labor Relations Act (29 U.S.C. 153(3)).

²⁵ Columbia University, 364 NLRB No. 90 (2016).

²⁶ Brown University, 342 NLRB 483 (2004). Graduate teaching and research assistants were primarily students with no right to unionize.

²⁷ Yale University and UNITE HERE Local 33, 1-RC-183016; 1-RC-183022; 1-RC-183-025; 1-RC-183031; 1-RC-183038; 1-RC-183039; 1-RC-183043; and 1-RC-183050 (January 25, 2017); See also Duke University and Service Employees International Union CLC/CTW, No. 10-RC-187957, NLRB, Region 10 (January 18, 2017).

On September 23, 2019, the NLRB followed through and announced its proposed rule which held that:

In order to more effectively administer the National Labor Relations Act (Act or NLRA) and to further the purposes of the Act, the National Labor Relations Board (the Board) proposes a regulation establishing that students who perform any services for compensation, including, but not limited to, teaching or research, at a private college or university in connection with their studies are not “employees” within the meaning of Section 2(3) of the Act. The Board believes that this proposed standard is consistent with the purposes and policies of the Act, which contemplates jurisdiction over economic relationships, not those that are primarily educational in nature. This rulemaking is intended to bring stability to an area of federal labor law in which the Board, through adjudication, has reversed its approach three times since 2000.

If this rule becomes final (there is a public comment period that expires on December 31, 2019), the NLRB will no longer have jurisdiction over such student workers and future unionization efforts to organize graduate student workers will likely shift away from the NLRB election procedures and instead lead to public relations campaigns to force universities to voluntarily recognize graduate student unions.²⁸

Full-Time Faculty Organizing in the Private Sector: The NLRB Redefines the Test

While *Yeshiva* remains bedrock law, the interpretation of that decision in individual cases has varied since 1980, with the Board in given cases sometimes finding managerial status and sometimes not. In 2012, the Board signaled that it would completely revisit how it would analyze managerial employee cases going forward and requested amicus briefs from the public in the case of *Point Park University* on the issue of whether the faculty members at that institution were statutory employees or, rather, should be excluded as managerial employees under *Yeshiva*. This followed a remand from the Court of Appeals for the D.C. Circuit which denied enforcement of the previous Board ruling that the Point Park faculty were not managerial. The Court believed that the Board had failed to articulate how it reached its result.

²⁸ Such efforts have already been successful at Georgetown University and, ironically, at Brown University where those institutions have voluntarily recognized graduate student unions over the past year.

Specifically, in its call for briefs, the Board said the briefs should address some or all of the following questions:

1. Which of the factors identified in *Yeshiva* and the relevant cases decided by the Board since *Yeshiva* are most significant in making a finding of managerial status for university faculty members and why?
2. In the areas identified as “significant,” what evidence should be required to establish that faculty make or “effectively control” decisions?
3. Are the factors identified in the Board case law to date sufficient to correctly determine whether faculty are managerial?
4. If the factors are not sufficient, what additional factors would aid the Board in making a determination of managerial status for faculty?
5. Is the Board’s application of the *Yeshiva* factors to faculty consistent with its determination of the managerial status of other categories of employees and, if not, (a) may the Board adopt a distinct approach for such determinations in an academic context or (b) can the Board more closely align its determinations in an academic context with its determinations in non-academic contexts in a manner that remains consistent with the decision in *Yeshiva*?
6. Do the factors employed by the Board in determining the status of university faculty members properly distinguish between indicia of managerial status and indicia of professional status under the Act?
7. Have there been developments in models of decision making in private universities since the issuance of *Yeshiva* that are relevant to the factors the Board should consider in making a determination of faculty managerial status? If so, what are those developments and how should they influence the Board’s analysis?
8. As suggested in footnote 31 of the *Yeshiva* decision, are there useful distinctions to be drawn between and among different job classifications within a faculty—such as between professors, associate professors, assistant professors, and lecturers or between tenured and untenured faculty—depending on the faculty’s structure and practices?

In response to this request, many amici briefs were filed. The AAUP filed an extensive brief urging the Board to read *Yeshiva* narrowly. It went on to offer additional factors the Board should consider. Essentially, the thrust of the AAUP’s brief was that since the 1980 decision, the growth of the corporate business model of running colleges and universities has increased dramatically and is now pervasive. The increase in administrators, the growing percentage of budgets now devoted to

administration rather than instruction, and the examples of faculty advice being ignored on key educational matters were all cited by the AAUP as factors for the Board to consider in future *Yeshiva* cases.

Ironically, the Board did not use these briefs to decide the *Point Park University* case but later ended up utilizing the input from the public in deciding *Pacific Lutheran University*,²⁹ where the Board set forth in detail what it expected an administration to prove when it makes an argument that its faculty are all managers. The *Pacific Lutheran* standards remain as the current blueprint for institutions that wish to make the case for the managerial status of its faculty.

In *Pacific Lutheran University*, the NLRB specified the analytical framework it would use in addressing such issues going forward. The Board wrote that in examining the degree of control faculty members have in a given case, it would distinguish between “primary” and “secondary areas” of decision-making. The Board defined as “primary” considerations three broad areas of inquiry:

- Academic Programs: For example, the university’s curricula, research, major, minor and certificate offerings, and the requirements to successfully complete those offerings.
- Enrollment Management: The size, scope, and make-up of the university’s student body.
- Finances: The power to control or make effective recommendations regarding financial decisions, both income and expenditure. For example, what the school charges for tuition.

The Board considered the secondary areas to be:

- Academic Policy: For example, teaching/research methods, grading policy, academic integrity policy, syllabus policy, research policy, and course content policy.
- Personnel Policy and Decisions: Faculty control over personnel policy, including hiring, promotion, tenure, leave, and dismissal policies.

The Board then went on to hold that, within these areas, the institution must prove “actual control or effective recommendation” power by the faculty. Mere paper authority is insufficient. The Board stated that it will need “specific evidence or testimony regarding the nature and number of faculty decisions or recommendations in a particular decision-making area, and the subsequent review of those decisions or recommendations, if any, by the university administration prior to implementation, rather than mere conclusory assertions that decisions or recommendations are

²⁹ 361 NLRB No. 157 (2014).

generally followed.” As to what constitutes “effective recommendations,” the Board stated the faculty’s recommendations “must almost always be followed by the administration,” to be deemed effective.

Finally, and importantly, the Board stated that an evaluation of whether the faculty actually exercises control or makes effective recommendations requires an inquiry into the nature of the employment relationship between the faculty in question and the institution. Commenting at length on the “corporatization” of higher education, and the connected use of contingent faculty, the Board noted that contingent faculty—such as full-time, non-tenure-track lecturers—have limited appointments that often depend on a single administrator “producing the kind of hesitancy regarding controversy or offense in teaching and research that limits academic freedom.” Such faculty members tend not to be involved in governance at most institutions and the net result “of their unique, temporary relationship frequently is a diminution of the faculty voice.” The Board concluded that it would examine “whether the nature of the employment in issue prevents those affected from helping shape the academy as a whole at their individual institutions.”

Impact of *Pacific Lutheran*

The continuing impact of this decision on academic unionization will be considerable, and the decision raises a number of significant concerns. For example:

- The Board gave no indication of whether an institution must establish faculty decision-making in all three of the so-called primary areas to show managerial status, or whether something less will suffice. Is one primary factor sufficient? What if no primary factor is proved, but both secondary factors are proved?
- What if an institution can show faculty power in everything except financial decisions?
- The Board’s emphasis on the fact that “effective recommendation” means that faculty recommendations “must almost always be followed.”
- The fact that normal layers of administrative review of faculty recommendations prior to final enactment—even if perfunctory—may block a finding of managerial status.
- The clear indication that most full-time contingent faculty will not be found to be managerial because of the tenuous nature of their appointment.
- These and other types of issues will undoubtedly continue to be litigated before the Board and in the courts.³⁰

³⁰ One U.S. Circuit Court has weighed in on *Pacific Lutheran*. In *University of Southern California*, Case No. 17-1149 (D. C. Cir., March 12, 2019), the Court of

What We Do Know

When we endeavor to wrap our arms around the historiography of unionization, or review the institutional landscape associated with faculty unionization, generalizations about the terrain, as we argue, are not easy to measure. There are always exceptions attributable to particular personalities and situational concerns. We know that the process unfolds somewhat differently in different universities or systems, such as at Rutgers, the University of California at Santa Cruz, the University of Montana, the University of Cincinnati, the University System of New Hampshire, the State Colleges and Universities in Pennsylvania, the University of Florida, the Graduate Center at City University of New York, and Westchester Community College—not to mention private institutions like the University of San Francisco, Long Island University, or Rider University. Colleges and universities are different in mission, culture, management practices, funding, and the type of students they serve; therefore, it comes as no surprise that collective bargaining and faculty administration relationships play out in different ways in different institutions and systems. In such contexts, collective bargaining reflects varying legal structures, cultures, and personalities, but is anything unique or truly new?

We certainly believe from our experience that leadership matters, but few studies seem to be able to substantiate this point. The leadership issue is complicated due to the glacial pace of change in colleges and universities, high turnover rates for administrators, and the oddity of institutions where the progressives of one era are invariably pegged as the reactionaries of the next.

There are other observations where we feel more comfortable making generalizations. We now know that collective bargaining has served to codify previously informal policies, so that overall administrative and human resources practices have become more structured, transparent, and standardized. Unionization has brought consistency and more equity to compensation practices, some finality to governance interactions, and “binding arbitration” to issues covered in labor agreements (many of which are very similar). Collective bargaining has invariably (in the areas of compensation and grievance administration)

Appeals for the D.C. Circuit upheld the basic parameters of Pacific Lutheran but also rejected the Board’s treatment of how the disputed category of adjunct faculty’s numbers on governance committees should affect the outcome. The NLRB had “counted heads” and essentially held that if the adjuncts on a faculty committee did not constitute a majority of the committee members, then their managerial work on such committee could not be considered evidence of managerial status. The Court found that such a strict rule was a major problem and returned the matter back to the Board.

shifted authority upwards to the presidential and system offices, as local flexibility often gives way to broader institutional interests. In institutions and systems where faculty and non-faculty are organized, collective bargaining has served to standardize human resources practices for all categories of employees, although there often remains the struggle to equalize benefits across campus where different union constituencies may have sharply different goals and do not always share a common interest in standard benefits.

We know that unionization has served to identify supervisory responsibilities (for deans and chairs) and necessitated a more standardized way of managing. Unionization has inevitably ushered third parties into the decision-making process (arbitrators, mediators, legislators), and in general it has led to greater and more varied involvement of union leaders in institutional decision making—directly or indirectly—under the protection of state and, in the private sector, federal legislation.

We also know that, despite early misgivings, the collective bargaining process itself, one that accommodated a wide range of workers and professions since the late 1930s, also proved adaptable to faculty collective bargaining. This is not too surprising considering that ballet dancers, musicians, engineers, journalists, teachers, and other professionals, not to mention other types of industrial workers, public sector professionals, and, in some cases, military personnel, have bargained collectively for years.

The Broader Industrial Labor Relations Context: The Craft Analogy

Earlier studies of unions in higher education made many claims about the probable impact of unions on campus.³¹ Many suggested that collective bargaining may be incompatible with the dictates of professionalism and values of the professoriate. However, as we have noted, there is very little research that establishes a causal relationship, particularly in regard to professionalization. Perhaps a better lens through which to evaluate the actions of organized faculty is through a comparison to craft unions in industrial or corporate settings (e.g., electricians, plumbers, musicians, printers, journalists, etc.).³² While such comparisons are by no means

³¹ Edwin D. Duryea and Robert S. Fisk, *Faculty Unions and Collective Bargaining* (San Francisco: Jossey-Bass Publishers, 1973); Robert K. Carr and Daniel K. Van Eyck, *Collective Bargaining Comes to the Campus* (Washington: American Council, 1973); Joseph W. Garbarino, *Faculty Bargaining: Change and Conflict* (New York: McGraw-Hill, 1975).

³² Margaret K. Chandler, "Craft Bargaining," in *Frontiers of Collective Bargaining*, ed. John Dunlop and Neil Chamberlain (New York: Harper and Row, 1967), 50-74; Daniel J. Julius, "The Status of Faculty and Staff Unions in Colleges and Universities: 1930s-1990s," in *Managing the Industrial Labor Relations*

exact, it is useful to consider the similarities between faculty and craft unions.

Crafts are known to be flexible within their own groups but rigid in their external relations. They can be adaptable, but this is not one of their prime characteristics. If craft employment conditions and rights are provided for, the craft will concern itself with administering these. If seniority or craft entrance criteria are threatened, for example, rigid reactions can occur. The group may rise to defend its jurisdictions, and a great deal of non-productive activity may take place. Crafts have the ability to participate well in the managerial process, but the relationship of a craft to the management with which it deals can become destructive if both parties focus on the defense of their respective rights to the neglect of the problem both are trying to solve.

Craft employees who work on project-type tasks usually have the freedom to run their affairs autonomously; the contractor for whom they work counts on this. However, when craftspeople work in large organizations, the relationship with managers who head the organization can cause problems. The cause of these difficulties is, however, frequently misstated. Observers perceive a clash of viewpoints because the “craft orientation” is often contrasted with that of the “bureaucrat.” In reality, there are some marked *similarities* between craftspeople and bureaucrats. Both stress universal standards, specialization, and evaluation of competence on the basis of performance. Conflicts arise not because of the differences but because of the similarities.³³

As colleges and universities evolved in the early 1900s, professional specialists (faculty) confronted another emerging group of specialists, academic administrators, who claimed responsibility for many of the same functions and prerogatives. Indeed, the role of faculty and administration in shared governance matters has never been clearly delineated.³⁴ With the arrival of collective bargaining 60 years later, the

Process in Higher Education, ed. Daniel J. Julius (Washington, D.C.: College And University Personnel Association, 1993).

³³ Chandler, “Craft Bargaining”; Margaret K. Chandler and Daniel J. Julius, *Faculty Vs. Administration: Rights Issues in Academic Collective Bargaining* (New York: National Center for the Study of Collective Bargaining in Higher Education and the Professions, 1979).

³⁴ The AAUP has issued statements concerning shared authority and the delineation of the territorial boundaries of the respective parties. Various state statues and accreditation bodies have also addressed these matters. However, these issues are by no means settled and remain salient and often undefined in both unionized and non-unionized institutions. The issues that are shared depend on a variety of factors which include the nature of what is being decided, whether a crisis exists, the culture and history attendant to shared decision making in the institution, as well as other systemic and personality-based factors.

inevitable jurisdictional disputes arose. In the 1960s and 1970s, as well as today in locations where faculty are organizing, these disputes were hastened by enrollment-related factors, public calls for institutional accountability and lower tuition rates, and the loss of legislative funding. As administrators (and legislators) endeavored to assert control over faculty workloads, promotion and tenure standards, job security and the like, faculty (who, in addition, may have experienced a real decline in salaries and decision-making prerogatives), joined unions in states where enabling legislation facilitates collective bargaining.

Faculty unionization can be attributed more to the craft orientation of the professoriate, rather than economic factors. Assertion of craft rights (i.e., control of work schedules, selection of course content, defense of appointment, promotion and tenure policies, and protection of the faculty's role in curriculum and teaching methodology) arguably remain the most important stimulus for unionization and a primary impetus for collective bargaining.

If the analogy of crafts to traditional professional orientations is accepted, the debate over professionalism versus unionism becomes less meaningful. If, by unionism we mean seniority-determined work rights, uniform procedures and policies in the workplace, and guaranteed job security, a potential conflict may exist with professional academic values. However, the above analogy fits with what is thought of as the “industrial” approach to unionism, not the craft approach.

As craft-type unions, academic employees have negotiated provisions into labor contracts that reflect a professional/craft orientation. For example, bargaining agreements do not usually specify the use of standardized personnel policies, nor do they dispense with traditional academic criteria used to assess intellectual quality. The majority of labor agreements contain language protecting tenure. The traditional argument for tenure is based on its relationship to academic freedom. Without the tenure process, it can be argued, the professor is merely an “employee,” directly dependent on the administration. For the professional craft group, however, tenure is the keystone to its existence. Through the tenure process, traditional craft controls can be exercised. Perhaps, in this context, it is the equivalent of the hiring hall in the construction trades.

Which Unions Are in Play?

The traditional education labor unions—AAUP, AFT, and NEA—are still actively involved in organizing faculty and staff, but their new competition comes from more traditional blue-collar unions. For example, as noted, the SEIU has targeted contingent faculty and some graduate students in its organizational efforts, in addition to its usual activity among higher education staff. While all three of the traditional educational unions pledge support for adjunct and graduate teaching assistant unionization, for example, and all have active organizing wings, they are not the prime organizers of these folks. Instead, the SEIU, UAW, and others are

presenting a different look for those groups interested in collective bargaining.

Nevertheless, the three main unions are seeking new ways to become relevant to a wider body of potential faculty members and staff. Like other unions in the U.S., issues of bread and butter outweigh ideology, and all higher education bargaining agents have proved willing and able to merge in various institutions to present faculty with a more inclusive look. According to the National Center for the Study of Collective Bargaining in Higher Education and the Professions,³⁵ those three labor organizations represent 54% of all unionized faculty; however, it is frequent to see collaboration between unions, and indeed a number of merged unions now represent many bargaining units. As one example, United Academics, an affiliate of both the AAUP and AFT, currently represent faculty in several places around the country, including the University of Alaska, University of Vermont, and Rutgers University.

Gradations of academic status and economic differentiation among full-time faculty, graduate students, and adjunct faculty remain very salient, particularly in institutions where the full-time faculty remain unorganized, and where other professionals seek representation. In such cases, it is not politically feasible for traditional faculty agents (or associations—terminology which still is difficult to pinpoint in many locales) to jump into the fray; particularly when, as is often the case, the full-time faculty may not support collective bargaining. While the administration is often cast as recalcitrant, administrators are often responding to subtle cues from full-time faculty. This is reflected in the types of relationships that occur when those with less status and prestige endeavor to seek representation, and in the agents—more often industrial unions seeking new clientele for additional dues—which more often represent these groups. For example, the United Auto Workers represent graduate students at the University of California, Harvard University, Columbia University, and New York University. The United Electrical Workers represent graduate teaching assistants at the State University of New York and the University of Iowa, and, as noted, the now has dozens of contingent faculty units across the country, from major private universities like Duke University to community college systems in Missouri and New Hampshire. The introduction of such historically “industrial” unions into faculty organizing is partly by design, as in the case of the SEIU that has consciously sought to expand its organizing activity among faculty,³⁶ and partly by necessity, as in the case of the UAW, which suffered dramatic loss of membership in their traditional industry.

³⁵ Berry and Savarese, *Bargaining Agents in Institutions of Higher Education*.

³⁶ Already with over 2 million members and growing, the SEIU specifically highlights its recent activity in trying to organize adjunct faculty. See www.seiu.org.

Table Talk: What Issues Will Be Front and Center in Faculty Negotiations?

What will the central issues for negotiations look like in the next decade? As always, administrators at the bargaining table will hear familiar themes. We would be remiss if we left the impression that faculty concerns and challenges were only those heard at the negotiating table. While there is no doubt some overlap, the problems articulated by union spokespersons, a number of whom may not even be members of the faculty where negotiations are occurring, versus those discussed by faculty in other campus settings, may not track closely. Union spokespersons are rightfully concerned with wages, hours, and working conditions, and many are “true believers,” or elected to represent certain constituencies. In any event, we do not subscribe to the notion that the “faculty” and the “union” are the same. Opinions and views voiced at the bargaining table may or may not be representative of general faculty concerns. Our experience is that at the bargaining table faculty will complain of too much “top down” management, that shared governance is not being shared, that many students are ill-prepared for college, and decry the lack of autonomy or resources. Negotiators may complain about too much pressure to publish or engage in meaningful research, or the amount of time spent in service activities, and how the decline in staffing the institution with tenure-track faculty has only added to their burdens. They will grumble about process issues, unfair evaluations, and too much emphasis on student evaluations. They will insist that benefits be kept untouched, and those benefits being enjoyed prior to bargaining be added to those now being negotiated, salaries increased, release time for every manner of activity be instituted, and, in many locales, “work” for the union be recognized as academic service for promotion and tenure. Some of these claims should be taken very seriously, others not.

Of course, there will be lectures about arbitrary decision-making of executives, their embrace of new “corporate models,” the increasing number of administrators, and the lack of attention to the basic values of the academy in pursuit of goals of legislators or other outsiders. All these will sound familiar, some of it is true, and we would agree that faculty are at the core of what universities represent and do. Students, research funding, academic distinction, and the like come to universities because of faculty expertise; faculty are the ones who make the lifelong commitment to teach, research, and serve, and it is faculty, not administrators, whom students remember.

Simultaneously, collective bargaining often uncovers deep suspicions and fractures between schools and disciplines, exposes the haves and have-nots among senior and less senior (untenured) faculty, and causes an examination of the inequality of treatment by faculty against others who may also call themselves faculty, but who are not part of the inner power structure within departments or schools. Faculty view

collective bargaining, more often than not, as an “add-on” to existing arrangements, benefits, policies, and practices. What is good for the union may not necessarily be good for students or faculty, and this observation is drawn into sharp relief as bargaining intensifies. Although it’s a contentious and sensitive issue—particularly in areas of workload, scheduling, evaluation for reappointment, promotion or tenure—unions are sometimes faced with conflicting pressures to balance needs for accommodation or job security and control with student success and rigorous performance criteria. Added to these dynamics will be new and emerging areas of conflict, as well a few of which we discuss below.

Online Courses and Distance Learning

Front and center will be the myriad of issues surrounding online courses and distance education. Some of the likely areas of discussion will focus on workload; other areas will include the question of ownership of such courses and what compensation, if any, faculty should receive for developing such courses or for having others teach such courses. As online education advances in the years ahead, and as more and more faculty are engaged in developing and teaching online courses, there will inevitably be difficult negotiations over such issues as:

- Whether such online course work can be assigned or remain voluntary?
- How much training will institutions give faculty for online teaching?
- Will there be incentive compensation for faculty who choose to teach online? Incentives for those who choose to develop courses online?
- Should teaching an online course count equally for workload purposes as live classroom instruction? Is it more difficult, easier, or the equivalent?
- Who owns the intellectual property to such courses?
- Will faculty who develop a course receive royalties when someone else teaches it?
- Who owns the courses? The institution, the faculty member, or is it shared?
- Is there room for some profit sharing for developing online programs?

Some of these issues are already being dealt with in collective bargaining agreements. No doubt that where an institution has made a substantial investment in online education, there will be added pressure to share the “profits” of their endeavors with the faculty involved. Long discussions on the vagaries and intricacies of copyright law will ensue.

Family-Centered Issues

Here, colleges and universities will inevitably be faced at the bargaining table with demands to accommodate family needs and to strike the proper balance between work and family. This is the era when all employers have had to modify their work requirements with the realities of family life in the 21st century.³⁷ Unions have made, and will continue to advocate for, provisions in collective bargaining agreements that focus management's attention on the needs of individual workers in all aspects of their personal lives—from the challenges of child rearing, and the poignant and time-consuming care of elderly parents, to the complex issues of mental health and the all-consuming emotions of divorce and other personal crises. Time off for such events—with or without pay—will likely be a benefit that unions will strive to achieve in their negotiations with administrations.

On this point, many faculty contracts already embrace not only the basics of the Family Medical Leave Act (FMLA) but other family-friendly policies that are not required by law. These include paid time for certain family emergencies, suspending the tenure clock for pregnancies and early child rearing, special provisions to cover adoptions, and other family-friendly policies. Current issues often center on demands for entire semesters off, with pay, for both mothers and fathers.

In dealing with such issues at the table, institutions of higher education will not have the option that non-educational employers have to argue that personal life issues must sometimes yield to the competitive need for high production and achievement of maximum profit. And while the daily business of the university needs to be attended to, unions can make compelling cases that education will not be ruined by accommodating the personal vagaries of individual faculty life, and that indeed campuses should lead the way on this movement.

The Impact of Technology on Doing Business

In addition to the focused issue of online education mentioned above, the new ways of communicating—email, texting, Twitter, Facebook, and

³⁷ Indeed, polling results from the National Partnership for Women & Families, issued on December 3, 2012, indicate that regardless of party affiliation, a majority of respondents struggle with the balance between work and family responsibilities. The majority feel that Congress should pass legislation that would require paid sick days and paid family and medical leave insurances. While Congress may struggle with such issues, some states, such as Massachusetts and Vermont, have already moved forward by guaranteeing paid time to employees within the state. This trend is likely to continue, although with the advent of the Trump administration, great care should be exercised in making generalizations.

other social media—will be part of the dialogue at the table. For example, students may still need face-to-face office time, but they are much more likely to communicate with their professors via email—and to assume they can do it at any time of the day or night. Indeed, thousands of students taking online courses never see their professor; in some locales students can get a degree without attending a traditional class. As such, some questions to consider would be:

- What are the 21st century means of communications between faculty member and student?
- Administrations will rightfully expect faculty to respond to student needs, but to what degree? This becomes a workload issue in contract talks.
- What faculty post on Facebook for their students will be a new area of concern, particularly as to the scope and propriety of such postings. Other issues that entangle new technologies with the educational process may also find their way to the bargaining table.
- For those who teach online, how will they be evaluated by students and administration? How does a colleague, chair or administrator “observe” an online course in action, and how is such information incorporated into rank and tenure considerations? What changes will need to be made to the methods of evaluating faculty?

Regarding student evaluations, paper course evaluations are quickly giving way to online evaluations. This raises questions about when such online evaluations should be done, what form they should take, what type of access professors will have to such evaluations, and what they can be used for. Again, all are items for discussion at the table.

The Right to Criticize Administrations

Academic freedom has always been a major subject of bargaining, as well as a major historical issue concerning academic professionalization and autonomy. Here the AAUP deserves credit for its pioneering role in the development of policies protecting academic freedom. Most labor agreements covering faculty contain academic freedom provisions adopted from original AAUP statements. Such provisions remain at the heart of virtually all faculty contracts and can be the third rail of negotiations if administrators seek to restrict them in any way.

Of course, it should be noted that while faculty unions have vigorously fought—and will continue to fight—for academic freedom, they could ironically also undermine academic freedom because of their organizational goals. For example, for many years at the University of San Francisco,, tenured faculty could be fired for not paying union dues;

academic freedom, also covered in the labor agreement, notwithstanding.³⁸ The dilemma of union solidarity, the need for dues, and the rights of faculty to exercise freedom of conscience when it comes to joining or criticizing the union are also part and parcel of the bargaining environment. Here, unions have had more difficulty reconciling competing definitions of academic freedom.

On the nature of academic freedom itself, we have observed that unions have already started to push for more expansive visions of what academic freedom means. They have sought—and will continue to seek—to have academic freedom embrace far more than speech in the classroom or freedom of research. We believe that with court restrictions on First Amendment rights of public employees,³⁹ public sector faculty especially may seek broader contractual guarantees of their right to criticize administration policies, while force-fitting it under the umbrella of academic freedom.

This discussion may also include what faculty choose to say on Facebook posts as well. The growing volume of advice and case law from the NLRB on what constitutes protected concerted activity and the limits on the degree to which management can limit criticism of the employer on social media sites is still evolving and has already been a source of litigation. Faculty unions will press for contractual guarantees of their right to criticize the administration (an easy target) in social media settings and

³⁸ Efforts to have the University of San Francisco faculty accept something less than forced dues payment upon employment, a provision based on freedom of conscience to mandatory union membership, where faculty could pay an equivalent amount in dues to another organization, led to significant labor strife in the 1980s.

³⁹ The lead case in this area is *Garcetti v. Ceballos*, 547 U.S. 410 (2006). In that case, a California district attorney, Richard Ceballos, was demoted and transferred after he wrote a memorandum to his supervisors in which he criticized the sheriff's department and its practices. His suit against his supervisors claimed that he had been retaliated against for exercising his First Amendment free speech rights. The Supreme Court ruled against Ceballos holding that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." The Court reasoned that public employers must have the ability to restrict the speech of their employees in order for public institutions to operate efficiently and effectively. Since then, some other federal court decisions have limited free speech rights of public employees in different settings. See, for example, *Savage v. Gee*, 665 F.3d 732 (6th Cir. 2012); *Demers v. Austin*, 2011 U.S. Dist. LEXIS 60481 (E.D. Wash. 2011); *McArdle v. Peoria School District*, 7th Cir., No. 11-2437 (Jan.31, 2013) (An Illinois middle school principal fired after she charged her predecessor and immediate supervisor with misuse of public funds lacks a First Amendment retaliation claim because she spoke as a public employee on a job-related matter rather than as a citizen on a matter of public concern).

elsewhere, armed with the guidance and rationale of the NLRB. Even though the Board only covers the private sector, public sector unions, hamstrung by the Supreme Court's *Garcetti* ruling,⁴⁰ will push administrations at the table to provide the protections that the Court has not given. In addition, the new means of communicating with the world—Facebook and Twitter, for example—raise technical issues regarding the traditional mandate that the faculty member should always indicate that s/he is not an institutional spokesperson. Does every tweet or post need a disclaimer, or will such social media and other 21st century modes of communication somehow be exempt from the 1940 AAUP mandate?

Merit Pay and Compensation Issues

On the administration side, there will be a growing demand to pay faculty based on performance, as well as student and institutional outcomes measures. Merit pay—frequently a contentious issue now—will only grow in importance, as students, legislators, and parents demand accountability. Administrations will ask “what is working and what is not?” How can merit be woven into the collective bargaining agreement in a way that respects and rewards faculty efforts and success (we would argue only with the faculty union as a partner not as an adversary), and is not merely perfunctory window dressing? The format for deciding upon merit pay, the criteria to be used, and the amount of the raise dedicated to merit, including the link of compensation to institutional outcomes, will be salient topics. It may also be the case, particularly in larger state systems where negotiations are conducted by members of the Governor's staff representing the employer, that funds will be so scarce that merit or across-the-board increases will not be forthcoming. It is one thing to argue about merit pay when there are funds to distribute. In locales where the proposed settlement is so meager, the parties may simply return to universal cost-of-living increases.

Regardless of how salary money is distributed, administrations—both public and private—will struggle with raising revenues to support such increases. The reality facing virtually every institution in the country is that tuition can only be raised so much. The drive to keep tuition

⁴⁰ *Garcetti v. Ceballos*, 547 U.S. 410 (2006). See footnote 20. The trouble posed by *Garcetti* for those in the public sector is the Court's exclusion of First Amendment protection for a public employee when she/ he is speaking “pursuant to his official duties” as a public employee. Thus, criticism of administration policies might not enjoy the protection of the First Amendment in many settings. See, for example, *Demers v. Austin*, supra where a claim by a Washington State University faculty member that he was retaliated against for publishing a criticism of the administration and his own School of Communication failed in federal court.

increases very low (fueled by the realities of low inflation⁴¹); the high cost of tuition, room, and board at many institutions; and growing student debt will likely be maintained in all quarters. Couple this with the fact that in many areas of the country, such as the Northeast, the demographics regarding high school graduates are alarming. Fewer students coming out of high school means more institutions competing in a pool of fewer students. For small institutions dependent on student tuition as their sole source of significant revenue, the economic future seems quite precarious.⁴²

In addition, public institutions will not be well-funded by the state for the foreseeable future, and new revenue will consequently be limited. In response, unions will continue to attack what they will suggest are needless (i.e., non-faculty) expenditures on campus. They will demand an increasing amount of data and information from administrators on how money is spent and criticize the growth in the number of administrators, and they may suggest linking pay increases to tuition increases or linking the size of the entering class to a certain pay raise, much like there have been conditional salary increases in the public sector based on state funding.⁴³

Everyone will continue to look for solutions to the rising cost of health insurance. The passage of the Affordable Care Act—assuming it survives in some form during the Trump administration—continues to present new challenges, particularly with part-time faculty, as noted below. If the Act is repealed in whole or in part, what will replace it, and how will that new scheme affect bargaining? No one can be sure.

Another benefit issue that is likely to grow in prominence at the bargaining table are proposals for economic assistance with child care. More and more unions are proposing that administrations provide either child care on campus or provide some monetary supplement to help employees pay for private child care.

⁴¹ According to the Bureau of National Affairs, the annual inflation rates for 2013-2016 have been 1.5%, 1.6%, 0.1% and 1.3% respectively.

⁴² Indeed, a growing number of small institutions have gone out of business in the last two years, including Mt. Ida College and Newbury College in Massachusetts, Burlington College, Southern Vermont College, Green Mountain College, St. Joseph College in Vermont, Dowling College in New York, and Grace University in Nebraska. At well-regarded Hampshire College in Massachusetts, the Board of Trustees is struggling to keep the College from closing its doors, and its AY 20 freshman class was reduced to less than 100.

⁴³ In Vermont, significantly low state funding, which consistently ranks 50th in the nation, has led to the necessary merger of Johnson State College and Lyndon State College into a new entity, Northern Vermont University, in an effort to save money.

Many institutions and states will finally be forced to pay attention to the debt they have incurred promising post-retirement medical benefits. Aggressive proposals from the administration side of the table will seek to lower future retiree benefits for current faculty and perhaps eliminate them all together for new faculty. These will pose immense challenges at the table to find some common ground.

The Special Issues in Adjunct Faculty Negotiations

Adjunct faculty negotiations will continue to present special challenges in the years ahead. Here, many administrations are still in virgin territory. While there is a growing number of adjunct contracts already in effect, the field is still relatively new. As more and more adjunct units come into being, new approaches to handling common issues may emerge, especially in areas like course assignments. This will include what will be the perpetual tension between the need for flexibility to deal with the vagaries of student enrollment, and the adjuncts' desire for commitment as to how much and when they will teach.

Adjunct faculty are a diverse group, with some teaching for an occasional supplement to income or to share their professional expertise in the classroom, but with others seeking to cobble together a living from part-time assignments, often at more than one institution. They are integral to many colleges and universities, particularly in the graduate and professional areas. Such faculty members, especially those who are in the liberal arts and at the forefront of unionizing efforts, are looking for guaranteed commitment and respect not only from institutions but from full-time colleagues as well. Some may ultimately seek a pathway to full-time status, but, at the very least, they would like the certitude of knowing they can teach two, three, or four courses a semester. Given the semester-to-semester adjustments in course offerings, this is difficult for administrations to accept and, we would argue, might not be supported by the full-time faculty as well. Moreover, when budgets are trimmed, courses taught by adjuncts, not full-time faculty, are the first to go, thus exacerbating the problem of guaranteed work. Administrations will find it difficult to provide too much security for this remaining faculty group over whom considerable flexibility now exists.

On a related issue, adjuncts will seek greater job security for more senior members of the group, asking for commitments in offered classes especially desirable to them. Here, institutions will counter with the need to put the best possible adjunct faculty member in the classroom by taking into account academic credentials; past teaching experience in the particular course; qualifications and sub-qualifications; curriculum needs in general; teaching effectiveness; and, of course, student demand. But compromises in these areas can be reached. As but one example, there are now preferred hiring pools at some institutions where adjuncts, once accepted into the "pool," have a reasonable guarantee of employment for classes they have been teaching, sometimes for many years. In other

contracts, seniority is a tie-breaker for assigning courses only after analyzing relative credentials, teaching experience and performance, and determining that all such factors are equal. In some of the newer SEIU contracts, provisions are made for multi-semester, multi-year contracts, and, in some cases, with some course guarantees. Stronger evaluation systems have accompanied such benefits, resulting in a weeding out of less effective adjuncts who may have previously slid under the radar.

Another issue for the adjunct table will be how to deal with reductions in offered courses. The idea of retrenchment, in its traditional sense, does not quite fit the world of contingent faculty because, unlike tenured faculty, they do not have contractual ongoing employment. It is likely that parties will at some point have to address the issue of how to deal with large-scale cutbacks in available adjunct assignments. When an institution needs to cut budgets, adjuncts that traditionally might have been given three or four courses per semester to teach may find they are only given one course. Thus, while not technically without work, or “laid off,” the bulk of their income may be severely reduced. Regardless of contract language, the practical expectations that long-term adjuncts develop *vis-à-vis* workload and income will have to be reconciled with an institution’s need to reduce costs and courses. These issues may be dominant in bargaining and functionally equivalent to traditional layoff arguments in other employment sectors.

Another growing area of concern is how institutions will measure performance. In trying to establish reasonable procedures for determining teaching effectiveness, evaluations will play a new role in adjunct negotiations. Given their sheer numbers, adjuncts have rarely been systematically evaluated. But in bargaining, it is likely that administrations—desirous of avoiding straight seniority assignments—will seek to establish clarity in this area, so they can reasonably measure the performance of one adjunct against another. The need for greater accountability from adjuncts will necessitate such evaluations, and, perhaps equally as important, will also usher in an era of greater training and much improved professional support for these faculty members. An attendant complication where both full-time and adjunct faculty are unionized is that the burden of evaluating adjuncts may fall on department chairs. In many cases, such chairs are also unionized, sometimes residing in the same bargaining unit with adjuncts, sometimes not. Thus, changes in an adjunct collective bargaining agreement with regard to chairs’ duties to evaluate adjuncts may spawn workload disputes with the full-time faculty union that represents chairs.

Because negotiations with adjuncts are still relatively new at most schools, and because there is no pre-existing template such as a tenure system to accommodate, adjunct bargaining will potentially be highly creative in terms of how the parties address job security protections, pay systems, and other working conditions. Lacking the traditional but rigid tenure system, and lacking a large number of comparators, adjuncts and

their bargaining partners can literally create new schemes of contract sequences, compensation options, performance pay, training and professional development, and other such areas.

Also, it is likely that, little-by-little, adjuncts will attain some success in negotiating benefits for themselves, albeit on a modest level. One can see small incursions into this territory. Some adjunct contracts already provide limited health insurance benefits to more senior adjuncts, for example. In addition, we are seeing limited contributions to pensions (a benefit that, unlike health insurance, can be specifically calculated and budgeted) and some access to tuition reimbursement. This benefit trend is probably going to continue, though slowly, as it will simply be too difficult to maintain the structure of half the curriculum taught by faculty members who have no benefits.

And finally, and perhaps most imminently, the impact of the Affordable Care Act continues to loom large, as institutions try to understand the Act's 30-hour provision for defining full-time work and try to ascertain how many hours a week their adjunct faculty really spend working. How this law is interpreted will be a major factor as to whether or not adjuncts begin to attain health insurance coverage. In some situations, administrations will be faced with a new reality that some of the adjuncts they considered "part-time" are really "full-time" under the Act. That, in turn, will lead to new internal administrative debates about assessing the cost of providing health insurance to such individuals versus incurring government penalties for not doing so. This will be immensely complicated and, at present, stands as a question without any firm guidelines or regulations from the federal government.

The Difficulty of Analysis

One immediate challenge in addressing the questions posed is the difficulty of untangling the impact of collective bargaining from other internal and external forces shaping post-secondary education. For example, can the effects of collective bargaining be gauged in an era when other external catalysts appear to be more salient in promoting organization change? We mentioned enabling legislation in some Midwestern states. What about the decline in federal and state support; the increased use of adjuncts and decline in full-time appointments; the presence of free online courses (which may soon be transferable for credit); public pressures for tuition decreases and a growing disenchantment with the benefits of higher education; transition in presidential or decanal leadership; institutional size; or the region in which bargaining occurs? All have been cited for years by scholars as catalysts for change in higher education.⁴⁴ Or have local labor management

⁴⁴ Jeffrey Pfeffer, *New Directions for Organizational Theory* (New York: Oxford University Press, 1997); Peter M. Blau, *The Organization of Academic Work* (New York: John Wiley, 1973); Joseph W. Garbarino, David E. Feller, and

relationships and the “personalities” who shape interactions had a greater impact on a particular college or university than the external factors?

The difficulty in assessing the impact of collective bargaining is not confined to the larger organizational questions. Take the issue of bargaining agent effectiveness. Does it matter if faculty or graduate students are represented by a particular union or bargaining agent? Do particular agents bargain better agreements? Does the recent union trend towards mergers, such as the AAUP-AFT combined units, yield better results at the table? Even within the context of individual unions, are results at the table driven by the personalities who negotiate or by organizational constraints?

Although there are few objective studies which concern these questions, what evidence there is seems to suggest that what is more important when discussing issues associated with agent effectiveness is where the bargaining occurs (i.e., the institutional and demographic characteristics of institutions or systems and/or *what* particular employee groups are represented), rather than the particular agent.⁴⁵ While we realize such claims may be controversial, the majority of organized faculty in the U.S. today are represented by mergers of unions, not one particular bargaining agent.⁴⁶ Moreover, even within the context of a single union, the variations and results at the table can often depend on the force of personality (power and influence) of the negotiator and his or her team as opposed to the relative abilities of the opposing team. For such reasons, claims that one particular bargaining agent or union is more “effective” (assuming that term can be defined) are spurious best. This is not to say that certain agents at various schools can be very effective, but it is difficult to make across-the-board generalizations.

When trying to discern themes, trends, and outcomes, those who have studied collective bargaining in higher education have had difficulty untangling a myriad of variables such as internal and external, demographic, environmental, personality and the like, which effect the processes and outcomes. Nor have we found many studies that identify the long-term impacts of bargaining. For example, in the area of compensation, the question of whether or not unionization results in higher

Matthew W. Finkin, *Faculty Bargaining in Public Higher Education: A Report of the Carnegie Council on Policy Studies in Higher Education* (San Francisco: Jossey-Bass Publishers, 1977); Frank R. Kemerer and J. Victor Baldrige, *Unions on Campus* (San Francisco: Jossey-Bass Publishers, 1976); Harold L. Hodgkinson, *Institutions in Transition: A Profile of Change in Higher Education* (New York: McGraw-Hill, 1971).

⁴⁵ Daniel J. Julius and Margaret K. Chandler, “Academic Bargaining Agents in Higher Education: Do Their Achievements Differ?” *Journal of Collective Negotiations* 18, no. 1 (1989): 9-58.

⁴⁶ Data compiled by the National Center for the Study of Collective Bargaining in Higher Education and the Professions, Hunter College, CUNY (<http://www.hunter.cuny.edu/ncscbhpep>).

salaries remains unclear, despite the claims of many, because there is no body of research which unambiguously demonstrates, after all these years, that unionization results in higher salaries.⁴⁷ Indeed, the highest paid faculty members in the U.S. remain unorganized—as do the lowest paid.⁴⁸ Nor is there unequivocal data, despite strongly held opinions by many union adherents, around the issue of student outcomes, and whether students fare better (stay in school, graduate) when taught by adjuncts rather than full-time faculty. Nor can we pinpoint whether unionization has encouraged the hiring of greater numbers of adjunct faculty. Unionized institutions appear to be hiring adjuncts at the same rate as non-unionized institutions. Clearly, there is a need for additional research in these important areas.

Another issue concerns the impact of bargaining on shared governance. Our experience indicates it not only survives unionization, but in some cases collective bargaining has resulted in the establishment of additional joint decision-making bodies on campus. To be sure, in some settings, the faculty union has trumped the faculty senate in importance and influence, or taken it over, but by no means does it appear that faculty unions have marked the death knell of governance bodies themselves. Other important academic concerns—institutional rankings, the teacher-mentor relationship, the impact of technology and online courses, the share of full-time faculty teaching undergraduate courses, faculty diversity, and student debt ratios—all may be going through profound change, but there is a paucity of evidence pointing to collective bargaining as the reason or cause of transformation in these areas.

⁴⁷ However, there does seem to be an emerging trend that unionization of adjunct faculty members has resulted in significant increases in per credit rates, at least in the initial year of a first collective bargaining agreement. Some of the newer adjunct faculty settlements at institutions like Tufts, Boston University, Washington University in St. Louis, Lesley University, and Champlain College, among others, show substantial increases, sometimes double digit increases in the first year, with lesser increases in subsequent years of the agreement in many cases. Whether this early trend continues remains to be seen.

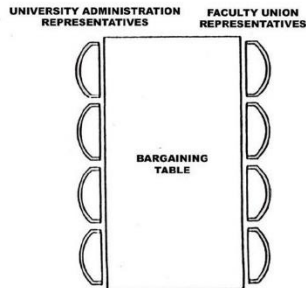
⁴⁸ One reviewer reading this manuscript suggested the following: “It could be said that any salary advantage to faculty bargaining collectively is time limited and subject to general market forces affecting faculty salaries by sector, region, and discipline.” One of the best discussions of the research in this area can be found in Cain, Timothy. R. (2017) *Campus Unions Organized Faculty and Graduate Students in U. S. Higher Education. ASHE, Higher Education Report*, Vol. 43, Number 3, John Wiley and Sons, N.J.: See also, Herbert, W.A., *The Winds of Change Shift; An Analysis of Recent Growth in Bargaining Units and Representation Efforts in Higher Education. Journal of Collective Bargaining in the Academy*, 8 Retrieved from <http://thekeep.eiu.edu/jcba/vol8/iss/1/1/>.

Decision-Making and the Dimensions of Collective Bargaining

Charts 1 through 6 depict the dimensions of labor relations and constituents who impact collective bargaining processes and outcomes. Knowing the “dimensions” is a *sine qua non* for understanding how the process is influenced, as well as the “rhetoric to reality” journey.⁴⁹

Chart 1

DIMENSIONS OF BARGAINING



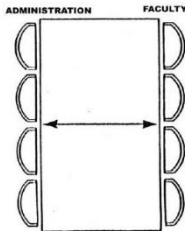
The issues that are brought to the table, or scope of bargaining, are determinative and can set the tone for collective bargaining relationships. In many jurisdictions, the scope of negotiations (wages, hours and working conditions) is outlined in enabling public sector labor legislation. Terms, such as wages, hours and working conditions can be ambiguous in higher education settings. In general, creative spokespersons can negotiate the issues they need to address each party's concerns. However, there remains a healthy tension between unions and various “governance” committees in many institutions. There are no set rules for the number of individuals who sit on bargaining teams. In general, it is more often difficult to come to agreement when greater numbers of individuals participate, particularly if party spokespersons lack the necessary clout or integrity to deliver on promises made at the negotiating table. In some systems or institutions, bargaining protocols are set forth in negotiated agreements. The location of bargaining sessions, release time for negotiators, and team membership can all be contentious issues. Normally, chief institutional representatives, President, or Chancellors do not participate in negotiation sessions. To do so would significantly reduce their ability to “take positions” or “remain above the fray”. The absence of chief executives also provides flexibility to negotiators to float trial balloons or table sensitive topics. Bargaining is a political process which causes those in charge to “compromise”. Eventually, the need to engage in compromise erodes authority.

⁴⁹ The following charts, titled “Dimensions of Collective Bargaining,” were, to the best of our knowledge, originally developed for training programs by the U.S. Department of Labor in the 1940’s or 1950’s. We have adapted them for use in higher education and have been using them since the 1970’s.

chart 2

DIMENSIONS OF BARGAINING

HORIZONTAL - ACROSS THE TABLE

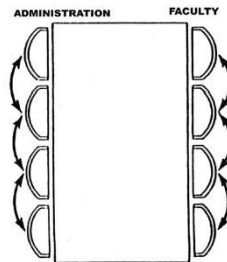


All formal agreements should be initiated by the chief university and union negotiator. The arrow between the administration and faculty depicts the horizontal bargaining that takes place between two chief negotiators. Such bargaining may begin at the table, but ultimately migrates to legislative hallways, restaurants, and bathrooms. Toward the conclusion of negotiations, the parties invariably spend more time away from the table than at the bargaining table itself. Nevertheless, personal trust, integrity, and professionalism remain a constant feature of effective collective bargaining. Demonizing opponents or rotating negotiators (so others can get a turn, but who may have no awareness of history or trade-offs necessary to conduct negotiations), hampers collective bargaining. Why would any professional negotiator come to a resolution which often involves compromise and the need to "sell" the resolution to other team members or constituents, with one negotiator only to find that individual had been replaced by another spokesperson with no memory or appreciation for the compromise recently made. Unions who engage in such practices, allegedly to promote democratic values or training opportunities often have difficulty coming to resolution with employer counterparts. Seeing negotiating positions through the eyes of the individual sitting across the table is important! Creative negotiators have an uncanny ability to find shared objectives and construct contract language which addresses the concerns of both parties. Here the key is not to negotiate language which proves impossible to implement. This can be problematic as many negotiators, union and administration, have no real management or supervisory experience. Negotiators are often very naive about how contract language is translated and utilized in the workplace. (A good reason to insure that "managers" or other faculty are present on the bargaining team). Moreover, in many higher education settings, individuals who determine "bottom line" parameters for the union and management are not present at the table. All the more reason that chief negotiators are able to deliver on their promises. In the final analysis, all the negotiator really has to offer is his or her word.

Chart 3

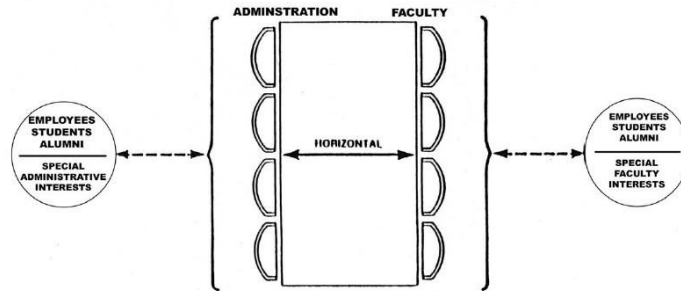
DIMENSIONS OF BARGAINING

INTERNAL - WITHIN EACH TEAM



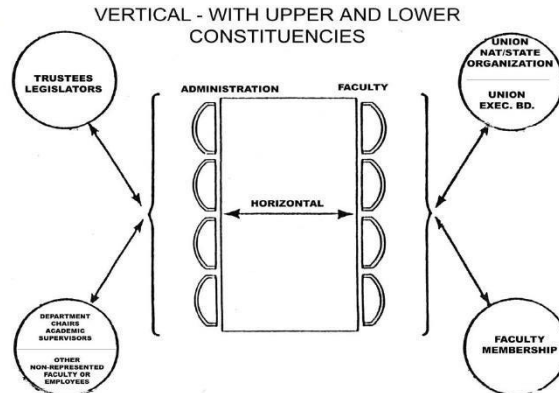
In most higher education settings, there is political intrigue and honest disagreement among members of the same bargaining teams. Significant internal negotiations can occur between representatives of academic units and financial offices. It is also quite common for various faculty in different schools to disagree over standards. Faculty often have pronounced opinions concerning the work of those in other disciplines which, if not addressed openly, can hamper negotiation processes. This is particularly the case in systems where different institutions seek to safeguard institutional autonomy and resist centralizing tendencies. In some employee associations, there are factions who seek to take over the union, particularly in organizations where leaders are not secure. In such cases, negotiations can be very challenging, as negotiating counterparts are reluctant to make concessions to individuals who may be unable to deliver on promises, or who are susceptible to recall elections. Personal animosities between different units, divisions, or individuals also hamper collective bargaining processes. These animosities are exacerbated when those responsible for labor relations are demonized by other administrators or faculty, or accused of "giving away the store". When negotiating positions are not in alignment with organizational values or mission statements, or institutional leaders undermine negotiators by allowing "end runs", the process breaks down. The maintenance of sound labor relations requires institutional and union leaders to stay focused on outcomes and ensure that authority and trust are accorded to negotiators. Obviously, collective bargaining is impeded when those given responsibility for negotiations are not trained, do not understand the role of the negotiator, lack the confidence of the senior leaders or understand unique organizational features of colleges and universities.

Chart 4
DIMENSIONS OF BARGAINING
 EXTERNAL - WITH OUTSIDE GROUPS



Special interest groups effect bargaining outcomes in many negotiating settings. Collective bargaining is inherently political and requires an awareness of the importance of particular external constituencies. Those who negotiate must negotiate on behalf of wider audiences. For example, agreement on economic provisions which require increases in tuition or agreement on contract provisions which change promotion or tenure criteria, or the compensation of department chairs, potentially effect other powerful special interest groups. Providing particular economic benefits to one group may require similar benefits be offered to comparable employee groups. The “costs” of such compromises must be seen in a larger context. A party cannot easily afford to ‘settle’ with one constituency to the detriment of other interests; both must please a particular constituency within its ranks. Ultimately labor relations requires a redistribution of power and influence; this is difficult in organizations where shared governance and consensus are normative. Labor relations demands finality. Academic organizations resist hierarchy and deadlines. Negotiators from all perspectives face similar problems and challenges.

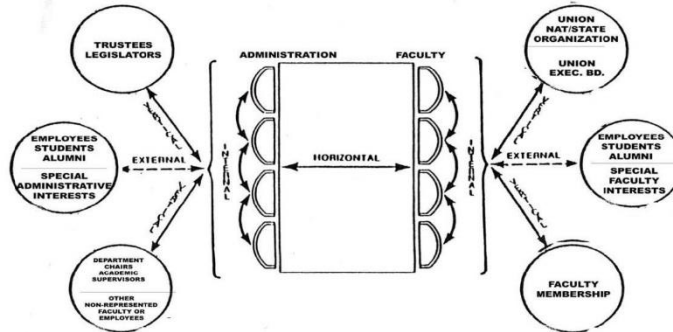
Chart 5 DIMENSIONS OF BARGAINING



Ultimately, administrative representatives must convince Trustees, Legislators, or other powerful academic leaders to come to agreement or compromise on matters that may have been characterized as “principles”. This requires an internal structure to guide the decision-making process. Problems and challenges are complicated when those who negotiate are external to academic divisions where organized faculty and academic leaders reside. Union negotiators have similar challenges, particularly when organizing rhetoric promises new gains and the redistribution of power relationships. Negotiators who make such promises risk losing the confidence of union members or union executives if such claims are not deliverable. It is also the case that senior organizational leaders, on both the administrative and union side, may have bigger fish to fry. While compromise on an issue (parking rates, subcontracting, office hours, and the like) may seem monumental to local constituencies, individuals responsible for approaching state or federal officials for new legislation or increased financial support, may not feel “local” issues are worth the fight when “large” systemic concerns are being debated. In this regard, parties external to the process can exert a pronounced influence on bargaining relationships.

Chart 6

DIMENSIONS OF BARGAINING



This chart depicts why collective bargaining, particularly in large complex systems, is a cumbersome and time consuming affair. Negotiation processes, horizontal, vertical, internal, and external, occur with an array of individuals. Relationships break down during periods of institutional transition because those responsible for making decisions or legitimizing bargaining compromises leave or are at risk themselves. Stable academic environments and consistency in leadership are important. In large organizations or systems, executives or faculty leaders must effectuate policies and procedures in alignment with other institutional endeavors. This can be difficult where permissive leaders or those who insist on being popular or loved by all are reluctant or unable to hold others accountable, or senior union officials are subject to the whims of elected faculty. Ultimately the ability to negotiate effectively requires integrity, political acumen, support by institutional leaders and good fortune. Various actors and constituencies away from the table exert continuous pressure on parties to come to agreement or, in some cases, resist compromise. For example, a Dean who seeks to impress a particular faculty group or president may, for his or her own selfish reasons, undermine the efforts to negotiators. Communication and a concrete strategy underpinned by realistic and objective bargaining parameters are essential. At some juncture during the negotiations, the good of the organization must be put before the interests of any one party or constituency.

The Dimensions of Collective Bargaining: Rhetoric Rarely Translates into Reality

In our experience, there are five primary reasons why statements made about collective bargaining, particularly in the initial phases before elections, or during negotiations for successor agreements, may not be predictive of bargaining outcomes. These are discussed briefly below.

Political Process

Collective bargaining is an inherently political process based on perceptions calibrated to garner political support. Like elected politicians who often fail to deliver on campaign promises, it is much harder to guarantee outcomes than to talk about expectations. This is especially the case when administrative or faculty leaders (or constituents) are inexperienced or lack even a rudimentary appreciation of what has occurred in other jurisdictions. Moreover, the behaviors needed to be successful at the bargaining table are often alien to the dispassionate stance of scholars. Add to this a certain bias on the part of many in the professorate, which can translate into many thinking “their” issues or points of view are more important than those who actually make decisions (and who are held accountable). Collective bargaining is an inherently fluid process (because of the multiple actors, high degrees of interdependence, role of external parties, and the like) with all of the attendant benefits and pitfalls associated with processes that demand “trade-offs.” Unlike many academic meetings, those with “power” win the day, not those with more “rational” academic arguments.

Dimensions of Negotiations

As the charts depicting the dimensions of collective bargaining illustrate, a multiplicity of actors, interest groups, constituencies, and “players,” influence bargaining processes. The goals of some groups may conflict with others. Once bargaining gets underway, those with real power and clout (governors’ staffs for example) may make their will known and cause the parties to accept settlements on terms other than those initially promised to faculty or administrative colleagues. National union leaders may also feel, for reasons external to the institution, that settlement is in the best interest of the union, regardless of local feelings.

Compromise Demands Trade-Offs

Negotiators are vulnerable to political realities generated by practical dictates that may not have been initially manifest to the parties. For example, a union concerned about a rival faction may decide it is better to agree to a slightly less favorable settlement and obtain a three-year agreement (thereby eliminating competition from another individual union leader or rival union), rather than holding out for a more favorable settlement and risk looking ineffectual. Once labor agreements are signed, administrative or faculty challengers may have fewer people willing to

listen to how the situation could be enhanced if someone else were in charge! For administrators in particular, conflict in the organization generally turns to dissatisfaction with leadership. Better to get the contract signed than risk putting careers at stake. Ultimately, the desire or need to obtain settlement means that certain proposals fall by the wayside. These “proposals” may be held in high esteem by some and appear inconsequential to others. Negotiators are faced with these kinds of tough choices. I am reminded of the chief employer negotiator for a large western system who repeatedly begged the chancellor “not to make promises he couldn’t keep”. Those responsible for labor relations soon learn what is possible and what is not. Promising an 8% raise is meaningless if the funding authorities simply cannot afford to finance the settlement. There are rarely unused pots of money to cover settlements, and state officials with budgetary authority are constrained by voters as well as tax reserves.

Bargaining Unit Strength

Influence at the bargaining table (the ability to “deliver”) is directly related to the real and imagined influence of represented constituencies and, more importantly, what those constituents are capable of actually doing in the event demands are not met. Academic organizations are vulnerable to many internal and external constituencies. Faculty who consider a “walk out,” or engage in other forms of concerted action, often risk losing more than can be gained in such actions. Negotiators may realize, sometimes very late in the game, that if the opposing party were to call their bluff, chaos, not settlement, may ensue. The ability to bring pressure on the parties that requires unity and consensus among faculty—or engage in organized conflict—is often directly related to the bargaining demands that are met, and those that are dropped. This is true for unions and universities alike.

Third Parties

Third party intrusion into collective bargaining processes is another reason why rhetoric may not match reality. Arbitrators, mediators, neutrals, labor board officials, the courts, and legislative agencies become involved in collective bargaining, particularly if the parties cannot reach settlement or engage in “end run” tactics to bring pressure upon seemingly recalcitrant negotiators. In such cases, external procedures such as “fact finding” or “final offer arbitration,” procedures often set forth in legislation governing the bargaining relationship, cause the parties to confront new realities. Invariably, the folks who become involved as third parties may be unfamiliar with (or unsympathetic) to the culture of higher education. Cases and disputes are settled on the basis of accepted precedents in the “industrial” or “public” sectors. Related to this notion is the matter of “comparability.” Third parties who impose settlements will look to precedents and benchmarks found in other or “comparable” jurisdictions or institutions. Many in higher education think “their” situation is unique.

This is rarely the case, and arbitrators, fact finders, and courts mandate terms based upon what others have already agreed upon.

Salient Organizational Impacts

Can salient organizational impacts be identified? As set forth in an earlier section of this essay, untangling the effects of employee unionism from other intellectual, social, economic, political, and organizational forces is exceedingly difficult. Although there are few studies on the longitudinal effects of collective bargaining on college and university systems, experience suggests that certain organizational consequences find their roots in collective bargaining. It would, however, be difficult to substantiate that direct relationships exist. Moreover, other environmental factors, particularly evolving legal and fiscal, or for-profit ventures, may exert similar systemic effects. With that caveat, the following effects of collective bargaining on college and university systems are suggested.

The Centralization of Power and Authority

In unionized systems, power and influence have inevitably flowed from individual campuses to system offices and union headquarters. From there, influence accrues to external agencies, elected politicians, and others who are integral to union-management relationships. These centralizing tendencies have resulted in increased bureaucracy, the codification of procedures and policies, and demands for consistent applications of university or system wide regulations, policies, and practices.

The Need for New Styles of “Administration”

One byproduct of unionization has been the “classification” and recognition of the specific responsibilities of supervisory, administrative, and faculty employees. This is no small issue in organizations where territorial boundaries, professional jurisdictions, and departmental autonomy have remained fluid and are considered one of the most significant organizational attributes of colleges and universities. The clarification of roles and responsibilities has, more often than not, ushered a change in personalities when unionization arrives, or agreements are renegotiated. Managing a unionized school requires additional skills than those needed to work in non-unionized environments, although this caveat is still only grudgingly accepted in many colleges and universities (indeed, involvement in labor relations is normally not a good route to leadership positions in academe).⁵⁰

⁵⁰ Notable university leaders, including Derek Bok (Harvard), Clark Kerr (University of California), Ken Mortimer (University of Hawaii), and several others, were industrial labor relations scholars and involved in collective bargaining. The skills learned in the industrial labor relations environment are those needed for success in higher education. However, the taint of “adversarial”

While there are increased opportunities for conflict once unions arrive, conflict resolution mechanisms are a salient feature of the labor management environment. Unionism has hastened the need for individuals who can “administer” labor agreements. Lastly, new faculty and administrative roles may contribute to organizational effectiveness by encouraging economic forecasting, strategic planning, benefits sharing, cost savings, and related policies, as multi-year labor agreements are implemented. Unionization forces review of compensation systems and may result in what are perceived to be more egalitarian approaches (salary steps, across-the-board increases) to the distribution of compensation. Formalized compensation systems are less common in non-unionized settings. Lastly, unionization forces faculty and administrative leaders to create a decision-making architecture (complete with policy manuals) to accommodate labor-management relationships.

The Relationship of Faculty as “Employees” to “Employers”

In many unionized colleges and systems, relationships between the “organization” and represented faculty has improved over time. Such is the case when power imbalances are reduced, and administrative offices act and speak with consistency. That being said, many believe academic institutions remain vibrant precisely because they are not managed like motor vehicle bureaus, or organizational health is attributed to the vigilant defense of departmental and school autonomy. It has been suggested that professional autonomy, hence academic quality, may be compromised through collective bargaining. For example, in what many consider the finest institutions of higher education in the U.S., professors remain non-unionized. Faculty in elite institutions are often rugged intellectual individualists and operate in ways antithetical to values unions promote such as probationary professors can be released, not due to poor performance, but because, in the future, more promising candidates may be found. It is thought that the least productive academic departments are those fully tenured. Senior research scientists have the autonomy and resources to act independently. Union leaders are quick to argue these values (and inequities) can be accommodated, and that wealthier institutions have the resources to keep everyone placated (to an extent we agree). But the tensions within unions, organizations legally obligated to protect professional prerogatives *and* job security, is ever present, particularly when faculty want similar raises given to all in the unit, or in cases where graduate students or adjuncts may be represented by competing unions. Moreover, administrators who face lengthy arbitration hearings over promotion or tenure denials are far less likely to make tough but necessary calls. In employment policy at least, unionization will cause

often hinders rather than helps academic careers, particularly affecting individuals who have served as chief negotiators for colleges or universities.

institutions to regress to a “status quo.” For many, this will be a real improvement and for others, a significant disadvantage.

Enhanced Risks for Leaders

Future challenges involving collective bargaining will probably result in greater exposure of organized institutions to both internal and external pressures. Administrative leaders will find that collective bargaining is inherently cyclical; tranquil times sometimes become attenuated. The progressives of one era become the reactionaries in the next. (This is particularly so when new presidents decide to change the “chemistry” between “their” administration and the faculty). The skills and attributes needed to be successful (i.e., the ability to hold others accountable, assure standardization in contract administration, and the like) lead to the creation of “internal” opponents. Eventually, when the five people that hate you link up with the five who are undecided, those in charge are forced out. In academe, friends come and go, but enemies remain. Collective bargaining feeds these interactions because the risk of exposure for poor decisions becomes greater in unionized organizations where simply not making a decision is no longer an option! Unionized public systems will become more beholden to state governors and legislative leaders. Such vulnerabilities, in evidence before unionization, are hastened, as the locus of bargaining has moved to legislative, not academic, offices.

Leadership

Leadership, for faculty and administrators, is an essential ingredient in the management of collective bargaining in colleges and universities, but it is not leadership in the traditional sense. The truly successful do not simply engage in the articulation of a vision or elaborate planning processes, they do not put great faith in rational decision-making, or behave as if their role is to serve others, nor do they manipulate colleagues and subordinates through cleverness or intimidation. Under such circumstances, leadership is impossible and certainly breaks down under conditions of goal ambiguity, professional dominance, and environmental vulnerability. The most effective executives and faculty leaders communicate well, know their institutional culture, engage in authentic behavior (they embrace the values cherished by their most respected constituents), legitimize the ideas and action of others, surround themselves with the right people, demand the bad news, continually agitate for excellence, are tenacious, patient, and focused on goals. They know when to react to external pressures and when not to. We can also discern cases where individuals hold important titles—Union Leader, President, Dean, or Provost—and have no effective influence or leadership skills. This is most often associated with “leaders” who handled a crisis ineffectively, cared too much about holding onto a job, or were put in place by those who seek to maintain the status quo; sobering thoughts for many who work in unionized organizations.

Observer Status

In most jurisdictions, observer status is not uncommon. In some locales it is mandated in the enabling public sector labor legislation. It has been said watching a bargaining session is akin to watching grass grow. Nevertheless, the experience can be enlightening and lead to informed involvement. Minutes of bargaining sessions are often posted on websites. Departments might even consider assigning this task, on a revolving basis, to colleagues. Being influential in these processes requires one to devote time to be informed and present. Active engagement, now there is a novel thought!

What Has Not Changed Over the Years in Collective Bargaining*Trust and Honesty*

If one searches for those bargaining realities that are no different today than in the early days of academic bargaining, there is no doubt that the relationship between negotiators still remains of crucial importance. A relationship characterized by trust and honesty between chief negotiators remains a *sine qua non* for successful negotiations. Ultimately, negotiators must shake hands and sell the agreement to constituencies over whom they have no formal authority, keeping in mind some will be displeased with final outcomes, compromises, and tradeoffs necessary in all negotiations. End runs and related tactics notwithstanding, in the final analysis negotiators must deliver what was promised at the table. In academic settings, the actions and behavior of union and employer representatives are subject to frequent criticism by those who are not experienced or conversant with bargaining; authority and legitimacy are often questioned. Absent trust and an established relationship between negotiators, the bargaining process fails because in the political world of higher education, decision-makers on both sides of the table will not risk exposing vulnerabilities to would-be competitors or to constituencies to whom they report. Without honesty, negotiators will not conclude a final deal (the test of a successful relationship, we would argue) and will instead be held hostage to those who wish to see them fail or be blamed for lofty promises about the impact of unionization or provisions in the “new agreement.”

History Intrudes

History has always played its role in bargaining and still does. People in academic organizations have very long memories, particularly on the faculty side of the table. Personal history, disciplinary feuds, perceived slights that occurred years ago, and the desire to “even the score” impact

bargaining in a myriad of ways.⁵¹ Activists in the union, sometimes referred to as true believers or those with whom peace and reconciliation are impossible, endeavor to address grievances decades in the making. Professors who have spent an entire professional career in one school or college remember conversations or personnel actions years before any of the current administration arrived, and they are not shy about airing a point of view which may have been true 20 or 30 years ago. Bargaining reflects the “history” between the parties, and we define history in this context as long-term perceptions about “injustices” nurtured over years (and there is always some truth on both sides of an issue). Because of the history, there is a tendency to blame others for situations that were, in retrospect, difficult to predict.

In addition to the influence of past perceptions is the nature of leadership in academic organizations. By and large, and there are exceptions, the road to the office of president or provost requires avoidance (at least outwardly) of controversy and conflict. Engagement in collective bargaining is a non-starter to search committees who want a charismatic (seasoned executive; renowned scientist; community builder; already a president at a place like this; inspirational fund raiser; can repair our reputation; understands our culture; dispassionate scholar; will take us to AAU status; non-traditional; stand up to the system head or governor; obtain Ph.D. programs... pick your favorite) academic leader “acceptable” to faculty on the search committee. Many who secure positions of leadership in academic organizations often arrive unprepared for what it is they have to do to be successful. This too presents problems because leaders in such situations may not understand why the history, coupled with particular issues and individuals, is so important in the academic environment. Often leaders lose patience with the management negotiator who tries to explain why a proposal, so simple and rational to the president, will not fly. In such cases negotiators are vulnerable and achieving agreement is far more complex (and a major reason why many management negotiators have the professional life span of field goal kickers in the NFL).

Ground Rules that Work

Ground rules remain a key ingredient today in most negotiations. Parties to negotiations are well served by a set of written ground rules that function as an umbrella for bargaining. Often ground rules provide the rules of engagement and some degree of shelter (privacy) to those who must explore difficult and complex issues at the table. While it is always

⁵¹ Nicholas DiGiovanni Jr., “This Much I Know is True: The Five Intangible Influences on Collective Bargaining,” *Journal of Collective Bargaining in the Academy* 3 (2011), <http://thekeep.eiu.edu/jcba/vol3/iss1/5/>.

the case there is some old-fashioned blustering, saber-rattling, and posturing—all are part-and-parcel of the process—the parties need freedom to float trial balloons or tentatively advance an idea in order to gauge constituent reaction; when taken out of context such ideas might seem draconian. Bargaining cannot take place in a fish bowl; a certain amount of privacy is needed, and ground rules are essential in this regard.⁵² The faculty member who sits behind the chief negotiator, glaring at the management representative, tweeting out each response and counter response, makes it immeasurably harder to reach agreement and in worst cases erodes trust and respect between the parties because most understand that such actions are in fact a violation of the spirit of the ground rules. Union spokespersons who invariably take the position in which they cannot control or censure such faculty, even when what is being tweeted is inaccurate, are not believed to be credible by management negotiators. They clearly see this behavior as a tactic to whip up constituent support and pressure the university into succumbing to union demands. We might add that this does in fact sometimes occur, but it is more often very counterproductive to negotiations. Ultimately, the “angry tweeter” violating ground rules becomes a problem for his own chief negotiator who needs some privacy and orderly engagement to reach agreement.

Credible Data

Data drive perceptions, and in the academic environment those who marshal good data with believable assumptions underpinning the data win negotiations arguments. Said another way, power and influence in the academic setting cannot be exercised without credible data to support proposals and ideas because many require objective evidence for arguments being made on behalf of one position or another. We know that managing perceptions remains an important aspect of all successful negotiations. In higher education the Holy Grail is “evidence-based validity,” which is not always easy to pursue in collective bargaining. Of course, the challenge here is self-evident as well because many on both sides of the table, trained to deconstruct ideas and question assumptions, arrive at very opposite views about what constitutes reliable and valid data to support bargaining positions.

⁵² No better example exists of the success of closed and secret bargaining than the work of the men of 1787 who locked themselves in Constitution Hall, issued no statements to the press, kept no detailed notes of their proceedings, and yet, in one summer, negotiated the most perfect model of democratic governance that had ever been seen (notwithstanding the unfortunate acceptance of slavery and the initial lack of universal suffrage, errors thankfully corrected by future generations).

The question of reliable data is complicated by additional factors. First, because so many harbor varying notions about institutional priorities in academic organizations, the use of data by the administration at the table can be suspect from the beginning. Faculty may view it as skewed to support a management position. Second, a culture of dissent coupled with negative perceptions about the nature of management make it harder to use data and persuade faculty that just because the idea comes from the administrative side, it does not make it anathema.

The challenge of arriving at a mutual understanding of what constitutes credible data and their relationship to issues at hand is daunting and yet is essential for success. Both sides will use data to support positions across the table, and, at times, the presentation of data can help persuade the other side to modify positions. Finally, should negotiations proceed to mediation, fact finding or arbitration, data assume a new critical role. There, data are used not just to persuade a skeptical opponent but also a dispassionate neutral. Those skilled in organizing and presenting data to support bargaining positions, including comparative data of peer institutions and systems, will be more successful in these forums. It has been our experience that outside mediators, fact finders, and arbitrators—those involved in the later stages of collective bargaining—will pay close attention to data because ultimately, they will have to justify their findings based on the information presented. They will also have much less patience with data purporting to show that faculty are exploited, that issues being debated are truly unique, or that valid peer institutions are too difficult to identify.

Managing Conflict

Ultimately, collective bargaining has always been a process to manage disagreements about rights, authority, and the roles of important constituencies in academic organizations. Managing conflict is not easy, particularly in first-time negotiations where long-standing (sometimes a century old) policies, procedures, and statutes concerning “legal” authority, the nature of shared governance, and the like, must now be interpreted. In these contexts, the parties must also accommodate informal practices that have grown up around statutes and incorporate these into labor agreements, subject to binding arbitration. After all, the reality is that while formal authority may have been invested in a president or board, it falls to the faculty to implement and deliver what colleges and universities do. Further, whatever policies and statutes may say, it has been our experience that there are always exceptions made for any number of reasons.

Conflict arises when policies and procedures are formalized and standardized, one of the key results of collective bargaining. Conflict also arises because much of what is negotiated or renegotiated, as we discussed earlier, strikes at the heart of professional autonomy and perceptions about what is reasonable, fair, or just. In such cases there is a continuing need to

manage, or at least contain, conflict accompanying negotiations, and this in turn requires a decision-making architecture allowing for debate and communication among senior leaders, deans, and others—academic and non-academic—who may find themselves being marginalized as bargaining unfolds. In worst case scenarios, work stoppages or strikes occur, and while these are part of the process and sometimes necessary when negotiations break down, the resulting polarization between the parties can be a factor for years to come, cause the exit of respected leaders (from both sides), as well as damage students and the institution.

What Has Changed Over the Years in Collective Bargaining?

Technology and the Internet

When the authors first worked together in the mid-1970s negotiating with organized faculty at the Vermont State Colleges, proposals were assembled on typewriters, no one owned a cell phone, words like “online,” “tweeting,” “blogging,” or “YouTube” did not exist or meant something entirely different than they do today. The negotiating environment has changed. We do not carry vials of “white-out” anymore. The computer has altered how we negotiate, and how others are involved in negotiations. Members of negotiating teams come to the table today with iPads or laptops, not yellow pads. Emails are checked routinely and links to principals who may be in the background are available as never before. Dramatic arguments for proposals may be accompanied by PowerPoint presentations. Proposals and counter-proposals are routinely sent between the parties by email. The historical record of bargaining can be neatly, and usefully, filed away on one’s computer, with no need to check reams of paper in dusty files to ascertain bargaining history. The evolution of an article can be seen quite clearly, in its dated proposal/counterproposal history between the parties. All of this has generally made bargaining easier and provided clarity surrounding what parties meant, that may not have existed before. In addition, the challenges of working in real time are evident. This is a new dimension of bargaining that we believe has made the process more inclusive and more complex because additional players are involved; those with ulterior motives have a far easier time upending the process.

Less Authority for Negotiators

Collective bargaining in higher education is no longer a new phenomenon. In the early years, negotiators, many of whom learned on the job (and some of whom had worked as labor arbitrators, or mediators, or came from industrial relations, or legal departments in business and law schools, or an occasional dean) were charged with managing a critically new organizational challenge. Union negotiators, the “true believers” with organizing experience, joined management counterparts; both were likened to gunslingers shooting it out at the “OK Corral.” Corporate law

firms were involved, but here many of the labor lawyers negotiating agreements had not worked in the higher education sector and certainly not with organized faculty. Even for advanced labor negotiators, there was really no template to utilize in negotiating with faculty. Everything was new. A cadre of home-grown management negotiators soon emerged, many from Michigan and New York, and founded their own professional association in 1972 (which still meets each year).

In the early years, and in first-time contract situations, negotiators reported directly to presidents and chancellors. Many assumed executive positions and served as institutional leaders following their time managing negotiations. Those who bargained were given wide latitude and assumed a fair amount of authority needed to effectuate negotiations successfully. As collective bargaining became more institutionalized; as outcomes became more routine and knowable; as the number of successor agreements grew; as compensation for labor relations staff stabilized; and as other organizational crises edged out collective bargaining, the role and authority of negotiators diminished in many cases. Many now report to the general counsel, a human resources professional, or a senior administrative vice president. Labor relations are handled by folks who are lower in the organizational hierarchy. and, while it may be that legitimacy or credentials are no longer questioned, as a group, negotiators—those who handle academic bargaining in large systems or institutions—have less access to senior decision-makers, less organizational clout, and less ability to control processes attendant to negotiations.⁵³ This is a new situation, and where it exists, we would argue, it makes the process more cumbersome, time consuming, and expensive.

The Post-Secondary Context

All historical periods are turbulent in retrospect, and the current period will be no exception. We would argue, however, there may be several other new factors that will shape collective bargaining processes in ways unimagined in the past. The first, while not entirely new (few things are), concerns the evolving nature of higher education. The late Clark Kerr's line about common themes in the university—complaints over parking or coffee pots in communal areas—presaged a more autonomous and fragmented post-secondary environment. As state support and federal funding continue to decline, institutions and systems will evolve, and units based on their ability to generate revenue or meet a particular student or constituent demand will grow in importance. In several states, flagship schools are leaving or endeavoring to leave systems. As bargaining units

⁵³ The authors would acknowledge that this is not a universal development, and, particularly in smaller colleges and institutions, the negotiator may still report directly to the President or Provost.

become smaller and more homogenous, and as fragmentation and specialization increase—coupled with previously union-friendly states abandoning enabling labor legislation—the tenor, scope, and reach of collective bargaining will be altered.

Simultaneously, as more adjuncts, graduate students, and part-time employees join unions, how colleges and universities are funded, assessed, and governed will also change because authority will be more decentralized, a counterintuitive observation from what has occurred to date. Not long ago it would have been unimaginable to think that Lehman Brothers, not to mention U.S. Steel or other large banks, would be organizations of the past. We believe the same may be true for a number of organized public systems and smaller private institutions where bargaining has occurred. We have yet to witness the level of foreign competition that will challenge us in the future. Technology and the internet will continue to change the way we approach and deliver higher education. All of which reminds us of the ancient Chinese proverb: may you continue to live in exciting times. Count on it.

Conclusion

In this paper we examined a number of important issues: first, how to conceptualize and evaluate the impact of collective bargaining in institutions where faculty are elected to join unions. We summarized what is known and what is not known about academic collective bargaining after nearly fifty years of unions on campus. We argued that faculty unionization is more a factor of institutional and demographic variables (enabling labor legislation, region, institutional size, the presence of other public and private sector unions, unit determination configurations, the scope of bargaining) than faculty “attitudes” about unionization. In this respect, many of the earlier studies of collective bargaining failed to account for the overriding forces and constraints common in the industrial labor relations context. Attitudes about unions, we now know, are relatively poor predictors of what actually occurs in unionized settings. This is not too surprising as most scholars who initially wrote about collective bargaining had limited experience in the labor relations processes, were not involved as practitioners in labor negotiations, and approached the phenomenon from theoretical perspectives which led to a number of predictions about unionization that proved not to come true (i.e., that tenure or academic freedom would be traded for compensation gains at the bargaining table, that “prestige” would have a strong negative effect on faculty proclivities to usher in unions, that unions and professional standards were not compatible, etc.). In fact, far more than originally thought, the legal and legislative architecture framing these processes steer the parties along very predictable pathways.

Faculty unionization is also a result of a defensive posture designed to safeguard newly won rights and prerogatives and to solidify gains in professional autonomy made by faculty, particularly in the state

college and university systems. We posited that an analogy with “craft union” behavior provides a powerful lens through which to assess academic collective bargaining. For this reason, we do not agree that faculty unions are necessarily antithetical to professionalism. In fact, in most instances, unions codify academic prerogatives into labor agreements and, in this sense, reinforce and safeguard professional rights and responsibilities. Of course, maintaining the delicate balance between the needs of organizations dependent on employee dues and devoted to employment security with the responsible exercise of professional obligations, including the non-reappointment of probationary faculty and access to graduate students for various employment activities, can be challenging. These and other characteristics inherent in the academic environment will forever cause tension between faculty in organized institutions. The “union” and the “faculty” are not one in the same, regardless of what many union leaders may say.

It may also be of interest to note that once a certain point of view takes hold, particularly if initially argued by those in elite places and in elite journals, such frameworks come to be considered as the established cannon by many in academic organizations; few are taking the time to see if the facts actually align with expressed theory. The “prestige as an inhibiting factor to unionization” took nearly three decades to debunk. Elite public institutions, including five AAU universities, are now bargaining collectively. Votes to unionize at other high prestige public schools were split between union factions, and so the “no agent” alternative was triumphant. We would agree, however, that the lion’s share of collective bargaining among faculty takes place at large public systems in states with enabling labor legislation. Although, if other employee groups are examined, for example graduate students seeking representation or non-faculty, the elite private and public sectors are very well represented. Another common notion, that the US Supreme Court decision has all but ended faculty unionization in the private sector, is also a case in point. In fact, faculty unions never made much headway in the private sector, even before the decision, and while the court made it more difficult to unionize in the private sector, twice as many private school faculty are now organized than at the time when the decision was rendered (it is still a very small number when compared to the public sector). Moreover, in the majority of cases where private universities were unionized prior to the decision, they have remained unionized, despite the legal arsenal now afforded those who wish to terminate organized relationships.

A second issue we explored, the contemporary subjects and problems facing parties at the bargaining table, yielded few surprises. Here we identify matters concerning workload and how to account for online courses and distance learning, family centered issues, the impact of technology, freedom of expression, merit pay and compensation, and negotiations with adjunct faculty, to be most salient. Have we uncovered

new or uncharted areas for bargaining, or did we discern an expansion of the scope of negotiations today? We hint in this paper that it is, for the most part, déjà vu all over again. That being said, we provided a view of the changing legal and legislative landscape; wild cards which will become more manifest, particularly when it comes to the assessment of graduate student unions and the future of enabling public sector labor legislation. The latter is directly linked to the presence of viable collective bargaining in the public sector, and we are comfortable in stating: so goes enabling legislation, so go academic unions.

Third, we argue it is exceedingly difficult to untangle the effects of collective bargaining from other forces shaping the academy. For example, despite years of research there is no consensus regarding whether or not unionization results in higher salaries. The highest and lowest paid faculty in both the public and private educational sectors remain non-union. We identified salient organizational impacts of academic unions once the dynamics of collective bargaining are institutionalized on campus, and we offered a number of observations on effective administrative strategies needed to manage in organized institutions. We argue that decision making processes, shared governance dictates, and administrative practices and policies change. We also suggested bargaining dynamics—a multi-dimensional process with many different groups potentially exercising influence—mirror the many constituencies involved in university governance. While negotiation processes retain a number of their primary characteristics, in higher education at least, they have changed in subtle ways as well. Like many in academe, those responsible for negotiations and collective bargaining in general have had to adjust to a “new normal”; they have less flexibility, power, and influence to effectuate change. Technology and “real time” communications have made negotiations more complex and public. We also sought to demonstrate why the rhetoric around labor management relations more often than not fails to become reality. Our depiction of the dimensions of collective bargaining was based on our involvement in hundreds of negotiations at colleges and universities representing over two thirds of all unionized faculty in the US.

We offer two other concluding comments. First, that organized faculty are still a relatively new phenomenon and do not represent the majority of those teaching in post-secondary education. Collective bargaining in the U.S. is nearly 100 years old. While the National Labor Relations Act was passed in 1935, faculty unions arrived on the scene in the late 1960’s, and the NLRB asserted jurisdiction over higher education in 1970. Important cases that continue to shape the legal landscape are still winding their way to labor boards and the Supreme Court. Although unions have made significant gains on campus (public post-secondary education is one of the most organized sectors in the US), first time agreements are still being negotiated; the process is yet to fully unfold in a number of systems. Unlike other labor sectors, the probability exists that

we will see some additional variations on older themes. Moreover, despite the high levels of union penetration, there remains an uneasy balance between unions and pre-existing governance bodies (senates and assemblies). Few, if any, industries have competing structures like those found in colleges and universities. The jurisdictional territories of faculty versus those who “manage” the academic enterprise, overlap in many ways. Staking out clear areas of influence will remain a challenge; the organized professoriate will struggle with identity issues in the foreseeable future.

Second, the nature of academic labor is changing rapidly from one grounded in full-time, tenured positions to the perilous world of contingent faculty and online education. Putting aside the issue of whether tenured, full-time faculty really need a union, in the future the largest body of organizational activity will be with adjuncts, graduate assistants, and part-time faculty. Here we believe unions will thrive because they are needed by these constituencies, and institutions of higher education do not have the resources or the ability to address real concerns. Coupled with the decline in state and federal support and public calls for accountability and “objective” performance measures, the future may see more, not fewer, collective bargaining units.

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