

Professors and instructors - Collective bargaining.

COLLECTIVE BARGAINING FOR

COLLEGE FACULTIES

A Colloquium Sponsored by the Departments of
Economics, and Government and Law,
Lafayette College, Easton, Pennsylvania,

March 29, 1974,

Program Chairman: Dr. Paul A. Pfretzschner.

[Lafayette College. Department of Economics.]

EDITORIAL NOTE:

This program was designed to present a balanced point of view. The emphasis was on private colleges although comparisons with public institutions were made. The audience included faculty and students from Lehigh Valley Colleges, some of whom had little acquaintance with collective bargaining, even in industry.

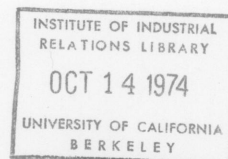
The papers have been summarized, and approved by the speakers.

BACKGROUND:

Collective bargaining, or collective negotiation, in higher education (with a recognized bargaining agent) is a new development. It began in the public sector, largely in states which have enabling legislation, such as Massachusetts, New York, New Jersey, Pennsylvania, Michigan and Hawaii. Organization has occurred more often in two year colleges, and in institutions which had been teachers colleges and which became four year state colleges. Recently some State Universities such as those in New York (SUNY) and Rutgers, in New Jersey have signed agreements. Relatively few private colleges or universities have collective bargaining with signed contracts. An early example is St. John's University in New York (1970).

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Easton, Pa., 1974.



Twelve private 4 year institutions started collective bargaining in 1973.

(See Appendix I and Appendix II for tables.)

While some bargaining units are independent, most are affiliated with either the American Association of University Professors, the National Education Association, the American Federation of Teachers (AFL-CIO) or a coalition of the latter two (United Federation of College Teachers).

Many institutions of higher education already have a structure for faculty participation in policy determination. Parts of this structure may be incorporated in the collective bargaining agreement.

Most contracts have an explicit grievance procedure. In some the final disposition of a grievance is made by a top bi-lateral board in the institution. In others an outside neutral, familiar with academia (frequently obtained through the American Arbitration Association) makes a final and binding award. However, the field of the neutral often is limited to procedural matters. He is frequently not allowed to substitute his judgment for an academic judgment already made of the professional competence of a faculty member, even when the arbitrator is asked to determine if there has been discrimination, or abridgement of academic freedom.

Chairman, Afternoon Session: Dr. Alfred E. Pierce

The Ground Rules of Collective Bargaining

Frank P. Corcione, Instructor in Economics, Lafayette College

Bargaining in state institutions of higher learning usually comes under a state employee relations act.

Private colleges with gross annual revenues of a million or more dollars, come under the jurisdiction of the NLRB, as the result of decisions in four cases between 1969 and 1971. (See Appendix III.)

A group of faculty desiring organization may petition the Regional Director of the NLRB for an election, if it can submit signed authorization cards for at least 30 per cent of the members of the proposed unit.

The usual rules for appeals to the NLRB, entrance of intervening groups, elections, and run-off elections, as used in private industry, are followed. If one bargaining agent receives a majority of the votes, it is certified as the agent to bargain for all members of the bargaining unit.

The Nature and Applicability of Collective Bargaining for Colleges

Dr. Dick Netzer, Dean, Graduate School of
Public Administration, New York University

There is a fundamental difference between public and private institutions with respect to collective bargaining.

While there are situations in which collective bargaining may be a good choice in the public sector, it is not appropriate in private institutions.

Collective bargaining involves both economics and governance.

In the public sector there is a well defined economic adversary, whose funds are ultimately derived from taxes. Thus collective bargaining in a public university may help to maintain the institution's relative share, when other organized public employees are pressing their own demands.

On the other hand, a private institution, unless a prestigious giant, may lose students if it raises tuition, especially in times of slackening total demand. The faculty might gain slightly by increasing its proportion in the institution's budget, but additional demands would be restrained by the danger of terminating the institution. The economic position of the faculty may not be appreciably different, whether or not there is collective bargaining.

Faculty are very much concerned with other issues such as class size, teaching loads, and laboratory needs. There are also issues of appointments, promotions and tenure. Most institutions already have collegial decision making machinery, and a good deal of faculty participation in critical decisions.

This is illustrated by the experience of New York University, where after two long drawn-out elections, the faculty voted for "no union". In a time of financial stringency in 1972, the Administration reluctantly accepted faculty advice to retain the School of Social Work and to delay a merger of the Engineering Department with Brooklyn Polytechnic until better terms were secured. The point is that faculty views were decisive in these most serious developments.

At NYU the Faculty Senate and Faculty Committee on Self Governance get input from all strata of faculty. They transmit the views of independent scholars on University problems more effectively than an NLRB-type bargaining agent could do.

Bargaining contracts tend toward uniformity specifying, for example, exact time of office hours for faculty. They may reduce faculty participation in governance if this is traded for economic gain. Some contracts provide for external arbitration, which can be unpredictable. Many faculty are apprehensive about loss of individual freedom of action or rights through collective bargaining. There have been a significant number of rejections in recent elections. At the University of Hawaii, where negotiators had bargained away some tenure rights, the contract was rejected by the faculty.

The Nature and Applicability of Collective Bargaining for Colleges
(Continued)

Dr. William Weinberg, Institute of Management
and Labor Relations, Rutgers University

(EDITORIAL NOTE: Dr. Weinberg, when he was Assistant to the President, negotiated the first Rutgers Contract. He has long experience in mediation and arbitration. At present he is making a study of collective bargaining in higher education.)

I agree with much of what has been said by Dean Netzer, but I reach a different conclusion: collective bargaining fits comfortably into a governance system. I am very much for collective bargaining, although it is not a panacea, and in some situations, the desired results may be achieved by other means.

Statistics on organization in 2 and 4 year institutions since 1970, show that the rate of organization in the public sector is falling off because organization has already covered virtually all institutions wanting to be organized in states with a favorable legislative climate. There is some increase in the rate of organization in the private sector in 1973-74, but the actual number is small, and many faculties are uncertain about it. The rejection rate has increased.

There is great diversity in contracts. It is reassuring to administration and faculty to recognize that contracts are typically adapted to the pre-existing structure of decision making. Governance thus survives along with collective bargaining. In fact collective bargaining often revitalizes governance. The senates have not disappeared; some administrations are now more willing to deal with a strong senate as an alternative power structure.

In certain cases, if the faculty has control of its own destiny

and participates in decision making and there is a fairly large endowment, or a secure economic base, the institution may be better off without collective bargaining. Large and well endowed institutions (like Harvard which I characterize as a cross-breed of Oligarchy and Commune) may not need collective bargaining.

Collective bargaining is more likely to come in a crisis situation, when there is a threat to tenure, or when there is a feeling that bargaining could bring more faculty participation in policy making. State centralization of public higher education is an effective organizer of faculties. The faculty prefers that someone else present demands. They also find that it is a protection against unilateral withdrawal of a benefit already obtained. It could also be used in an individual state institution as a protection against consolidation into a state-wide bargaining unit.

Faculty unionism is now here, but probably will develop slowly.

Contents of Collective Bargaining Agreements

Dr. Morrison Handsaker, Professor
of Economics, Lafayette College

My function is to present as objectively as possible the contents of a contract in higher education. I am not advocating. I am not opposing. I am reporting.

I have examined contracts from both public and private institutions and find greater variation in subjects, and in specific details, than would likely be found in contracts among, for example, steel fabricating plants.

Some contracts concentrate on economic issues, while others put more stress on faculty participation in college governance. One or two contracts offered students the opportunity to participate in an advisory capa-

city, but more often there was simply the stated objective of providing high quality education for students.

For illustration (not necessarily typical, since there is no pattern) I am presenting the contract between HCFSTRA UNIVERSITY (Hempstead, New York) and the AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, for the period September 1, 1973-August 31, 1976.

This agreement incorporates by reference the "Faculty Statutes" and the "Faculty Policy Series" which are binding on both parties "unless modified by or in conflict with this Agreement". It also incorporates individual employment contracts and specifies that in the event of conflict, "the Agreement shall be controlling".

The bargaining unit covers full-time and part-time faculty but excludes Department Chairpersons and other Administrators. The faculty of the Law School is excluded.

Compensation: In 1973-74 all full-time faculty are to get a 5.5% increase in base salary. Those receiving a rating of "satisfactory or better" in evaluation receive an additional half of 1%. The same pattern of increase is used for 1974-75, and for 1975-76, except that the general percentage increase is raised to 6% in 1975-76.

In addition an incremental step-salary system is to be put into effect. A schedule, to be effective in 1975-76, shows minimum salaries for each of four ranks. For example, there are eight steps for instructors, rising from \$10,600 to \$14,100, and 12 steps for full professors, rising from \$17,500 to \$26,300. With each additional year of service in rank the teacher moves one step higher in the schedule.

There is also provision for extra merit bonuses which do not become

part of the base salary.

Working Conditions: Teaching load is defined as 24 semester hours per year, normally 12 hours each semester. There is provision for some control on class size.

Fringe Benefits: Various previously existing fringe benefits, pensions, insurance, tuition remission for faculty, and faculty children's scholarships are to be continued. Provision for sabbatical leaves is made.

Reduction of Faculty: A detailed plan for reduction in faculty because of a "bona fide exigency" or "to eliminate or curtail programs" provides for reduction according to seniority, and allows transfers, provided the senior member of the faculty is qualified to teach the course in question.

Appointment, Reappointment, Promotion and Tenure: A system for transmission of recommendations from faculty members through different levels of administrators to the University Faculty Personnel Board is provided. Appeals concerning evaluations or other decisions are ultimately decided by the University Appeals Board, chaired by the Provost, but with faculty and administrative members.

Grievance and Arbitration Procedure: This applies to grievances concerning application or interpretation of the contract, excluding questions of appointment and tenure, which are handled separately, as indicated above. The final step is arbitration through the American Arbitration Association.

Other Clauses: Non-Discrimination; Check-off of AAUP Dues; with signed authorization cards; No-Strike-No-Lockout clause for the duration of the Agreement.

Chairman, Evening Session: Dr. Robert N. Kelson

Consequences of Collective Bargaining for
the Individual, Institution and Society

Mr. Woodley B. Osborne, Associate Counsel and
Staff Director for Collective Bargaining,
AAUP

Collective bargaining is still new in the area of four year colleges and universities. We have few second contracts. It is, therefore, difficult to project the future.

Faculties desiring collective bargaining should consider, before they approach the NLRB, whether they wish to include the Department Chairman in the bargaining unit. The NLRB excludes supervisors who make effective recommendations to management, but will include a Chairperson if it is shown that he or she is merely a conduit for the general will of the Department. Also consideration should be given to whether Librarians and other professional groups are to be included.

Although levelling of salaries as a result of collective bargaining is sometimes predicted, in actuality, bargaining agents have obtained funds to correct inequities, and merit plans have been continued in various instances.

Strong management's rights clauses in contracts are sometimes feared by faculty contemplating collective bargaining and negotiators should examine carefully the proposed wording. Much depends on how management uses them, and often they have had little significance.

The tensions resulting from bargaining unit elections, especially when more than one union is involved, are also similarly feared. After elections are over, however, there tends to be accommodation.

Consequences of Collective Bargaining
(Continued)

Mr. Ray A. Howe, Dean, Henry Ford Community
College, Dearborn, Michigan
(Formerly Vice President of the American
Federation of Teachers, 1962-65)

In my 10 years experience as a Faculty representative and 7 years as an Administrative representative I have never found anything that wasn't, in the long run, thoroughly comfortable and enjoyable in collective bargaining.

Collective bargaining comes only if the faculty wants it. The Institution, the individuals that compose it, and society as a whole, must be well served by collective bargaining, if the decision is made to undertake it. This is a responsibility of all concerned and involved.

Collective bargaining is an evolutionary process. A great deal depends on the skills, experience and attitudes of the practitioners on both sides of the table.

Is the "Adversary" Relationship the Death Knell of Collegiality?

We should recognize that our society rests, in the legal area, on the adversary system and an "adversary" is not an "enemy". As mutual respect and credibility develop between the two sides of the bargaining table, collegiality and peer status can be preserved.

Is Collective Bargaining a Blue Collar Experience, and Improper for Professionals? It should be remembered that Marian Anderson has seven union cards. Collective bargaining is suitable for professionals who seek to improve the situation for students, faculty and administration.

What Are the Costs of Collective Bargaining? It requires expenditure of money for affiliation and local dues, for collecting data, and for legal

expenses and possible arbitration. It also requires time, concentration and effort. It is not an automatic process, and it never ends, since ratification of the first contract is the first step toward the second contract. There are other consequences, in tension, and sacrifice of idealism to practicality. While it probably won't produce rampant radicalism, it might produce too rigid conservatism, at a time when higher education needs flexibility.

What Can be Accomplished? Collective bargaining usually comes because there is already a problem. Collective bargaining commands attention. There is a riddle: "What do you get if you cross a canary with a tiger? Answer: I do not know, but if it sings, you had better listen to it."

More efficient administration may develop.

There will probably be more open disclosure of financial information.

The land-use policies of the administration may become a new subject for bargaining. It may, for example, be a significant matter in terms of administration's ability to pay.

Some thought must be given to making the bargaining unit creative, as well as distributive, although this might be complicated by political issues.

Final Advice: Collective bargaining should be approached with an open mind. Do not harbor resentment but work cooperatively toward the solution of problems, and recall the lines of Dorothy Parker's poem, "The Veteran", which ends "A battle lost, a battle won, the difference is small my son."

APPENDIX I

FORMATION OF FACULTY BARGAINING UNITS (1964-1973)*

	<u>PUBLIC INSTITUTIONS</u>			<u>PRIVATE INSTITUTIONS</u>		<u>YEARLY</u>
	<u>2-Year</u>	<u>4-Year</u>	<u>2/4 Year</u>	<u>2-Year</u>	<u>4-Year</u>	<u>TOTALS</u>
1964	1					1
1965	9					9
1966	7	1				8
1967	11				1	12
1968	17					17
1969	28	2	1	1		32
1970	27	7			4	38
1971	21	6	1		7	35
1972	19	11	1	1	7	39
1973	<u>3</u>	<u>4</u>	<u>—</u>	<u>1</u>	<u>12</u>	<u>20</u>
Totals	143	31	3	3	31	211

Sources: National Center for the Study of Collective Bargaining in Higher Education; and Faculty Bargaining in the Seventies. Ann Arbor, Michigan: Institute for Continuing Legal Education, 1973.
also Issues of Chronicle of Higher Education.

*Includes only units in which the bargaining agent is the exclusive representative for the purpose of collective bargaining.

NOTE: This table is taken, with the permission of the author, from an article by James P. Begin, Institute of Management and Labor Relations, Rutgers University, entitled "Faculty Bargaining in 1973: A Loss of Momentum?", to appear in a forthcoming issue of the College and University Personnel Journal.

APPENDIX II

FACULTY BARGAINING REPRESENTATIVES AT FOUR-YEAR COLLEGES AND UNIVERSITIES

February 1, 1974

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

*Adelphi University **
 *Ashland College **
 *Fard College **
 *Elcomfield College
 *University of Bridgeport
 *University of Delaware **
 *Dowling College **
 *Hofstra University **
 *Lincoln University **
 *New Jersey College of Medicine and Dentistry **
 *New York Institute of Technology **
 *Oakland University **
 *Polytechnic Institute of Brooklyn **
 *Regis College **
 *University of Rhode Island **
 *Rider College, N. J.
 *Rutgers-The State University of N.J. **
 *St. John's University **
 *Temple University
 *Towson State College, Md.
 *Wagner College
 *Wayne State University **
 *Eastern Michigan University
 *Fairleigh Dickinson University

INDEPENDENT BARGAINING AGENTS

Southern Oregon College
 *Fordham University Law Faculty
 Newark College of Engineering
 Temple University Law Faculty
 *Syracuse Law Faculty
 *San Francisco University Law Faculty
 *New York University Law Faculty

NATIONAL EDUCATION ASSOCIATION

Central Michigan University **
 *Detroit College of Business **
 Ferris State College
 Fitchburg State College **
 *Loretto Heights College **
 *Monmouth College **
 Nebraska State Colleges **
 North Adams State College
 Pennsylvania State Colleges **
 Saginaw Valley State College **
 Salem State College
 *Roger Williams College **
 Westfield State College
 Youngstown State University **
 *Jamestown College

AMERICAN FEDERATION OF TEACHERS

Boston State College **
 *Bryant College **
 University of Hawaii
 *Layton School of Art & Design **
 Lowell State College
 Massachusetts College of Art
 *Moore College of Art **
 New Jersey State Colleges **
 Rhode Island College **
 Southeastern Massachusetts University **
 *Wentworth Institute & College of Technology
 Worcester State College **
 *Franklin Pierce College
 Vermont State Colleges
 *New England College, N. H.

AFT/NEA (UECT)

City University of New York, UECT **
 *College of Pharmaceutical Sciences, Columbia University
 *Long Island University, Brooklyn Center **
 *Long Island University, Southampton
 *Pratt Institute **
 State University of New York **
 U.S. Merchant Marine Academy
 *Long Island University, C.W. Post Center

*Private
 **Contract has been negotiated

NOTE: This table was furnished by Woodley B. Osborne, Director of Collective Bargaining and Associate Counsel, American Association of University Professors, 1 Dupont Circle, Washington, D. C. 20036

APPENDIX III

NLRB CASES: JURISDICTION OVER COLLECTIVE BARGAINING
IN PRIVATE COLLEGES AND UNIVERSITIES

In 1969 the non-professional employees and various other non-faculty groups connected with Cornell University sought recognition under the State Labor Relations Act. Cornell University requested the NLRB to accept jurisdiction.

- JUNE, 1970 The NLRB assumed jurisdiction and established a bargaining unit of non-supervisory and non-professional employees at Cornell.
- NOV., 1970 The NLRB established the "Million Dollar Rule":
- Annual gross revenue of a million dollars is the minimum criterion for NLRB jurisdiction (to make the Board's jurisdiction co-extensive with the Commerce Clause of the U. S. Constitution).
- APRIL, 1971 In the C. W. Post Center of Long Island University decision of April 1971 the employer did not contest the right of the faculty to bargain. Issues mainly dealt with exclusion of certain personnel from the bargaining unit.
- SEPT., 1971 In the Fordham University case the NLRB ruled that faculty members were eligible under the NLRA.

Source: Robert E. Doherty (Director, Institute of Public Employment, School of Industrial and Labor Relations, Cornell University), "Collective Bargaining in Private Colleges and Universities: Issues and Implications," The Twelve College Faculty Appointment and Development Study, Institute for Educational Development (52 Vanderbilt Avenue, New York, New York, 10017), Chapter II, pp. 43-45.