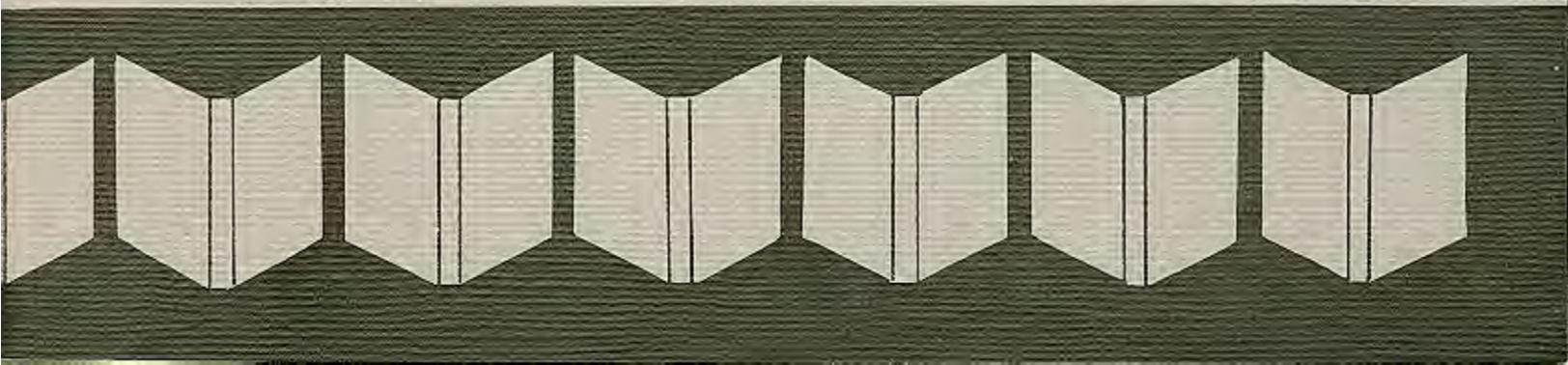


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# educational considerations

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## Viewpoint

# A balance of views on collective bargaining

Collective bargaining in the public sector, which includes public schools and public institutions of higher education, is a modern fact of life. Statutes authorizing bargaining rights for public employees now exist in three-fourths of the states in this country, and there is every indication more states will pass some form of permissive legislation during the next several years. The question is thus not one of whether or not bargaining should be extended to the public sector, but rather how is public sector bargaining to be carried out and what is the current and potential impact of such bargaining?

The articles included in this issue all focus on collective bargaining in education, with attention given to schools at the elementary and secondary level, community colleges, private higher education institutions and public colleges and universities. The issue is thus directed to a status report on bargaining. Some comment is perhaps in order with regard to the rationale for singling out the topic of bargaining as a concentrated theme. The answer is simple. Collective bargaining in education is an important subject to educators. All educators! Educational bargaining is becoming more and more a reality in the Midwest region of the country, and that being so, those individuals involved need to know as much as possible about the subject.

A word of caution about the issue. In selecting articles for inclusion no attempt was made to specify the extent to which each author did or did not take a neutral stance with reference to the topic. Clearly some of the authors were not neutral concerning their commentary. So much the better reading! A balance of viewpoint for the issue as a whole was, however, sought. The success of this attempt is left to your judgment.

**Eddy J. Van Meter**  
Associate Professor of Education  
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**For all practical purposes, 1960 marks the true beginning of the collective bargaining impetus in public education**

# Collective bargaining in education: an historical perspective

by Thomas A. Eaves

Nearly 40 years ago, Congress and a number of states recognized collective bargaining as a procedure for the orderly determination of working conditions in private enterprise.

The federal policy established in 1935 by the Wagner Act might not have come to fruition had it not been for the Depression. However, 125 years of employees' use of economic power, such as work stoppages which halted industrial production, preceded the congressional approval of collective bargaining (5). Thus the Wagner Act did not evolve totally from the Depression, although the Depression provided perhaps a necessary thrust. When the Wagner Act was enacted, public employees had little interest in bargaining. They had job security, pensions and adequate compensation. The civil service system or the political process afforded public employees working conditions generally regarded as superior to those of employees in private industry.

Gradually after 1935, private employees forged ahead of public employees in compensation and benefits. By 1965, conditions had changed substantially. Government employees, like their counterparts in private enterprise, were being subjected to the same vicissitudes of employment insecurity, inflation, accident, illness and old age. Other factors influenced the pressure for public sector labor legislation and the demand for the privilege to bargain. Increased employment in state and local government caught the eye of union leaders as a source for union growth. Congruently, the human desire to have a voice in those activities which have substantial influence on one's life motivated public employees to organize.

## The Federal Scene

At the federal level, the first right granted federal employees came with the Lloyd-LaFollette Act of 1912. This legislation reversed the President's "Gag Rule" of 1902 and thereby allowed employees to petition Congress individually or collectively, and specified that postal employees had the right to join organizations that did not authorize the use of strikes (10). Although it mentions only postal employees, it has been held to protect the rights of all federal employees. The major breakthrough in federal labor relations programs occurred, however, in 1962 with President Kennedy's Executive Order (EO) 10988 which authorized union representation for most federal employees. The order also provided for advisory arbitration of representation issues and permitted negotiations between governmental agencies and the organizations representing their employees. However, it did not provide the right to strike.

Dissatisfaction with the provisions and execution of EO 10988 increased as collective bargaining units and agreements spread among federal employees. Such dissatisfaction had grown because some measures had become outmoded and others had proved more restricting as employee organizations and employee-management relations developed. In September 1967, President Lyndon B. Johnson appointed a committee to review and study the operations of EO 10988. The report of the Wirtz Committee, as it was known, was never officially released by President Johnson due to changes in the committee membership. Nonetheless, Secretary Wirtz, in his final report as Labor Secretary, issued the unofficial text as agreed to by the committee majority (11).

On October 29, 1969, President Nixon issued EO 11491, thereby revoking EO 10988 as well as the Standards of Conduct for Employee Organizations and the Code of Fair Labor Practices. The new order incorporated most of the Wirtz recommendations and differed from EO 10988 primarily by further extending the procedures for impasse resolution and the provision for a greater degree of finality in employee relations in the Federal Government (10).

## State and Local Action

Collective bargaining has existed in state and local governments for decades. The International Association of Fire-Fighters, for example, is one of the oldest unions operating in the public sector, while the American Federation of State, County and Municipal Employees, (the largest public sector union in America today) dates back to the 1930s in the state of Wisconsin (11). However, prior to 1962, no state had passed legislation permitting or requiring government agencies to bargain with employee organizations. During that period, judicial decisions and orders by state attorneys general typically opposed the concept of collective bargaining for public employees. Murphy has indicated that the three events generally cited as historic precedents for public employee unionism at the local level are:

1. The recognition of the city of Philadelphia in 1957 (the Clark-Dilworth Era) of AFSCME as the exclusive bargaining agent for all nonuniformed workers in the city, on the basis of proof of majority representation, and the subsequent negotiation of an agreement.
2. The issuance by Mayor Robert Wagner of New York City in March of 1958 of an executive order (often called New York City's "Little Wagner Act") declaring

it to be the policy of the city to promote the practice and procedures of collective bargaining for the city by the majority representatives of its employees.

3. The negotiation by AFSCME in July of 1956 of an agreement with the city of New Haven, Connecticut, which provided for third-party arbitration by an independent arbitrator selected through the American Arbitration Association.

When EO 10988 was issued in 1962, it had a profound impact on state and local government. Thereafter, in the middle 1960s several states began to enact laws that showed the distinctive influence of the federal model found in Kennedy's Order (10). The overwhelming majority of state statutes pertaining to public employee relations have been enacted since 1965, and each year brings additional states into the picture, either through amendments or the enactment of new laws.

Robert G. Howlett, chairman, Michigan Employment Relations Commission summarized the state and local involvement in collective bargaining:

Today, 38 states and the District of Columbia require public employers to engage in collective bargaining or to meet and confer with all or some employees. Thirteen states **authorize**, by statute, attorneys general opinion or court decision, collective bargaining for some or all public employees or grant to public employees the right to present proposals.

Collective bargaining between public employees and labor organizations exist in states where neither statute, court decision, nor attorneys' general opinion authorizes bargaining. The number of public sector union members in these states, as evidenced by the most recent Labor Department statistics, discloses that neither unions nor employees have waited for the passage of public sector bargaining laws to begin organizing and bargaining. (6:37)

### Public School Bargaining

Prior to 1962, no board of education in the United States was required by law to negotiate with its teachers, and only a handful of boards of education had signed written collective bargaining agreements. Such limited activity by public education in collective bargaining has been partly explained by Parrott.

In 1917, the question whether public school teachers could be dismissed for membership in a labor union arose. The Chicago Board of Education adopted a resolution prohibiting membership by any of its teachers in the Chicago Federation of Teachers. Several teachers who violated this resolution lost their jobs and the Supreme Court of Illinois upheld the board's resolution. In the case of **People ex. rel. Fursman v. City of Chicago**, 116 N. E. 158, 1917, the court declared that union membership "is inimical to proper discipline, prejudicial to the efficiency of the teaching force, and detrimental to the welfare of the public school system." (13:35-36)

It was not until 1951 that the regulation against union membership by teachers was reversed. This occurred in **Norwalk Teacher's Association v. Board of Education**, 83A. 2d 484, 1951, where the dismissal of several Norwalk, Connecticut, school teachers (for striking) was upheld. However, the court ruled that, in the absence of enabling legislation, (1) public school teachers may organize; (2) a

school board is permitted, but is not legally obligated, to negotiate with a teacher's organization, (3) a school board may agree to arbitrate with teachers, but only on those issues that do not erode the board's legal prerogative to have the last word, (4) a school board may not agree to a closed shop; and (5) public school teachers may not strike to enforce their demands (12).

However, even the advent of the **Norwalk** case did not rapidly stimulate the bargaining movement in public education. For all practical purposes, 1960 marks the true beginning of the collective bargaining impetus in public education. According to Livingston:

While virtually no teachers were covered by collective bargaining agreements as of the 1961-62 school year, a survey by the National Educational Association (NEA) of selected school districts during the 1966-67 school year found 1,531 separate collective bargaining agreements covering 609,034 teachers. By the 1970-71 school year these figures had increased to 3,522 collective bargaining agreements covering 1,337,146 teachers. (18:63)

The American Federation of Teachers (AFT), the more militant of today's teacher labor organizations, was founded in 1916 as a craft union affiliated with the American Federation of Labor (AFL). Consequently, the AFT was organized along traditional trade union lines. From 1916 until 1960 the AFT was practically moribund. However, after the success of its New York City affiliate, the United Federation of Teachers, in obtaining collective bargaining rights in 1961, the AFT experienced significant growth in membership. As of September 1962, the AFT had 261,506 members. By May 31, 1973, AFT membership had increased to approximately 360,000, largely as a result of the merger between the NEA and AFT affiliates in New York State. In order to be a member of the merged state organization, New York State United Teachers, teachers were required to join both the NEA and the AFT (4).

Unlike the AFT, which has collective bargaining as an almost exclusive objective, the NEA is a multi-purpose organization which devotes itself to such matters as research, teaching methodology, standards for teacher education, academic freedom and tenure, and a wide range of political activities. In recent years, however, a steadily increasing percentage of the NEA's annual budget has been earmarked for the direct or indirect support of collective bargaining activities.

With local affiliates of both the AFT and NEA merging and as the two organizations have moved to more common grounds, discussions of organizational detente or amalgamation have increased. Since 1968 the AFT has publicly advocated a merger of the two national organizations and has urged the NEA to enter into talks looking to this end. After repeatedly rejecting the merger requests of the AFT, the NEA, in 1973, did authorize its president to enter into discussions regarding the merger of the two respective organizations. From the fall of 1973 until the end of February 1974, the two teacher organizations discussed the possibility of merger. However, the NEA terminated the talks on the grounds that the AFT was unwilling to agree to a merger on the terms called for by the NEA Representative Assembly of 1973.

As the NEA has become more militant in its approach to teacher bargaining, the gap in philosophy and action between the AFT and NEA has narrowed to the point where one cannot determine which organization represents

the faculty of a particular school or school system (9). Currently, both are ardent supporters of the strike as a basic right of their respective clientele and both have strong lobbying efforts for a national public employee labor law. Helen Wise, 1973 president of the NEA, stated this support aptly with:

The real reason for the resistance to collective bargaining is obvious. Collective bargaining means bilateral decision-making in respect to many matters traditionally within the unilateral control of the school board, and history teaches us that authority is seldom relinquished without a struggle. (3:21)

### Post-Secondary Education: Focus on Two-Year Institutions

The 1960s was the era of explosive growth for collective bargaining in the elementary and secondary schools. The decade of the 1970s seems destined to be recorded as the era when collective bargaining arrived as the primary vehicle for faculty entrance into the governance of post-secondary institutions. Evidence today clearly substantiates such a claim. In comparing statistics of surveys taken 1969, 1973, and 1975, one may determine the following:

1. In the 1969 Carnegie Survey of Higher Education 47 percent of the respondents supported the strike as "legitimate action." In the 1975 survey reported by Ladd and Lipset (9), 66 percent of the faculty respondents supported the strike as a legitimate action in lieu of impasse in negotiations.
2. In April 1973, as reported by Tice (14), 228 public institutions or campuses were represented by 194 faculty bargaining units. Two hundred and one (201) of these institutions were public two-year institutions or campuses having 142 bargaining units. Semas (14) reported 394 campuses or institutions with bargaining units in public post-secondary education; 266 of these being two-year campuses or institutions.
3. In the Carnegie Survey of 1969, 67 percent of two-year faculty respondents and 60 percent of all post-secondary faculty respondents supported the statement, "I disagree that collective bargaining has no place on campus."  
By 1975 these percentages had increased to 76 percent for two-year faculty and 69 percent for all faculty (8).

These data indicate the rapid growth of faculty collective bargaining in higher education and, further, clearly indicate that the focal point is the two-year post-secondary institutions and campuses.

The first recorded community college (or community college system) to affiliate with a labor organization and gain bargaining status was the City Colleges of Chicago which became officially recognized in October 1966. Three months later Macomb County Community College (Michigan) was officially recognized to have bargaining rights. In the years that have followed, community colleges across the nation have led post-secondary education to the bargaining table. This "march to unionism" was correctly predicted as early as 1967 by the American Association for Higher Education (17:23): "... studies indicate that the greatest discontent and most visible tendencies toward unionization are found at the junior college level..."

### Conclusion

Today, union organizations find faculty even more receptive to collective bargaining. Inflation, which has impinged upon faculty salaries, and the rising level of unemployment throughout the nation create anxieties that further faculty cutbacks will be forthcoming. The movement toward centralization and more state control creates impersonality in the operation of institutions and places faculty participation in decision-making farther from faculty influence.

Even where local autonomy exists, hierarchical governance structures persist and faculty "power" remains negligible, particularly in policy matters concerning compensation, personnel issues and job security (1). Faculty discontent has been compounded by the increasing practice of stretching instructional wage budgets by hiring increasing numbers of younger, inexperienced instructors at close to subsistence-level salaries and employing more instructors than may be allotted according to size of student populations at particular institutions. One might extrapolate, given the similarities of the mid-1970s (in regard to economic conditions and unemployment) with the mid-1930s, that public sector bargaining has the impetus to move Congress to a national public sector labor law as supported by the NEA, AFT, AFSCME and other public employee unions.

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## Community colleges should lead way?

Of the two levels of public higher education—community college and university—the community college system should perhaps be the leader in examining the climate of its member institutions with regard to collective bargaining. Such leadership by the community college system is most appropriate at this time due to the national trend of public two-year educational institutions' involvement in collective bargaining. Blumer<sup>1</sup> indicates that community colleges comprise 70 percent of the institutions in higher education which are unionized. Such membership can be aligned directly with the prevailing attitudes of community college faculty toward collective bargaining. Kennelly and Peterson<sup>2</sup> indicate that community college faculties view collective bargaining more positively than do other faculty in higher education. To them, collective bargaining promotes desirable administrative-faculty relationships, is not associated with militance or discontent, and does not imply adversity.

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The inception of collective bargaining in Kansas community colleges created considerable anxiety among administrators although most seem to accept bargaining as a reality.

# The current status of collective bargaining in Kansas community colleges.

by Dennis Michaelis

As early as 1970, the Kansas legislature recognized the rights of certain professional employees in education to organize and negotiate. Known as the "Professional Collective Negotiation Act," the legislation affects community colleges as well as all school districts and area vocational-technical schools. The 1970 statute, 72-5414, states the right to organize and negotiate as follows:

Professional employees shall have the right to form, join or assist professional employees' organizations, to participate in professional negotiations with boards of education through representatives of their own choosing for the purpose of establishing, maintaining, protecting or improving terms and conditions of professional service. Professional employees shall also have the right to refrain from any or all of the foregoing activities. In professional negotiations under this act the board of education may be represented by an agent or committee designated by it.

In 1973, the Kansas Supreme Court in *National Education Association of Shawnee Mission, Inc., v. Board of Education of Shawnee Mission U.S.D. No. 512*, 212 Kan. 741 dealt with three aspects of the law with regard to the language "terms and conditions of professional services." These three areas included: (1) the duty to negotiate; (2) subjects of negotiation; and (3) the time for negotiations. Most significantly, the Court identified several items as negotiable subjects. This list has served as a guide for boards and faculty associations and includes:

Salaries and wages; hours and amounts of work; vacation allowance; holiday, sick and other leave; number of holidays; retirement; insurance benefits; wearing apparel; pay for overtime; jury duty and grievance procedure; probationary period; transfers; teacher appraisal procedure; disciplinary procedure; resignations and terminations of contracts and such other areas that directly or by implication involve these factors.

In the same case, the Court specifically excluded such things as "curriculum and materials, payroll mechanics, certification, class size use of para-professionals, the use and duties of substitute teachers and teachers ethics and academic freedom" from the list of negotiable items.

Chiefly in response to pressure from Kansas-National Education Association, the scope of the act was expanded in 1976. The 1976 legislature provided for procedural due process, and it has been from this point on that professional employees have increasingly moved to organize and negotiate.

To determine the current status of collective bargaining under the legislation specifically as relating to Kansas Community Colleges, a telephone survey was conducted in June and July of 1978. All 19 Kansas public community colleges were contacted and information was collected by visiting with administrators of each institution. The purpose of the survey was to determine data on the number of community colleges actually involved in collective bargaining and to find out who is doing the bargaining for boards and faculties. The survey intentionally omitted attitudinal questions concerning the bargaining process since only administrative personnel were contacted. (Refer to Figure 1 for specific information requested of each college.)

Two general observations can be made as a result of this survey: (1) the status of collective bargaining in Kansas public community colleges can still be considered in an early stage of development; and (2) there are enough colleges currently involved in bargaining to indicate that the process will eventually lead to increased use of collective bargaining in the Kansas community colleges.

Several aspects of response to the survey lead to the conclusion that collective bargaining is still in its initial stages. Only six of 19 community colleges describe themselves as being involved in full scale collective negotiations. This particular question was posed to respondents as being typified by formalized periodic meetings between representatives of board of trustees and faculty representative organizations. Of the remaining 13 colleges, four described the process at their institution as being a modified version of formalized negotiations, six colleges as being involved in a meet and confer situation, and two colleges as not being involved in negotiations at all. One college operates under a unilateral Board of

Trustees' offer to their faculty. Because only six of 19 colleges describe themselves as engaged in formalized bargaining, it leads one to conclude that not all faculties have thus far insisted upon utilization of K.S.A. Chapter 72, Article 54.

Further indication of bargaining's infancy is the fact that only four community colleges have selected an outside organization to represent them. The majority, 11 in all, of the faculties have chosen a local faculty association as their bargaining unit while four colleges at present have no formal unit formed. The conclusion, of course, is based on the idea that the selection of more formalized groups such as K-NEA, AAUP or AFT clearly indicates a more sophisticated, more serious approach to the bargaining concept by faculties.

The less adamant tone of collective bargaining in Kansas community colleges is further underscored by the fact that few boards and faculties have selected outside personnel to conduct the bargaining for them. It is in this vein, however, that an interesting difference occurs. Virtually none of the community college faculty organizations employ an outside negotiator to sit at the bargaining table. Sixteen of the faculty organizations are represented by faculty members from within the organization while three of the colleges have no representatives involved in the bargaining. On the other hand, three of the Boards of Trustees have employed an outside attorney experienced in collective bargaining and two Boards utilize local attorneys to conduct the negotiations. Although there is no overriding trend among the Boards, seven of them choose members of the local Board to conduct the negotiations. Of the other Boards, one is represented solely by an administrator, two colleges utilize a combination of administrators and Board members, and four of the community college Boards of Trustees have no negotiator designated. Although Boards appear to have moved toward a more advanced level of negotiation sooner than faculty groups, the relative status of negotiations in this respect must still be termed somewhat less than full scale bargaining.

The second observation of this article that more formalized negotiations is on the increase is more difficult to prove by the direct information collected in the telephone survey. However, it was clear in talking with the various administrators that the bargaining situation has become more adversarial in the past two or three years. Several of the administrators offered the opinion that their faculties would likely seek more formalized negotiations in the future. On the whole, these opinions were not necessarily taken negatively. As viewed by many community college administrators, collective negotiations is a fact of law and the adversarial aspect of the process can and should be minimized. The Professional Collective Negotiation Act and the Shawnee Mission case have done much to clarify the various issues and provide adequate machinery for a livable relationship.

Other information collected in the telephone survey should be of interest. Fully 15 of the colleges include department or division chairpersons and counselors in the bargaining units. Sixteen also include librarians while only one includes administrators and part time faculty. Three of the colleges have no bargaining unit. Another fact of interest is that 14 of the colleges had completed

negotiations by July 12, 1978, while four were still in various stages of the process. During the 1978 negotiations, two of the colleges had cases referred to the Public Employee Relations Board with one being satisfactorily concluded by the time of the survey.

The inception of collective bargaining in the Kansas community college has created considerable anxiety among administrators although most seem to accept bargaining as a reality. There exists a good deal of regret that "things can't be as they were" before the right to organize and negotiate were legislated. The feeling seems to be that bargaining creates another administrative headache for personnel already too busy. Certainly a tight economy and the prospect of decreasing enrollments will tend to accelerate the movement toward collective negotiations. The general tenor of those colleges not yet involved in bargaining was one of putting it off as long as possible.

It is safe to conclude that collective bargaining in Kansas public community colleges is here to stay. However, it is still in its infancy.

Figure 1

#### CURRENT STATUS OF COLLECTIVE BARGAINING IN KANSAS COMMUNITY COLLEGES

1. Name of community college \_\_\_\_\_
2. Name and title of respondent \_\_\_\_\_
3. Which description best explains the current status of professional negotiations at your institution?
  - \_\_\_\_\_ full scale collective bargaining (formalized, periodic meetings)
  - \_\_\_\_\_ modified version of formalized negotiations
  - \_\_\_\_\_ meet and confer
  - \_\_\_\_\_ automatic acceptance by faculty of board's offer
  - \_\_\_\_\_ other (specify) \_\_\_\_\_
4. How is the faculty collective bargaining unit comprised?
  - \_\_\_\_\_ local faculty association
  - \_\_\_\_\_ Kansas-Higher Education Association
  - \_\_\_\_\_ Other teacher's union, e.g., AFT, AAUP, etc.
  - \_\_\_\_\_ no formal unit
  - \_\_\_\_\_ other (specify) \_\_\_\_\_
5. Who negotiates for the Board of Trustees?
  - \_\_\_\_\_ member(s) of the Board of Trustees
  - \_\_\_\_\_ local attorney
  - \_\_\_\_\_ other person outside the institution (specify) \_\_\_\_\_
  - \_\_\_\_\_ college president
  - \_\_\_\_\_ other administrator (title) \_\_\_\_\_
6. Who negotiates for the faculty?
  - \_\_\_\_\_ faculty members(s)
  - \_\_\_\_\_ local attorney
  - \_\_\_\_\_ other person(s) outside the institution (specify) \_\_\_\_\_
7. Does the bargaining unit include:
  - \_\_\_\_\_ librarians
  - \_\_\_\_\_ counselors
  - \_\_\_\_\_ department chairpersons
  - \_\_\_\_\_ part time faculty
  - \_\_\_\_\_ other (specify) \_\_\_\_\_
8. Have you concluded negotiations for the 78-79 contract year?
 

YES	NO
If yes, when? _____	

In labor relations, the impact is judged more than the intent. There are few innocuous mistakes. The best course for both administrators and faculty members, regardless of their individual desire to engage in collective bargaining, is to be knowledgeable about the topic.

# The legal base for collective bargaining in private higher education

by Michele L. Ramsey

What major laws govern collective bargaining in private higher education?

What is the function of the National Labor Relations Board in higher education?

What are the basic components statutorily included in the collective bargaining process in private higher education?

The preceding three questions are an attempt to simplify the labyrinth of labor relations law as it applies to private higher education. If the reader is able to answer the questions correctly and comprehends the ramifications implicit in each seemingly simple query, then he/she has a basic grasp of the subject matter. Understandably, the majority of readers will not have explored the topic. The remainder of this article is intended as an introduction to the legal framework of collective bargaining in private higher education.

## Legislation

It is important initially to point out that within a given state, different legislation governs collective bargaining in public and private institutions of higher education. State enabling legislation is the vehicle for bargaining in public institutions. Twenty-four states have some form of enabling legislation. Three additional states and the District of Columbia, by action of boards governing public institutions of higher education, have authorization for employees to bargain collectively if they so wish (Carnegie, 1977, p. 2). In the other states, faculty in public institutions are not legally allowed to collectively bargain.

In a 1970 decision by the National Labor Relations Board (NLRB) it was established that federal legislation held jurisdiction for collective bargaining in private institutions (Cornell). Thus, in all 50 states, faculty members in private institutions with a yearly budget of more than \$1 million have the legal right to collectively bargain. The legal guidelines applicable to private higher education are the federal labor relations laws operating in and generated from the industrial sector. (See Note 1.)

A series of laws from the 1820s through the early 1930s addressed the question of whether concerted action by a group of employees was a crime or was in fact constitutional. These laws seesawed between sanctioning and forbidding unions. Often laws written expressly to permit legal unionization were interpreted in the courts as disallowing unionization (Rutter, 1977, pp. 3-13). Gradually, however, opinion shifted and unions became generally recognized as legal entities. The first law to have major impact on labor relations as we know them today was the Wagner Act of 1935. Better known as the National Labor Relations Act (NLRA), this act smoothed the path for unionization by placing some restrictions on the employer's conduct regarding collective bargaining attempts by his/her employees. The most important effect of the act, however, was the establishment of the NLRB. This independent agency answers directly to the President and is responsible for administering the NLRA and any subsequent labor relations acts (Hill, Rossen & Sogg, 1971, p. 10).

The Labor Management Relations Act (Taft-Hartley), passed in 1947, amended the NLRA by beefing up the regulations concerning employer action *vis-a-vis* collective bargaining and adding some few rules for the unions to follow in their organization process.

With the spread of unionization and the increasing power wielded by union officers, public officials decided there was a need to regulate internal union affairs. And so in 1959 the Labor Management Reporting and Disclosure (Landrum-Griffin) Act was passed.

These three major acts form the basis for collective bargaining in private higher education. An attempt to pass major amendments to federal labor relations law snarled the U.S. Senate in filibuster this past session. The measure was sent back to committee and anyone interested in the topic should be watching for developments next year.

## NLRB

There are two principal functions of the NLRB. These are (a) "to prevent and remedy unfair labor practices, and (b) to conduct secret ballot elections to determine whether employees want to be represented by a union for collective bargaining." (Hill et. al., 1971, p. 28) The two organizational divisions of the NLRB exercise overlapping

authority in carrying out the functions assigned to the NLRB.

The Board itself, the first division, is made up of five members appointed by the President with Senate approval, each member being appointed for a five-year term. The Board may operate entire or as a three-member panel, in which case a two-member agreement constitutes a majority. The Board has final authority in overseeing representative elections though much of the administrative responsibility has been delegated to Regional Directors. (There are thirty-one Regional offices around the country.) The Board also acts as an adjudicatory body in unfair labor practice cases (Rutter, 1977, p. 23).

The NLRB General Counsel, the second division, operates independently of the Board and is responsible for investigating unfair labor practice charges. Should the General Counsel find evidence of a possible unfair labor practice, he/she issues a complaint and the matter is heard before the Board. The General Counsel is appointed by the President for a four-year term.

The Board has, as a part of its responsibility for conducting representative elections, the duty of unit determination. This means that the Board, not the faculty nor the administration, decides whether or not department chairpersons, part-time faculty, librarians, counselors and the like are included in the bargaining unit. Similarly the Board decides if faculty at a multi-campus institution must bargain as autonomous campus units or as a system-wide unit. The NLRA and past NLRB decisions provide guidelines for unit determination, but because of the tradition of collegiality, these guidelines admittedly do not fit higher education (Walther, 1978). Nonetheless these are the signposts the Board possesses and these are the ones it utilizes.

### Process Components

The NLRA and various amendments to it guarantee faculty members at private institutions of higher education the rights of (1) self-organization; (2) forming, joining or assisting labor organizations; (3) bargaining collectively through representatives of their own choosing; (4) acting together for the purposes of collective bargaining or other mutual aid or protection and (5) refraining from any or all such activities (AFT, 1973).

If faculty members choose to engage in collective bargaining, both they and their administrators are charged with the responsibility to meet and confer with respect to wages, hours and working conditions, in good faith and with a sincere desire to reach an agreement if possible.

The NLRA protects the rights of union members to picket, strike or to employ other sanctions against the employer. The employer is likewise provided with "muscle" through the lockout and the guidelines for rehiring striking workers. Mediation and arbitration can be included in the contract as steps toward impasse resolution.

The NLRA touches on the substance of collective bargaining in the area of scope of bargaining topics. To date, the Board has avoided specifically addressing the issue of scope in higher education collective bargaining

(Walther, 1978). The reason for this is that the peculiarity of the collegial relationship impacts on scope in such a way as to allow a broad range of topics to arguably fall within the range of wages, hours and working conditions. Conceivably the Board could be charged with decision-making responsibilities in such areas as tenure and academic freedom. Recognizing its lay status in academe, the Board is tiptoeing around the scope issue. However, that is a voluntary position assumed by the Board. It has the legal right to make decisions on scope of bargaining as occasion warrants.

### Summary

In answer to the three questions originally posed, the major laws governing collective bargaining in private higher education are the National Labor Relations Act, Taft-Hartley and the Landrum-Griffith Act. The function of the National Labor Relations Board is twofold, to determine employee representatives and to adjudicate unfair labor practices. The NLRA is specific as to the component parts though not the techniques of the collective bargaining process. The process may include all the traditional labor tactics including strike and may provide all traditional remedies including arbitration.

The legal forest is so thick the uninitiated may stumble innocently. Be advised that, in general, in labor relations the impact is judged more than the intent. There are few innocuous mistakes. The best course for both administrators and faculty members, regardless of their individual or aggregate desire to engage in collective bargaining, is to be knowledgeable about the topic. Ignorance may not be bliss.

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### NOTES

1. A recent ruling by a federal appeals court has overturned the 1970 NLRB ruling allowing faculty members at private institutions of higher education the right to collective bargaining (*Chronicle* . . . , August 14, 1978). This court found that all faculty members are supervisory personnel and therefore are not entitled to collectively bargain. The NLRB will probably appeal this case to the Supreme Court. Interested parties should watch for further action. A final decision in this case may change the entire face of collective bargaining in private higher education.

Arkansas law requires that teachers be involved in the development of personnel policies and some districts utilize negotiations as a mechanism to satisfy this requirement.

# Attitudes about collective bargaining in a non-bargaining state

by Joseph A. Sarthory and Jerry Kinnaird

As of this writing, 38 states have legislation affording public employees the capability to bargain collectively. Arkansas, typical of the deep South, is one of the remaining 12 states without such legislation. A neighboring state to the east, Tennessee, has just enacted such legislation and a neighbor to the west, Oklahoma, has had public employee collective bargaining for some years.

Arkansas is a right-to-work state and has no statutory provision for public employee meet-and-confer or collective bargaining capability. Despite the absence of such provision, many public jurisdictions in the state, local governments and school districts, do negotiate the terms and conditions of employment with employees. In no case of which the authors are aware is a master contract negotiated but the process often results in a written agreement and in some cases school board policy. Arkansas law requires that teachers be involved in the development of personnel policies and some districts utilize negotiations as a mechanism to satisfy this requirement.

Hard data are hard to come by but it is estimated that less than 10 of the close to 400 school districts in the state conduct some form of bargaining with teachers. The state's three largest districts, Little Rock, North Little Rock, and Pulaski County, do however and this has tended

to restrict the practice largely to metropolitan Little Rock. External pressures from surrounding states, increased organizational efforts in the state by national teacher organizations, and the desire for collective bargaining legislation by the Arkansas Education Association all suggest continuing pressure on public employers to bargain and a likely expansion of the process in the state. Federal legislation is a possibility in the foreseeable future and there will no doubt be a continuing effort by organized labor to repeal provisions of federal labor law affording state right-to-work legislation like that in Arkansas.

It seemed appropriate against this backdrop to survey the attitudes of Arkansas educators toward collective bargaining as the process evolves and legislation is debated.

## Procedures

In February 1978 a collective bargaining attitude survey instrument was mailed to 500 Arkansas educators: 100 teachers, 100 elementary principals, 100 secondary principals, 100 superintendents and 100 school board members. The teacher sample was provided by the Arkansas Education Association and was randomly selected from the AEA's computerized membership list. Tables of random numbers were utilized to select samples from the other four respondent groups. Thus, the sample is random but in no way representative of the proportion of each population in the Arkansas education community. Teachers, for instance, make up 84 percent of the total populations surveyed. Had proportional random sampling been utilized, this would have resulted in extremely small numbers of respondents from the other populations. Given limited resources to conduct the study, it was decided that equal random samples would be the best approach.

The instrument utilized was a modified version of one administered to 1600 board members and administrators at the National School Boards Association's 1976 convention. Permission was received to modify and use the instrument which was field tested prior to its use by NSBA. A stamped, addressed envelope was provided each respondent with an admonition to complete and return the instrument immediately but no later than a specified date.

Two hundred and thirty usable responses were received, a response rate of 46 percent. This rather low return is probably both a function of the researchers' inability to follow up and the import attached to collective bargaining by Arkansas educators. It is of more import to some than to others, however, as is shown in Table I.

TABLE I

Distribution of respondents

	Number	Percent of Sample	Cumulative Percent of Total Responding
Teachers	37	37%	16%
Elementary Principals	41	41%	18%
Secondary Principals	60	60%	26%
Superintendents	65	65%	28%
Board Members	27	27%	12%
Total	230	46%	100%

## Findings

Respondents were asked when, in their judgment, collective bargaining will become standard practice in the nation's school districts. Responses of the total sample and of each sub sample are reported in Table II.

Table II

### Collective bargaining as a future practice (Reported in Percentages)

	T*	EP*	SP*	S*	BM*	Total
Yes, in less than 2 years.	5	0	0	2	0	1
Yes, within 2-5 years	11	20	20	14	7	15
Yes, within 5-10 years	46	44	45	34	22	40
Yes, but in more than 10 years	16	20	18	23	33	20
No, some school districts will never engage in bargaining with teachers	22	17	22	27	37	24

\* T = Teachers  
EP = Elementary principals  
SP = Secondary principals  
S = Superintendents  
BM = Board members

Sixty percent of respondents feel that collective bargaining as standard practice in the nation's school districts is at least five or more years away. Fully a third of board member respondents feel it is at least 10 years or more away. Almost one-fourth of respondents believe that some school districts will never engage in bargaining. Thirty-seven percent of board members believe this. Sixteen percent of the sample believe that collective bargaining will be standard practice in five years or less. Five percent of teachers feel that this will be the case in less than two years. Generally, there is a fairly high degree of agreement between teachers and administrators while board members tend to be more conservative in their estimates.

### Attitudes Toward Selected Aspects of Bargaining

To assess attitudes toward selected aspects of collective bargaining, respondents were asked 15 questions about the impact of bargaining on school districts. To each question, respondents checked one of four responses: agree; tend to agree; tend to disagree; disagree. Responses of the total sample and each sub sample are reported in Table III. In the table, the four response categories have been collapsed into two—agree and disagree.

There is wide disagreement concerning whether or not bargaining will encourage allocation of funds to those services which most benefit children. Only 8 percent of superintendents and board members agree that it will while roughly 60 percent of teachers and elementary principals do. Similarly, roughly 40 percent of superintendents and board members agree that collective bargaining will result in more effective management and budgeting practices while approximately 90 percent of teachers and elementary principals do. A like alignment is evident concerning teacher living standards, public understanding of the schools, board member knowledge about school district operations and teacher organization responsiveness to the public's wishes. In all these in-

stances, much larger percentages of teachers and elementary principals than superintendents and board members agree that collective bargaining will encourage rather than retard. In some cases, secondary principals are somewhere between the attitudes of their elementary counterparts and teachers on the one hand and board members and superintendents on the other.

There is wide agreement among all groups on some items. Majorities in each group agree that collective bargaining will cause boards and teachers to decide matters which have traditionally been decided by administrators. Seventy-five percent of the teachers responding feel this way as compared with 63 percent of the total sample. Similarly, majorities agree that collective bargaining will prompt growth of citizen groups who lobby both the board and teachers for the benefit of children. Likewise, majorities believe that the process will reduce the decision-making authority of school boards. Finally, majorities in each respondent group agree that the frequency of teacher strikes will increase as a result of collective bargaining. It is interesting that 2/3 of responding teachers believe this to be the case.

Interesting response patterns appear on some other items. Three-fourths of responding superintendents and board members agree that bargaining will diminish the authority of administrators. A slight majority of principals feel this way. Strangely, a majority of teachers disagree. Roughly the same pattern appears relative to the likelihood of collective bargaining increasing the local tax burden on citizens. Slight majorities of professional educators believe that local district bargaining will be replaced by bargaining at the regional or state level while a slight majority of board members disagree. Large majorities of educators agree that school boards will take a more aggressive role in planning, goal setting, priority setting and the like. Among school board members a slight majority disagrees. Finally, large majorities of superintendents and board members agree that bargaining will force a disproportionate share of school funds into salaries and benefits. Four-fifths of teacher respondents disagree while principals are undecided on this issue.

Some generalizations appear supportable on the basis of data in Table III.

1. Items on which there is wide agreement among teachers, administrators and board members have to do with shifts in power and decision-making authority as a result of collective bargaining.

2. Items on which there is wide disagreement among teachers, administrators and board members have to do with resource allocation priorities and degree of understanding of school district operations as a result of collective bargaining.

3. Items on which no consistent response pattern emerges have to do with the locus of bargaining, revenue sources to support bargaining agreements and the impact on teacher salaries and benefits.

4. Generally, attitudes of board members and superintendents are similar; those of teachers and elementary principals are similar; attitudes of secondary principals are somewhere in between and less consistent.

### The Superintendent's Role in Collective Bargaining

Respondents were asked "In your judgment, what should be the role of the superintendent during collective bargaining?" Responses of the total sample and of each sub sample are reported in Table IV.

**Table III**  
**Attitudes toward collective bargaining (Reported in Percentages)**

	T		EP		SP		S		BM		TOTAL	
	A	D	A	D	A	D	A	D	A	D	A	D
1. Collective bargaining will encourage allocation of funds to those services which most benefit children.	67	33	56	44	32	68	8	92	8	92	33	67
2. Collective bargaining will cause boards and teachers to decide matters (such as teacher promotion) which traditionally have been decided by administrators.	75	25	53	47	76	33	59	41	59	41	63	37
3. Collective bargaining will force school districts to adopt more effective management and budgeting practices.	92	8	90	10	74	26	41	59	45	55	76	33
4. Collective bargaining will result in a better standard of living for teachers.	97	3	78	22	74	26	55	45	45	55	69	31
5. Collective bargaining will result in better public understanding of school district operation.	65	35	60	40	38	62	19	81	15	85	38	62
6. Collective bargaining will prompt growth of citizen groups who "lobby" both the board and teacher organizations for the benefit of children.	52	48	60	40	57	43	45	55	49	51	52	48
7. Collective bargaining will cause board members to be better informed about school district operations.	87	13	78	22	74	26	50	50	48	52	67	33
8. Collective bargaining will cause reduction in the decision-making authority of school boards.	60	40	63	37	55	45	74	26	63	37	63	37
9. Collective bargaining will tend to diminish the authority of school administrators over school affairs.	43	57	61	39	51	49	76	24	77	23	63	37
10. Collective bargaining will increase the local tax burden on citizens.	49	51	70	30	67	33	86	14	81	19	71	29
11. Collective bargaining will cause school boards to take a more aggressive role in planning, goal setting, priority setting, and the like.	94	6	71	29	83	17	75	25	46	54	76	24
12. Collective bargaining will prompt teacher organizations to be more responsive to the public's wishes.	68	32	46	54	40	60	14	86	23	77	36	64
13. Collective bargaining by each school district will be replaced by bargaining at the regional or state level.	43	57	46	54	43	57	47	53	57	43	47	53
14. Collective bargaining will make teacher strikes more frequent than if there were no bargaining at all.	65	35	80	20	76	24	86	14	89	11	79	21
15. Collective bargaining will force a disproportionate share of school funds into salaries and benefits.	21	79	49	51	55	45	83	17	89	11	61	39

**TABLE IV**  
**Role of the Superintendent (Reported in Percentages)**

	T	EP	SP	S	BM	TOTAL
	1. The superintendent should not be involved in the process.	4	4	11	5	5
2. The superintendent should be neutral, an information resources to both sides, supporting neither.	53	36	18	18	18	27
3. The superintendent should support and advise the board, but not sit at the table.	2	17	26	25	11	19
4. The superintendent should sit at the table as a member of the board's negotiating team.	27	30	22	32	34	28
5. The superintendent should be the board's chief negotiator.	11	11	21	19	29	18
6. Other	3	2	2	1	3	2
	100%	100%	100%	100%	100%	100%

There are wide discrepancies within and among respondent groups as to the role of the superintendent. Slightly more than half of responding superintendents feel that they should be on the board team—20 percent suggest as the chief negotiator. Fully a fourth believe that the superintendent should advise and support the board but not be at the table. Only 5 percent feel that superintendents should not be involved. The response pattern among board members is similar except that 63 percent feel that superintendents should be on the board team and a smaller number feel their role should be merely a behind the scenes adviser to the board.

A majority of teachers believe that the superintendent should be neutral, giving information to both sides while supporting neither. Fully another 38 percent feel that the superintendent should be on the board team however.

Elementary and secondary principals are fairly together on this item. Approximately 40 percent of both groups feel that the superintendent should be on the board's negotiating team. Twice the number of elementary principals as secondary principals—36 percent to 18 percent—feel that the superintendent should be neutral however.

### The Principal's Role in Collective Bargaining

A most important dimension of collective bargaining is the role of the principal in the process. Respondents were asked "In your judgment, what should be the role of the school principal during collective bargaining?" Responses appear in Table V.

Almost half of the respondents feel that the principal should either not be involved in the collective bargaining process or should be neutral. But 51 percent feel that the principal should be involved either on the board or teacher side. This variance of opinion is reflected within and among the respondent groups.

A majority of elementary principals feel that the principal should be neutral, an information source to both sides, supporting neither. Another 28 percent feel that the principal should either advise and support the board team or be on it. On the other hand, only 28 percent of secondary principals feel they should be neutral. Fully a quarter of this group believe that secondary principals should advise the board. But a significant 14 percent feel that they should support and advise teachers on their bargaining

position. Small numbers of both elementary and secondary principals feel that principals should be on the teacher negotiating team. Many responses to "other" indicated that principals should have their own unit and bargain with the board.

A solid minority of teachers feel that principals should not be involved or should be neutral. Slightly more than a fifth believe that principals should advise and support teachers in bargaining. Sixteen percent suggest that principals should be on the teacher negotiating team.

Superintendents and board members are fairly together on this item although 36 percent of the former and only 24 percent of the latter feel that principals should be neutral. Approximately a fifth of both groups believe that principals should advise and support the board but not be at the table. Eighteen percent of both groups indicate that principals should be on the board negotiating team.

### Public Involvement in Collective Bargaining

A controversial issue in collective bargaining is the extent to which the public should be involved in the process. Respondents were asked "In what ways, if any, do you think the public should be involved in the collective bargaining process?" Responses are reported in Table VI.

There is a high degree of between group agreement on this item. Thirty-eight percent of the total sample feel that the board is the public's representative and that no additional public involvement should be afforded. This proportion is consistent among all groups except in the case of elementary principals. Only 28 percent of this group believe that there should be no additional public involvement.

A slightly smaller minority feel that bargaining sessions should be open to press and public. Only 20 percent of secondary principals believe this should be the case however. A larger percentage of them suggest that the board should hold hearings in advance of the bargaining process.

Slightly more than a fifth of the sample feel that boards should hold a hearing prior to bargaining or that representatives of citizen groups should be a third party at the table. A very small percentage of respondents believe that the final agreement should be subject to a public referendum.

TABLE V  
Role of the Principal  
(Reported in Percentages)

	T	EP	SP	S	BM	TOTAL
1. A principal should not be involved in the process.	11	6	16	19	11	14
2. A principal should be neutral, an information resource to both sides, supporting neither.	33	51	28	36	24	34
3. A principal should support and advise the board, but not sit at the table.	11	14	26	16	24	19
4. A principal should support and advise teachers on their bargaining position.	22	6	14	7	13	12
5. A principal should be a member of the board's negotiating team.	4	14	6	18	18	12
6. A principal should be a member of the teachers' negotiating team.	16	8	7	4	8	8
7. Other	3	1	3	0	2	1
	100%	100%	100%	100%	100%	100%

**TABLE VI**  
**Role of the Public**  
**(Reported in Percentages)**

	T	EP	SP	S	BM	TOTAL
1. No involvement; the board is the public's representative.	41	28	41	36	44	38
2. The board should hold hearings in advance of the bargaining process.	12	13	22	14	14	14
3. Negotiation sessions should be open to press and public scrutiny.	39	42	30	40	36	35
4. Representatives of citizen groups should be a third party at the table.	6	11	10	6	3	8
5. The final agreement should be subject to a public referendum.	0	6	5	4	3	4
6. Other	2	0	2	0	0	1
	100%	100%	100%	100%	100%	100%

**TABLE VII**  
**Collective bargaining law**  
**scope and strike provisions**  
**(Reported in Percentages)**

	T	EP	SP	S	BM	TOTAL
1. Limiting the scope of bargaining to finance items (e.g., wages, hours)	5	11	17	38	13	19
2. Establishing a broad scope of items that are subject to bargaining	53	36	37	6	3	27
3. Outlawing the right of teachers to strike	8	9	6	36	50	20
4. Affirming the right of teachers to strike	11	0	2	0	0	2
5. Compulsory arbitration, instead of a strike	23	44	35	19	31	30
6. Other	0	0	3	1	3	2
	100%	100%	100%	100%	100%	100%

**TABLE VIII**  
**Educational influences at the state level**  
**(Reported in Percentages)**

	T	EP	SP	S	BM	TOTAL
1. State teacher organizations	32	31	28	30	27	29
2. State school boards association	13	15	14	25	17	18
3. State PTA	1	6	3	0	3	3
4. State administrator associations	9	13	16	19	8	14
5. State and federal courts	20	13	16	10	19	15
6. State Superintendent of Education	5	9	6	5	4	5
7. State Board of Education	19	12	16	10	19	15
8. Other	1	1	1	1	3	1
	100%	100%	100%	100%	100%	100%

### Collective Bargaining Law Provisions

Crucial to collective bargaining are statutory provisions within which the process takes place. Important elements of such legislation are scope and strike provisions. Respondents were asked "Please check which one of the following would be your highest priority in a collective bargaining law." Responses appear in Table VII.

As might be expected there is a divergent pattern of responses to this item. A majority of teachers feel that a broad scope of items should be subject to bargaining. Only 6 and 3 percent, respectively, of superintendents and board members agree. On the other hand, approximately a third of principals responding do agree. Fifty percent of board members would prohibit strikes as would a third of

the superintendents. Less than 10 percent of teachers and principals would outlaw the strike as a tactic. Significant numbers of respondents—ranging from 19 percent to 44 percent of each sub sample—would legislate compulsory arbitration as opposed to a strike provision. Principals and board members are more supportive of this legislative provision than are teachers and superintendents.

### Educational Influences at the State Level

The substance of Arkansas public sector collective bargaining legislation will be partially a function of the relative clout wielded by educational interest groups and institutions. To assess perceived degrees of clout respondents were asked "When it comes to influencing state

legislation affecting education which three of the following would you identify as having the most influence?" Responses are reported in Table VIII.

There is fairly wide agreement that state teacher organizations exert the most influence on state educational legislation. Roughly 30 percent of all respondent groups believe this. The next most influential group is perceived as being the state school boards association. Eighteen percent of the total sample feel this is the case. Interestingly, 25 percent of superintendents ascribe more clout to the school boards association than do the other respondent groups. Almost equal amounts of clout are ascribed to state administrator associations, state and federal courts and the state board of education. Generally, administrators credit their associations with more clout than do teachers and board members. Conversely, teachers and board members perceive more influence wielded by courts and the state board than do administrators.

### Conclusions

Some broad, general conclusions about collective bargaining in Arkansas evolve from the findings reported above. The most salient of these conclusions follow.

1. There is a wide divergence of attitudes toward collective bargaining among Arkansas educators. Aspects of collective bargaining around which this divergence is manifested include:
  - Time estimates as to the onset of collective bargaining as standard practice.
  - The impact of collective bargaining on:
    - school district resource allocations

- school district management and budgeting practices
  - teacher living standards
  - public understanding of the schools
  - board member knowledge of district operations
  - responsiveness of teacher organizations to the public's wishes
  - the authority level of administrators
  - the local tax burden
  - the board's role in planning, goal setting, and priority setting
- The role of the superintendent.
  - The role of the principal.
  - Statutory scope and strike provisions.
2. The level of interest in collective bargaining is rather low. This is evidenced by a 46 percent overall response rate and significantly lower response rates among teachers, elementary principals, and school board members.
  3. Levels of knowledge and understanding of collective bargaining are rather low. This is evidenced by comparing responses in this survey to generally recognized good collective bargaining practice around the nation.
  4. There is potential for increasing within and between group conflict as collective bargaining gathers momentum in the state.
  5. There is some receptivity to allowing outside third parties to influence substantively local bargaining agreements.
  6. There is a feeling that educators can influence the substance of any state collective bargaining legislation.

**Collective bargaining in the public schools in Kansas will continue to grow.**

# Public school collective bargaining in Kansas: K-NEA perspective

by Bruce Cooper

Collective bargaining in the public education sector is a relatively new phenomenon. The first public sector statute, labeled a meet and confer law, was passed in Wisconsin in 1959. The first collectively negotiated teacher contract was consummated by the United Federation of Teachers in New York City in 1964. In the 14 years since, collective bargaining or professional negotiation has grown in both acceptance and sophistication. Thirty-eight states now have some sort of statute authorizing bargaining rights for public employees, including in most cases teachers.

Efforts to enact legislation authorizing collective bargaining between Kansas teachers and boards of education began in the late 1960s. Prior to the act's passage the only bargaining in Kansas took place in Wichita. Credit for the act's passage, in view of the writer, goes to teacher lobbyists, including K-NEA and NEA-Wichita.

After enactment the statute was labeled by some authorities as a meet and confer law. Parties were required to "meet and confer, consult and discuss in a good faith effort to reach agreement on terms and conditions of professional service," if either the board or teacher organization requested.

The act contained no impasse mechanism for use in the event the parties were unable to reach agreement. There were no prohibited practices, provisions to enable one party to seek redress if the other violates the spirit and intent or letter of the law. To add to its inadequacies, the law was administered by the Kansas State Board of Education, an agency that did not want the responsibility. No effort was made by the state board to promulgate rules and regulations for the administration of the negotiation law.

In spite of the statute's shortcomings, approximately 260 local teacher organizations located in unified school districts, community colleges and inter-local special education cooperatives applied for and were granted recognition by their governing boards. According to the best figures available, all but roughly 70 of the eligible local affiliates of Kansas-NEA are recognized as exclusive representatives of the professional employees' negotiating units in their respective employing districts.

It is difficult to assess accurately the progress made between the act's passage in 1970 and its amendment by the 1977 legislature. It does appear that progress in collective bargaining in Kansas is slower than history indicates for other states enacting teacher bargaining statutes prior to that of Kansas.

Some of the earliest states enacting bargaining laws covering teachers had many collectively bargained comprehensive contracts negotiated during the first two or three years. That did not happen to the same degree in Kansas. The number of comprehensive agreements between boards and teachers grew and is still growing but at a much slower rate than is desirable from Kansas-NEA's point of view. This slowness is caused in large measure by boards of education contesting every point placed on the negotiating table by teachers. Kansas boards observed what occurred in other states after passage of a negotiation statute and apparently determined that "things will be different here."

The same phenomenon can be observed in the private sector nationally. Management is taking an aggressive posture at the bargaining table and in the halls of Congress as witnessed by the difficult time labor is having getting several of its priority measures acted on favorably. It also appears that labor is having a tougher time at the bargaining table. Contract negotiations appear to be longer and any strikes that are occurring are protracted ones.

It will be helpful to this discussion to consider briefly the evolution of Kansas school districts, the state organizational plan and the historical employment relationships growing therefrom. In the 1920s Kansas was served by 9,000 plus school districts. After World War II Kansas still had more than 7,000 districts. One does not have to be the world's most astute manager or economist to envision the inefficiency and duplication of services.

Each school district had a governing board. In many instances board members outnumbered the teachers they employed. It is probably remembered by students, teachers, and boards as a very personal one-on-one situation. Many teachers and former pupils recall fondly their experiences in one-room schools. Along with those fond remembrances are moments of fear and trepidation. When it was "salary setting" time, teachers usually would meet individually with the board sitting as a whole. This situation regardless of whether it was intended to be intimidating did little to enhance salaries and working con-

ditions. Salaries were low, working conditions far from adequate. This aspect of the one-room school era worked to the teachers' detriment.

Today, after the unification of districts in the mid-1960s, the state is served by 307 unified school districts. That number is down from its original 311. Several original unified school districts disorganized or consolidated with other districts because of loss of enrollment. Inflation also contributed. Because of unification student population in most districts has grown, so has the teaching staff. We have gone from what many believed to be a close personal relationship to a very impersonal one. School districts have grown from the one-teacher school district to where the largest now numbers approximately 2,600. Many teachers are left with the feeling that they, as individuals, are unable to provide meaningful input to the decision-making process.

As a district's size increased, demands for different kinds of skills on the parts of school administrators and boards of education were required. Size brings with it problems of a different nature than those of smaller districts. Further, many demands are now being made on public education that were not foreseen even a year or two ago. Policy statements of boards of education are now much more complex and comprehensive than they were years ago. Boards are being required to change direction and provide new services almost on a monthly basis. Factor in inflation and consider that the average teacher salary in this state is approximately \$2,000 below the national average while the per capita income ranks Kansas 18th. It is easy to see why Kansas teachers are approaching the bargaining table in increasing numbers.

In advocating local autonomy Kansas boards see themselves as the last bastion against total takeover of government by public employees. The almost reactionary stance assumed by some boards is difficult to deal with because of its intensity. Many board ears are closed to the fact that teachers do not want to control the schools. Teachers seek more meaningful input into the determination of terms and conditions of their professional service. Teachers recognize the statutory authority of school boards. No one denies their importance and necessary function in the education community. Teachers see the autonomy question as a red herring. It frustrates, and in many cases, blocks meaningful negotiation. Far too many items teachers place on the negotiation table are objected to by board negotiating teams allegedly because they represent an unwarranted intrusion into the decision-making prerogatives of elected representatives. Kansas boards of education are far from autonomous. They are not in any sense of the word fiscally independent. One needs only to consider the school finance structure of the state. Budget growth is controlled by the Legislature. Almost half of the average unified school district budget comes from state collected taxes. The budgeting and accounting process is virtually established by state and federal agencies.

There are regulations and statutes covering non-fiscal responsibilities as well. An important example is student due process. The Kansas Supreme Court spoke directly to the issue of board autonomy several years ago in a case appealed to it by the board of education of Unified School District 498, Marion County. The court ruled that the State Board of Education has general supervisory responsibilities over all unified school districts in the state. This fact can hardly be considered a reaffirmation of local autonomy.

Finally, many boards have given away what is probably the last vestige of their local control when they contract with the Kansas Association of School Boards for development of comprehensive policy manuals. The policy manual is the basic decision-making tool of the district. It is relied upon for such questions as what to do in a fire drill, how to establish the agenda for a board meeting, and how to suspend students. In theory such policies should be formulated with great care and should include the best thinking of the community and the district's patrons. It is true that the board can accept, reject or modify the policy manual prepared by the school board association staff, but the basic preliminary document is developed by outsiders. The local input board's claim to desire is denied at the crucial stage of reducing it to writing.

The collective negotiation act for Kansas was amended by the 1977 Kansas legislature after several years of urging by K-NEA and its affiliates. The amendments made were much less than those sought by the association. In its bill K-NEA had proposed administration of the act be transferred to the Public Employee Relations Board; that detailed prohibited practices be incorporated; that the scope of negotiable items remains unchanged, and that an impasse procedure culminating in mediation-arbitration, sometimes referred to as med-arb, be incorporated into the statute. Lobbying for and against the bill was intense. Virtually all organized groups, including the school board association, school administrators and The Farm Bureau, lined up against it.

During the bill's deliberation much debate centered around the constitutionality issue. Boards advocating their local autonomy positions argued against med-arb, stated that it would remove the decision making authority from local units of government. Inclusion of the K-NEA impasse procedure seemed to hinge upon that question.

The scope of negotiation also was a hotly contested point. School boards wanted to limit the items while the association's objective was to keep it at least as broad as in the original enactment. The association negotiators for years heard from boards in response to their proposals "management prerogative," "non-negotiable" or "that is covered by statute."

The legislature saw fit to amend the law significantly. Administration of the act was removed from the state board of education and placed under the authority of the Secretary of Human Resources or his designee. The scope of negotiable items was defined through the inclusion of a list. As defined, authorities are not certain exactly whether the scope of negotiations is broadened or narrowed. It is K-NEA's position that the definition does in fact broaden the scope of talks, and there are avenues for appeal should a board of education refuse to discuss a matter teachers believe to be clearly negotiable. Included was a list of actions prohibited to both boards and teachers, an impasse procedure including mediation by the Federal Mediation and Conciliation Service, and fact-finding as the final step.

In the negotiations occurring during the years immediately following the act's passage in 1970, teacher organizations were berated by boards for wanting to talk only about money. Virtually all teacher teams were accused of being money hungry, not concerned with professional matters affecting their jobs and the children. "More money for less work" was a frequently heard response to any teacher proposals.

Teachers admit that economic matters are a top

priority and will continue to be so, but non-economic professional issues are commanding more and more attention at the bargaining table. The reaction from boards, while disappointing, has not been surprising. Screams of non-negotiability and local autonomy continue to be heard around the state. It appears that teachers "are damned if we do and damned if we don't."

It appears many boards are using mistakenly a response of non-negotiability to avoid discussing an issue K-NEA believes the statute makes negotiable. Teacher attorneys in district courts, while pressing prohibited practices charges indicate the merits of a proposal are not at question. The issue is whether the negotiation statute requires boards to discuss or bargain, attempt to reach agreement, or at least fully support a refusal to agree. Stated another way, there is nothing in the statute requiring boards to agree with teacher proposals. As the Kansas Supreme Court said in its Shawnee Mission decision, boards are required to discuss proposals and make good faith efforts to reach agreement.

Litigation both in impasse and prohibited practices has been spirited. District courts have heard the disputes and, with an exception or two, have ruled. Many decisions were appealed by either teacher organizations or boards of education. Twenty-seven district courts declared impasse. At this writing 12 disputes are still at one stage or another in the impasse process. Sixteen prohibited practice allegations were filed by one party or the other. A majority of the prohibited practices cases filed alleged a failure of a board of education to negotiate in good faith on a particular topic. Thirteen scope cases were filed. The remainder dealt with acts prohibited to either boards or teachers. The majority of the actions were filed by teachers. Approximately 52 issues were declared non-negotiable by one or more boards across the state. The

issues ranged from class size to contract preamble. Most of the district court rulings are on appeal to the Kansas Supreme Court.

During the 1977 legislative session, while the amendments were being considered, K-NEA worked aggressively to have administration of the act, including impasse determination and prohibited practice resolution, placed under the Public Employee Relations Board rather than the State Board of Education or the Secretary of Human Resources or the courts. The association was concerned with the possibility of delays because of protracted litigation and crowded court dockets. A lack of labor law experience on the part of the Kansas judiciary was a matter of no small concern to teachers. The courts have complied with the timelines established in the negotiation law. They have issued rulings which in most instances indicate a thorough knowledge of the amended statute, plus public and private labor law history nationally.

A paper of this relatively short length and yet which is trying to cover many important points tends to make some broad generalizations. In doing so one can wrongfully include many boards which do not properly belong within this generalization. K-NEA recognizes there are boards that do approach their obligations forthrightly and with a good faith intent to reach agreement as required by the act. They provide examples for other boards to emulate.

Collective bargaining in the public schools of Kansas will continue to grow. It may not be a steady upward path, but nevertheless the number and scope of teacher-board pacts will increase. It is not the K-NEA staff issuing a lone clarion call to "do battle at the bargaining table." Teachers are demanding a voice in those basic decisions affecting their jobs—decisions they certainly are qualified to share in.

**The negotiator must understand education as well as collective bargaining.**

# Who will serve as the chief negotiator for the local board of education?

by John W. Dickerson

The process of professional negotiations in the public schools has reached a new level of sophistication in the state of Kansas. Recent amendments dealing with mediation and fact finding have added to the complexity, and there is nothing to suggest that easier or simpler proceedings lie ahead.

One administrator whose district has been to the courts a number of times as a result of negotiations is convinced that "the place to get an agreement is at the table and not in the courts."

If this statement has any credence, then a school board must do everything within its power to secure the most competent person possible to represent it at the table.

The boards of 180 of the 307 school districts in the state of Kansas enter into formal negotiations, according to the Kansas Association of School Boards most recent compilation of information. Of the remaining districts, 81 boards "meet and confer" with their employees, 19 neither negotiate nor "meet and confer," and 27 did not respond to the survey.

Who will serve as the negotiators for the boards of education in these 180 school districts?

What makes a good negotiator? What qualities and competencies must a negotiator possess? Where does a board go to find a negotiator?

The American Association of School Administrators has set up this amazing list of requirements for the ideal bargaining representative:

Knowledge of federal, state and local laws and court decisions affecting management-employee relations; current developments, trends, processes, and strategies in the field of collective negotiations; legal aspects of preparation and interpretation of negotiated contracts, school finance, tax and revenue structures, budgetary procedures and resource allocation; ability to conduct negotiations sessions that lead to acceptable agreement between the parties; plan, organize, and conduct research for the purpose of being better equipped to negotiate efficiently, prepare and present oral and written reports concisely, logically, and convincingly; deal tactfully, cooperatively and effectively with representatives of employee groups.

Due to the adversary nature of professional negotiations, the management side in the process requires the services of a unique individual. It requires someone who can deal with a teachers' union whose major aim is to alter management practices and the relationships between the board, superintendent and staff.

The negotiator must understand education as well as collective bargaining. He must have access to information concerning laws and the rulings and interpretation of courts and arbitrators. He should be educated in the field of industrial and social psychology in order to understand the motivations and frustrations of people and how they function in groups and how they adhere to organizational objectives.

It is obvious that a school board must choose its chief negotiator wisely; it is equally obvious, considering the numerous credentials reviewed here, that a school board is not likely to find good chief negotiators growing on trees.

Chief negotiators for school boards in Kansas presently are a varied lot. Their ranks include board members, former board members, superintendents, labor attorneys, general practice attorneys, central office administrators, principals and other people from assorted backgrounds. None of these necessarily has the qualifications essential to serving as negotiator.

If a board could employ a lawyer knowledgeable in labor relations who had been a teacher or school administrator presumably it would have a negotiator with an ideal background. Such an individual would be a rare find even in urban areas and rarer still in the many small, rural school districts of Kansas.

What, then, are the alternatives for a school district?

First, a school district should consider selecting a person who possesses the competencies and characteristics given by the American Association of School Administrators and noted above. Once found, the person should be employed on a full time basis by the school district. This presents the next problem: few school districts in Kansas are large enough to employ someone to serve as a chief negotiator and "director of employee relations" on a full time basis.

For this reason many school districts have assigned the responsibilities of chief negotiator to someone who is already full-time such as a central office administrator, superintendent, principal or other school district administrator. Sooner or later a district will learn that this

person is in a somewhat untenable position. For instance, one day the administrator is serving in an adversary type relationship with the teachers while the next day the same administrator may be seeking the support of the same teachers in an educational function or endeavor.

Another alternative that school districts have turned to is that of assigning the negotiation chore to a member of the board of education. Here again the negotiator is put in an awkward position. While at the table, the board member, in reality, is speaking for the entire board. This may not always be fair to the others on the board or to the individual board member.

Since the board is the final authority for developing any agreement, it is to the advantage of the board team, regardless of its composition, to be able to say to the teachers' team "we must take your proposal back to the board for consideration." This is difficult to do when a board member is the negotiator or when board members are serving on the board's negotiating team.

Assuming the above considerations are valid, the alternative remaining to the board is the employment of an "outsider" to head its negotiation team. This does not mean that the person must come from outside the school district or community. It means, rather, that a person "outside" the professional staff or board of education would be a better choice for the job.

The advantages that an outsider has in the negotiation process are these:

(1) An impersonal approach. The outsider will deal with the teachers' team only during the negotiations process at the table, thus allowing a more objective approach to the process.

(2) A more objective approach by the board. The board of education will not be involved in the negotiation process at the table and thus will have an opportunity to respond more as a unified body in dealing with the negotiation process. This does not preclude the board sitting in the audience during actual negotiations. Indeed, the presence of a board member during negotiations might well improve the chief negotiator's credibility with the association or union since a standard charge is that the negotiator is not speaking for the board or is not fully informing the board of what is happening in negotiations. Board members who sit as observers must, however, refrain from becoming actively involved in the process and from being swayed or prejudiced by the emotions or dramatics of the association or union.

(3) Better trained negotiators. Negotiators for the board must be thoroughly trained in the process. It is a proven fact that novices in negotiation soon tire of the pressures and frustrations. A well-trained outsider has a better opportunity of serving the board over a long period of time, because such a person is not subject to the built-in pressures which confront the "insider", such as the

superintendent, central office administrator, principal or board member in the system.

(4) Removal of the adversary situation with the school administration and the board. During difficult times in the negotiation process, the wrath of the teachers group naturally is directed toward the chief negotiator. In such cases, it is preferable that the negotiator be from "outside." The adversary situation which exists in negotiations always will generate some bad feeling toward the administration and the board, but having an "outsider" as negotiator surely should divert much of the heat.

Admittedly there are disadvantages connected with using an outsider as negotiator, but it is the opinion of this writer that the advantages are far greater.

The school board will think immediately of the cost of hiring an "outside" negotiator. In the first analysis, it will appear a very expensive proposition. And it is. But it may well be the best money the board can spend; it may even be the inexpensive route in the long run.

In any case if a better agreement can be reached, if a better working relationship can be developed with teachers, and if a better educational climate results for students, the money will have been well spent.

If the board of education does employ an outside negotiator, all of its members and the superintendent must agree:

- To have the utmost confidence in their negotiator
- To share and provide all needed information
- To spend time in the negotiations process as advisers
- To sit at the table with the negotiator if needed
- To give the negotiator the freedom to negotiate

Negotiating is an exceedingly complicated, complex procedure if it is done properly. It requires a person who is willing to work and to study, a person who can create and maintain an atmosphere of trust and confidence, a person who is fair and firm and tough but gentle. A rare bird.

Not many people have the exacting and broad qualifications referred to in this article; nonetheless, it behooves the conscientious board of education to seek and employ such a person for the important task of negotiating.

Who will serve as the negotiator for the board of education? The decision is one that must be made by board members and administrators. All of the ramifications of the decision must be carefully considered. The choice cannot be made lightly because it is one that will have a direct bearing on staff morale and staff morale ultimately comes to roost in the classroom and there it affects the education of the students.

In planning for negotiations, as in every other aspect of running a school district, the welfare of the students is the basic consideration. If they are well served, the district is well served.

**Public colleges and universities in states with enabling legislation have followed public schools and community colleges into the collective bargaining arena.**

# Public higher education collective bargaining at the crossroads

by Deborah N. Thomas

Attitudes toward collective bargaining among professors in higher education have moved more and more toward acceptance as political and economic pressures have threatened the traditional idea of the university. Among faculty members who view collective bargaining as a way of increasing salaries, or more importantly, as a way of coping with numerous external forces of change, collective bargaining has come to represent a method of redress. That is perceived as an imbalance of power in the governance process.

State statutes providing for the organization of public employees or faculty members in particular, have provided the impetus for this expansion. Public colleges and universities in states with enabling legislation have followed public schools and community colleges into the collective bargaining arena.

Executive Order 10988, in 1962, created the legal framework for collective bargaining in the federal service and prompted much of what has been the subsequent collective bargaining legislation at the state and local level. The immediate growth of public employee unions, including faculty unions was dramatic but over time, growth has tended to follow economic or business cycles. A variety of legislative provisions can now be found, with states mandating or prohibiting collective bargaining activities and a few states excluding certain public employees from coverage.

This legal framework defines the scope of bargaining, making certain subjects non-negotiable and providing set procedures for the resolution of impasses. Economic as well as political realities prevail in this environment which flows with the tide of pressure groups and may change drastically during an election year.

If this were not nebulous enough, there is the added dimension of two branches of government who must agree on the provisions of any negotiated agreement. Public higher education, then, is in a position to bargaining with one branch of government, with all agreements subject to approval by a second branch of government which does not participate in the bargaining process!

The U.S. Supreme Court decision in the National League of Cities case would seem to jeopardize the idea of a federal collective bargaining law providing uniform coverage to all state and local employees. However, due to the narrow margin of the decision, reversal of this decision is perhaps possible at some point in the future.

Most states now have public employee relations boards which administer public employee relations laws, applying standards developed in the private sector, considering the "community of interests" and the wishes of the parties involved when called upon to settle disputes. Unit determination has become an area of concern. This is particularly troublesome in department chairman issues, primarily due to lack of uniformity of professional tasks among institutions of varying size and complexity. Multicampuses also present some unique concerns.

The use of third parties to resolve impasses as mandated by much of the enabling legislation is often criticized for its inadequacies. These procedures usually focus on strikes and strike prevention measures while failing to affectuate an agreement between parties.

The philosophy and principles of sound management in public higher education are not totally different from those used by business and industry. The major differences that do exist, emanate from the legal, political environment and the traditional governance structure which is unique to higher education. The absence of a uniform public employee relations act, similar to the National Labor Relations Act, coupled with the inexperience of public employees and public officials has created confusion and in some ways hampered the development of collective bargaining in higher education. Much work remains before collective bargaining in the public sector attains the maturity enjoyed by the private sector.

So then, what do faculty members confronted by legalistic mazes on the one hand and the encroachments of external forces on the other hand, think about collective bargaining? The overriding consensus seems to be that faculty members in public institutions of higher learning want the opportunity to accept or reject the ideas, methods or results of collective bargaining.

While great improvements in salaries and working conditions have been secured in the last decade, it is difficult to say that such improvements have been a natural occurrence. As faculty have approached the idea of collective bargaining, some basic concerns have centered on the maintenance of institutional independence and the protection of collegiality in academic matters. Faculty collective bargaining developed as a result of adverse economic conditions in a political environment that has threatened job security, salaries and the traditional academic governance system. Faculty member decisions to accept or reject collective bargaining have tended to depend on ideology, the way in which issues were presented along with consideration for the prevailing economic conditions.

The initial impact of collective bargaining on higher education is not yet fully understood. It seems clear, however, that faculties have turned to collective bargaining to protect a way of life that is deemed worthy of survival. It would appear that a redistribution of power is desired though faculties can expect to both gain and lose power.

Collective bargaining in public higher education is at a pivotal point. With the potential for organization of faculty members complete in all but a few states where faculty collective bargaining is permitted by law, the

movement toward collective bargaining is leveling off. The future of collective bargaining in public higher education seems to depend equally on the financial future of higher education and enabling legislation as well as on the organization efforts of bargaining agents and the leadership of all parties involved.

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# Faculty bargaining in public higher education

**FACULTY BARGAINING IN PUBLIC HIGHER EDUCATION, A REPORT AND TWO ESSAYS.** Carnegie Council on Policy Studies in Higher Education. Jossey-Bass Publishers. San Francisco, 1977. 191 pages.

As the title indicates, this volume has a tripartite structure. Part One is the actual report of the Carnegie Council on Policy Studies in Higher Education and presents an overview of the current situation plus specific recommendations of the Council concerning faculty bargaining in public higher education.

"State Experience in Collective Bargaining," a monograph by Joseph W. Garbarino, professor of Business Administration and Director of the Institute of Business and Economic Research at UC Berkeley, is, in essence, an update of his now classic 1975 volume on faculty unionism.

Part Three provides a discussion on "Legislative Issues in Faculty Bargaining" by law professors David E. Feller (UC, Berkeley) and Matthew W. Finkin (Southern Methodist University).

The motivating purpose of the work as a whole appears to be two-fold: 1) to provide the basis for discussion on the policy and administrative aspects of faculty unionism in public higher education; and 2) to define and explain the principles which the Carnegie Council believes should "inform and shape policy" (p. 5) in that arena.

To these ends, the discussions all focus primarily on three major policy issues which the Council believes actual experience with faculty collective bargaining in public higher education has shown to be central: 1) the occupational nature and institutional composition of the election unit; 2) the scope of bargaining and how it is determined; 3) the institutional or governmental authority designated as "employer" and thus charged with the negotiating obligations and responsibilities.

Throughout the volume two assumptions are maintained. The first is that institutions of higher learning are not essentially business enterprises and thus that the "industrial model" of unionism is not only not totally appropriate, it is also in many ways threatening to the essence and unique character of the "academic enterprise." The core of this uniqueness, it is argued, is the tradition and practices of (collegial, says the Council) academic governance. That "the nation continues in a dynamic, formative and experimental period with respect to collective bargaining in the public and eleemosynary sectors . . . (and that) there are several key policy issues, including the three . . . singled out for discussion, that remain essentially undecided" (p. 7), is the second assumption and provides the fundamental justification for the book. Thus, while many examples of actual experience are cited and tentative conclusions are drawn on some aspects, the emphasis of the volume is definitely on how the future character of faculty bargaining in public colleges and universities may be influenced.

The clear purpose of the Carnegie Council report is to define the direction in which this future should be influenced to move. Representing what might be characterized as the myth of the "traditional faculty viewpoint," the Council report and recommendations emphasize the impact of faculty unionism as it is developing on the "ideal" of the (public) university. Its concerns are explicitly delineated: "(1) to safeguard faculty collegial influence over essential academic matters; (2) and to preserve institutional independence from excessive political and governmental control" (p. 7).

These concerns undergird rather detailed Council discussions on each of the volume's three focal issues. Concerning the designation of the election unit, the Council argues it should be limited to faculty on a single campus, with "faculty" being defined as "the 'colleagues' in the 'collegial governance' of academic life" (p. 9). The scope of bargaining should explicitly exclude all decisions which "are at the heart of the academic enterprise" and thus should be limited "to issues that bear directly upon 'wages, hours and terms and conditions of employment—essentially items that have a monetary dimension—'" (pp. 13-14). Finally, the Council would like to see the governing board designated as the "employer" for the purposes of bargaining.

If a governmental authority must be chosen, a two-tiered bargaining process is suggested whereby issues concerning money are bargained over with the "employer" and academic matters with the board. In a multi-campus system, a three-tiered bargaining process is recommended so that "some local non-money matters (are) bargained about at the campus level" (p. 20).

The Garbarino essay takes a very different approach. Arguing that "faculty bargaining has thus far created more change in administrative structures and procedures than it has in academic affairs" (p. 30) — as he predicted in 1975 — he focuses on the administrative aspects of current bargaining situations in various institutions.

His "Overview" chapter outlines and summarizes what he perceives from an administrative standpoint to be the five major problem areas within the three fundamental issues defined by the Council: "1. Bargaining structure and the identity of the employer; 2. Bargaining and the budget process; 3. The organized students' role in faculty bargaining; 4. Bargaining in multi-institutional systems; and 5. Bargaining units and internal administration.

In the second chapter, "State Experience" Garbarino utilizes information gathered from an indepth review of seven states (Hawaii, Michigan, Massachusetts, New York, New Jersey, Rhode Island and Pennsylvania) to compare and contrast alternative attempts to solve the first two of these five problems and then synthesizes experiences from all the states as the basis for a more general discussion on each of the remaining three.

Though not concerned with the global and perhaps eternal issues confronting the Carnegie Council, the Garbarino essay does make several critical and provocative points. On the designation of the "employer" he posits "perhaps the most important single administrative change that faculty bargaining has introduced into higher education" (p. 31) is the direct influence gained by the office of the governor in the bargaining process. Again arguing his 1975 thesis—"that the important effects (of faculty bargaining) . . . will be felt on the processes of decision-making rather than on the substance of the decision," (**FACULTY BARGAINING: CHANGE AND CONFLICT**, p. 256), however, he notes this involvement of the state executive office hasn't seemed to create any major problems. Addressing the widespread concern that the acceptance of a faculty union spells the demise of the faculty senate, Garbarino's empirical research seems to indicate "that the senate system has been strengthened by the advent of faculty unionism in more instances than it has been weakened" (p. 61).

Finally, concerning the questions about the scope of bargaining and the composition of the bargaining unit, he argues the "inclusion of multiple groups in single negotiations will broaden the scope of bargaining to encompass all the topics of concern to each separately" (p. 63). Given that this development would be in direct contrast to the pattern in private sector bargaining, Garbarino concludes "the participants (in higher education) may find the much-maligned 'industrial model' of unexpected utility and increasingly attractive" (p. 63).

The final section of the volume takes yet a different approach to the three central issues at hand. Focusing on the legislative aspects of faculty collective bargaining, law professors Feller and Finkin offer the only substantive comparison of the situations in public and private higher education in the book. This, however, is not their major purpose. Rather, their intent is to provide data on the legislative aspect to support first, the contention that colleges and universities are not business enterprises and should not (but currently are for the most part) be treated as such in state and federal legislation and labor regulations, and second, the argument that the situation can and should be changed. Their introductory, overview chapter is followed by a long, detailed, somewhat legalistic analysis of "Salient Issues." Herein, Feller and Finkin use multiple examples of current legislation to illustrate the issues and implications of determining: "1. The Appropriate Bargaining Unit (including geographic and occupational scope); 2. The Structure of Bargaining; 3. The Scope of Bargaining (including bargaining and academic governance); and 4. Other Provisions Accommodating Higher Education (including the student role in bargaining, representation elections, and union security)." As the title of the fourth subsection to chapter

two indicates, a major thrust of this entire part deals with the adaptation of existing—and the writing of future—legislation applicable to collective bargaining in public higher education so as to acknowledge and protect the unique character of academia. Specifically to that end, the final chapter in "Legislative Issues . . ." is devoted to a series of "Proposed Statutory Provisions." It is here that the previously, essentially undefined differences between the business and academic enterprises are explicitly addressed. Intended as guides for the formulation of inserts into general statutes concerning public employee bargaining, the eight recommended provisions deal with very specific issues as they directly relate to higher education: definition of "Labor Organization"; definition of "Supervisor"; definition of "Managerial Employee"; determination of appropriate bargaining unit; bargaining structure; scope of bargaining; management rights; and union security. The content of the recommended provisions is generally in line with and supports the position and recommendations of the Carnegie Council report, e.g., the "appropriate bargaining unit" is defined as one which "shall consider . . . the structure of academic government; provided that in any state college or university no unit shall include both faculty and non-faculty—as defined by the institution's governance structure—unless a majority of each group voting separately, approve . . ." (p. 160).

Only on the question of the scope of bargaining do Feller and Finkin veer from the Carnegie stance. Here their concern for language appropriate to higher education provides the opportunity for a much more widely ranging agenda of bargainable items. On the whole, however, the recommended provisions are written so as to protect existing governance structures, maintain institutional autonomy (at least in election and bargaining units), and clarify such issues as the position of administrators with faculty rank *vis-a-vis* the bargaining unit.

Each of the three parts of **Faculty Bargaining in Public Higher Education . . .**, therefore, addresses different aspects of the basic topic and major issues at hand. Yet, they are intersupportive and basically unified in their position. To differing degrees they both recognize and support the uniqueness of the academic enterprise and voice concern and apprehension over its future as a result of the experiences thus far with faculty collective bargaining. Yet each, in different ways, makes positive and rather concrete suggestions to prevent their fears from being realized. The Council report sums up the tenor of the entire volume when it warns on one hand that "academic enterprise can be gradually transformed into civil service" (p. 21) and notes on the other that the entire development is yet in its formative stages, i.e., there are real and serious threats in faculty unionism to the traditional character of American higher education, but the critical decisions can still be influenced. The views contained within this volume on how the latter can and should be accomplished provide the basis for much thought and discussion and thus make the book worth reading.

Susan J. Scollay

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