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AUTHOR Kramer, Gerald H.; Creswell, John W.
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ABSTRACT

Examined are the written collective bargaining agreements that existed during any part or all of the 1973-74 academic year between four-year state colleges and faculties who have chosen bargaining agents. All of the written agreements in effect at four-year state colleges, a total of fourteen covering thirty-seven institutions, were analyzed. The "scope of bargaining" is defined as the degree to which each written agreement included thirteen subjects traditionally considered in a "model" contract. Next, several research questions were posed to examine implicit assumptions held by practitioners and stated in the literature that may contribute to an extended "scope." Results showed that the type of law enacted by a state may influence the "scope of bargaining" of a written agreement. However, the type of organization representing faculty, the composition of the bargaining unit, the use of third-party intervention, and binding arbitration clauses in the agreements failed to significantly affect the content of the written agreements. (Author)

FOUR-YEAR STATE COLLEGES: THE SCOPE OF COLLECTIVE BARGAINING

By

Gerald H. Kramer, Ph.D.
Director of Employee Relations
Kansas State College of Pittsburg
Pittsburg, Kansas

John W. Creswell, Ph.D.
Assistant Professor
Department of Administration and
Higher Education
College of Education
Oklahoma State University
Stillwater, Oklahoma

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ABSTRACT

Of the potential initiatives in higher education, the Carnegie Commission cited those originating with faculties, and particularly collective bargaining as being the more dominant one in the 1970's. With unionization, functions traditionally considered the prerogative of administrators may be drastically altered. This study examines written collective bargaining agreements that existed during any part or all of the 1973-74 academic year between four-year state colleges and faculties who have chosen bargaining agents. All of the written agreements in effect for four-year state colleges, a total of fourteen covering thirty-seven institutions were analyzed. The "scope of bargaining" was operationalized as the degree to which each written agreement included thirteen subjects traditionally considered in a "model" contract. Next, several research questions were posed to examine implicit assumptions held by practitioners and stated in the literature that may contribute to an extended "scope." Results showed that the type of law enacted by a state may influence the "scope of bargaining" of a written agreement. However, the type of organization representing faculty, the composition of the bargaining unit, the use of third-party intervention, and binding arbitration clauses in the agreements failed to significantly affect the content of the written agreements.

FOUR-YEAR STATE COLLEGES: THE SCOPE OF COLLECTIVE BARGAINING

The Carnegie Commission on Higher Education predicts in its final report that "the 1970's may belong to faculty activism as the 1960's did to student activism."[1] Of the potential iniatives in higher education, the Commission cited those originating with faculties, and particularly collective bargaining, as being the more dominant ones in the decade. For state colleges facing conflicting pressures of decreased enrollments, financial exigency, and statewide demands, what attributes of the bargaining process seem to affect the scope of the written agreements?

The adoption of a written agreement between the institution and the bargaining agent is the most important aspect of the bargaining process since the agreement places "in written legal form a great deal of the substance and procedure of faculty-administrative relations heretofore either traditional or specifically delegated."[2] By committing to writing the substance and procedure of their relations, the institution and the bargaining unit broaden this relationship in scope and degree of codification.[3]

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[1] Priorities in Action: Final Report of the Carnegie Commission on Higher Education. (New York: McGraw-Hill, 1973), p. 56.

[2] Michael H. Moskow, "The Scope of Collective Bargaining in Higher Education," Wisconsin Law Review 1 (1971): 34; Russell A. Smith, "Legal Principles of Public Sector Bargaining," in Faculty Power: Collective Bargaining on Campus, edited by Terrence N. Tice (Ann Arbor, Michigan: The Institute of Continuing Legal Education, 1972), p. 16.

[3] Kenneth P. Mortimer and G. Gregory Lozier, "Contracts of Four-Year Institutions," in Faculty Unions and Collective Bargaining, edited by E.E. Duryea, Robert S. Fisk, and Associates (San Francisco: Jossey-Bass Publishers, 1973), p. 128.

The range of subjects covered by the provisions in the written agreement is broad and limited only by federal or state law.[4]

The purpose of this study is to examine written agreements that existed in four-year state colleges during the 1973-74 academic year in terms of their "scope," or range of topics included in the agreement. Further, several research questions are raised which examine implicit assumptions both held by practitioners and in the literature about factors contributing to an extended "scope." For example, one factor assumed to be influential is the particular faculty representative organization chosen. Loewenberg has reported that different types of employee organizations exhibit varying degrees of interest in bargaining with public employees.[5] Moskow has pointed to the philosophical differences of the major faculty organizations representing higher education faculties.[6]

A second factor alleged to be of major importance is the composition of the bargaining unit. It has been argued that to include non-teaching professional support staff would dilute the bargaining unit, thereby making the faculty union less effective. Others have taken the position that many of the non-teaching professional support personnel have many of the same interests as the instructional faculty and should be included in the same bargaining unit.

A third factor that is considered consequential is the legal

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[4]Moskow, op. cit.

[5]Michael H. Moskow, J. Joseph Loewenberg, and Edward C. Clifford, Collective Bargaining in Public Employment (New York: Random House, 1970), p. 92.

[6]Moskow, op. cit., pp. 35-50.

framework. The American industrial relations system has been greatly influenced by the statues regulating collective bargaining. The passage of the National Labor Relations Act (NLRA) in 1935 was influential in union growth to eleven million members by 1940. In addition, the good faith bargaining provisions of Section 8(d) and Section 8(a5) have greatly expanded the scope of bargainable issues in the private sector. Although bills are pending in Congress which provide for a federal law regulating public bargaining, the regulation of public bargaining is presently done by state laws. These laws range from "meet and confer" laws which provide for extensive consultation with representatives of employee organizations with final authority for action residing in governmental personnel to laws providing for fact-finding, the use of an impartial third party to delineate the facts, and mediation, the use of an impartial third party to assist in reconciling a dispute between representatives of the employer and recognized employee organizations through interpretations and advice.

A fourth factor which has drawn much comment is the use of neutral third parties to assist in negotiation impasses by acting as mediators or by performing a fact-finding function. Public administrators have been critical of such procedures, feeling that third-party intervention undermines their authority in allocating funds and in maintaining costs efficiently.

A fifth factor deemed to be influential is the practice of binding arbitration. The empirical work of Slichter, Healy, and Livernash has demonstrated the importance of contract administration, specifically, binding arbitration, in enlarging the scope of bargaining in the private sector.[7]

Written Agreements Analyzed

Written agreements between faculty and colleges for all four-year state colleges who have chosen bargaining agents as their exclusive representative during the 1973-74 academic year were analyzed.[8] In total, fourteen written agreements covering thirty-seven state colleges throughout the country were reviewed.[9] The

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[7]Sumner H. Slichter, James J. Healy, and E. Robert Livernash, The Impact of Collective Bargaining on Management (Washington, D.C.: The Brookings Institution, 1960).

[8]"State Colleges" are defined as those institutions offering liberal arts and/or professional courses leading to a bachelor's degree and, in some cases, to the master's degree or beyond but not to the doctor of philosophy or its equivalent and which have fewer than three professional schools.

[9]The fourteen written agreements apply to single state colleges in some instances and state college systems in others. These written agreements apply to Oakland University (Michigan), Boston State College (Massachusetts), Lowell State College (Massachusetts), Massachusetts College of Art (Massachusetts), New Jersey State College System (eight institutions), Rhode Island College (Rhode Island), Southeastern Massachusetts University (Massachusetts), Worcestor State College (Massachusetts), Central Michigan University (Michigan), Ferris State College (Michigan), Fitchburg State College (Massachusetts), Nebraska State College System (four institutions), Pennsylvania State College and University System (fourteen institutions), and Saginaw Valley College (Michigan).

names of state colleges that have chosen bargaining agents were obtained through lists available in the Chronicle of Higher Education and from the American Association of University Professors (AAUP), The National Education Association (NEA), and the New York State United Teachers (NYSUT). These sources could provide the names of colleges that have chosen through the election process bargaining agents as the exclusive representative of the faculties. However, to determine which state institutions actually had written agreements in effect for part or all of the 1973-74 academic year, it was necessary to write individually every state college listed. In this way, all written agreements, a total of fourteen documents, in effect were obtained. Only institutions defined by the United States Department of Health, Education and Welfare as four-year state colleges were included in this study.[10]

The Model Contract

Traditionally, "scope of bargaining" has been associated with the range of issues included in negotiations between parties to a labor agreement.[11] Scope is often the focal point of controversy; frequently, college administrators look upon an expanding scope as

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[10] J.L. Zwingle and Mabel E. Rogers, State Boards Responsible for Higher Education, 1970 (Washington, D.C.: U.S. Government Printing Office, 1972), pp. 179-194.

[11] Paul F. Gerhart, "The Scope of Bargaining in Local Government Labor Negotiations," Labor Law Journal 20 (August, 1969): 545.

an infringement on its rights to manage. To determine "scope", unions tend to utilize so-called "model" contracts in presenting their demands to administrators. Moskow suggests that a model contract would include the following:

1. Purpose and Intent. The parties recognize the purpose of the institution and describe the philosophical climate that has been reached through negotiations.

2. Recognition. The faculty union is recognized by administration as the exclusive representative of the bargaining unit for the purpose of collective bargaining under the rules of the governing state statute. A brief description of the composition of the bargaining unit may be included in the recognition clause.

3. Faculty Rights. The faculty members' rights and privileges as teacher, researcher, and citizen are stated.

4. Deduction for Professional Dues. The responsibility of the institution for deducting union dues from a faculty member's paycheck is confirmed.

5. Conditions of Employment. Either the normal or maximum teaching load per semester or per year is stated. Certain faculty responsibilities such as good classroom instruction, assistance in registration, posted hours for student advisement, and similar obligations are spelled out.

6. Leaves of Absence. The various types of leaves provided may include several of the following: professional, sabbatical, sick, maternity, no-pay, bereavement, military, personal, court-required, and others.

7. Professional Improvement. Provisions for faculty members to take graduate courses and/or to have fees waivered for themselves or their spouses are stated.

8. Insurance. Types of insurance involved may include life, health, and disability.

9. Retirement. Provisions are made for the age of retirement and/or the years of experience. The type of retirement plan is also stated.

10. Grievance Procedure. The definition of a grievance and the procedures for settlement are set.

11. Tenure. The definition of tenure, the length of the probationary period, the procedures for granting tenure, and the reasons and procedures for dismissing a tenured faculty member are set forth.

12. Professional Compensation. Procedural provisions for the length of the pay period. The methods of distributing paychecks, payroll deductions, the determination of credit for prior experience, and similar matters are covered by this item.

13. Duration of Agreement. The effective commencement and termination dates are listed. Most agreements designate some type of salary schedule that is correlated with the duration.[12]

For purposes of this study, the term "scope of bargaining" was defined as the number of subjects listed above that were found in the collective bargaining agreements negotiated with the four-year state colleges. The investigators utilized Collective Bargaining in Higher Education: Contract Content--1973 and Higher Education Contract Clause Finder to assist in the determination of whether the above items were actually in the agreements analyzed.[13] The scope of bargaining was dichotomized into two categories: (1) "low scope" is having ten or less items of the thirteen possible items and (2) "high scope" having eleven or more items of the thirteen possible. Based on these categories, seven written agreements were identified as having "low scope"; seven as "high scope."

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[12]Michael H. Moskow, "The Scope of Collective Bargaining in Higher Education," Wisconsin Law Review 1 (1971): 46-47.

[13]Harold I. Goodwin and John O. Andes, Collective Bargaining in Higher Education: Contract Content--1973 (Morgantown, West Virginia: West Virginia University Foundation, 1974); Higher Education Contract Clause Finder (Honolulu: The University of Hawaii, 1972).

Research Questions

The questions examined in this study are:

1. Do the written agreements negotiated by the three major faculty organizations reflect significant differences in the scope of bargaining?

2. Are there significant differences in the scope of bargaining between institutions whose bargaining units only include instructional staff, those employees who regularly engage in teaching and/or research and institutions whose bargaining units include professional support staff such as professional counselors, professional librarians, and instructional resource personnel and/or department chairpersons as well as the instructional staff?

3. Are there significant differences in the scope of bargaining between institutions in states with and confer laws and institutions in states which have laws that enable faculty to bargain collectively?

4. Are there significant differences in the scope of bargaining between institutions in states with laws providing for third-party intervention and institutions in states which do not have legal provisions for third-party intervention?

5. Are there significant differences in the scope of bargaining between institutions which have binding arbitration clauses in the written agreement and institutions with no contractual arbitration?

Findings and Implications

Many of the implications of this study are significant for relationships which were not demonstrated, rather than for data showing relationships which did exist. The finding that the particular union representing faculty members apparently did not have an effect on the scope of bargaining in four-year state colleges

was probably the most surprising finding to the authors. (See Table 1) For several years, writers in the field have pointed to the many historical, structural, and philosophical differences in these organizations.[14] They have described the evolution in philosophy and, hence, in militancy in the NEA and AAUP in the recent past. The changes in philosophy may have been a factor in increasing membership in the NEA, but at this time, the impact on scope of bargaining has not been demonstrated. It should be noted, however, that twelve of the fourteen agreements analyzed in this study were first agreements. As Mortimer and Lozier pointed out, future agreements may encompass the gains of the first agreements and seek to enlarge the scope of negotiations.[15] The attitudes and behavior of the local affiliates or local units may be more influential in the beginning years of negotiations than the stances of the national organizations.

Findings also suggest that the composition of the bargaining unit-hetrogeneous versus only instructional staff-does not affect the scope of bargaining. (See Table 1) That the inclusion of non-instructional staff in a unit might limit the number of topics in a written agreement and thereby delete the scope was not substantiated.

The type of state law may significantly affect the scope of

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[14]Moskow, op. cit., pp. 35-50.

[15]Kenneth P. Mortimer and G. Gregory Lozier, "Contracts of Four-Year Institutions," in Faculty Unions and Collective Bargaining, edited by E.E. Duryea, Robert S. Fisk, and Associates (San Francisco: JOssey-Bass Publishers, 1973), p. 128.

TABLE 1
SCOPE OF BARGAINING
BY TYPE OF FACULTY
ORGANIZATION AND COMPOSITION
OF BARGAINING UNIT

	Scope of Bargaining	
	High Scope	Low Scope
Type of Organization*		
AAUP	1	0
AFT	5	2
NEA	3	3
Bargaining Unit Composition**		
Heterogeneous Unit (includes more than just instructional staff)	8	4
Unit contains only instructional staff	1	1

*Using Kendall's tau test for grouped data an $r_c = .0615$ was obtained which is not significant at $p \leq .05$.

**Using Fisher's exact test, the results were not significant at $p \leq .05$.

bargaining in four-year state colleges. (See Table 2) The struggles in legislatures over the type of legislation appears to be of vital importance to both unions and administrators. The demise of meet and confer laws either by state action or by future federal legislation may mean important changes in the relationships between administrators and their faculties. It is likely that a change in the scope of bargaining which reduces administrators' authority could change the cost structure in many colleges. This could have serious consequences at a time when four-year state colleges are facing serious enrollment and fiscal pressures.

Another somewhat surprising finding was that the use of third-party intervention in state laws has not affected the scope of bargaining (See Table 3) Many concerns have been voiced by administrators that the use of mediation, fact-finding, and compulsory arbitration have severely limited administrators' actions in efficiently managing their institutions. However, the findings of this study suggest that the scope of bargaining is not significantly affected in states having statutes providing for such intervention.

Apparently the empirical findings of Slichter, Healy, and Livernash in the private sector regarding the impact of grievance machinery and arbitration cannot be applied to the public sector in four-year state colleges at this time.[16] Statistically, the data in this study did not support the contention that the presence of

[16]Slichter, Healy, and Livernash, op. cit.

TABLE 2

TYPE OF LAWS REGULATING FACULTY BARGAINING
AND THE SCOPE OF BARGAINING*

Institution	Sign	Scope of Bargaining
Boston State College	+ **	Low
Central Michigan University	+	High
Ferris State College	+	Low
Fitchburg State College	+	Low
Lowell State College	+	High
Massachusetts College of Art	+	Low
Nebraska State College System	- ***	Low
New Jersey State College System	+	High
Oakland University	+	High
Pennsylvania State College and University System	+	High
Rhode Island College	+	High
Saginaw Valley College	+	High
Southeastern Massachusetts University	+	High
Worcester State College	+	Low

*Using the sign test, the observed r was less than the tabulated value indicating a significant relationship.
**A "plus" denotes a Collective Bargaining Law.
***A "minus" denotes a "Meet and Confer" Law.

TABLE 3
SCOPE OF BARGAINING AND
THIRD-PARTY INTERVENTION CLAUSES
AND BINDING ARBITRATION CLAUSES

	Scope of Bargaining	
	High Scope	Low Scope
Type of Third-Party Intervention*		
No Third-Party Intervention	0	1
Mediation and Fact-Finding	4	3
Compulsory Arbitration	5	1
Arbitration Clause**		
Has clause	6	3
Does not have clause	3	2

*Using Kendall's tau test for grouped data an $r_c = .0716$ was obtained which is not significant at $p \leq .05$.

**Using Fisher's exact test the data was not significant at $p \leq .05$.

of binding arbitration clauses affects the scope of bargaining. As both sides become more sophisticated in the bargaining process, however, there may be a need for greater training in contract administration if both unions and administrators are to function effectively.

Perhaps the most significant finding was the overall impact that faculty unions have made on the four-year state colleges according to the model contract used in this study. Unions consider written items essential to any agreement. In only one of the contracts studied did the union fail to have less than nine of these essential items included. Thus, it appears that unions have already made an important impact upon the four-year state colleges. As the unions become more institutionalized within the colleges, these thirteen essential items will undoubtedly be broadened and strengthened, adding potential restrictions on administrators.

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