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ABSTRACT

Some of the critical choice points in the development of collective bargaining in public institutions of higher education are traced. The single most important aspect of the bargaining process that determines the nature of collective bargaining is enabling legislation. Changes that have appeared to influence the probability of unionization concern the renewed emphasis on accountability and the more permissive legal authorization for collective bargaining in higher education. Unit-determination refers to the composition or nature of the group of employees forming the bargaining unit. After the unit determination has been made, the next logical step is an election to see which, if any, of the potential bargaining agents will represent the unit. The three major union groups for teachers are noted, and some of the typical items included in a collective bargaining agreement in higher education are defined. Sources of difficulty in implementing a contract that has been accepted by both parties are discussed, as are challenges and decertification of a bargaining agent. (SW)

THE FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

Reports from the Field

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The Fund For The Improvement of Postsecondary Education
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This Report was selected in order to highlight some important issues in postsecondary education. The views expressed, however, do not necessarily represent those of the Fund for the Improvement of Postsecondary Education, or the Department of Health, Education, and Welfare.

FOREWORD

The Fund for the Improvement of Postsecondary Education was established in 1972 "to improve postsecondary education." This mission is executed primarily through awarding grants to colleges, universities, and other institutions and agencies to carry out a variety of reforms and improvement activities. The Fund's guidelines describe general problem areas common to wide segments of postsecondary education. Applicants compete for limited resources distributed in modest grants which typically do not exceed two years duration. Proposals are evaluated for significance of the problem addressed and the appropriateness of the proposed solution. In this way the Fund seeks to be responsive to the diversity of institutional initiatives. Consistent with its *seed money* capabilities, the Fund encourages cost-effective initiatives that are likely to become both self-supporting and adaptable to other locations and situations.

The demonstrated successes of many of these projects deserve to be known by a wide audience. Public and private policy-makers, administrators, faculty members, and all concerned with improved educational practice, should have access to these findings. The need for a better understanding of the total array of educational possibilities is especially pressing. The postsecondary student population is changing in size, age, and needs, while public and private financial resources to meet those needs are increasingly constrained. The Fund accepts as basic to its mission a responsibility to communicate and share, as widely as possible, its own understanding of successful educational improvements. In order to share this information, the Fund has initiated two series of reports which will communicate the outcomes of the Fund's programs.

REPORTS FROM THE FIELD, (like the one that follows), are derived from reports submitted to the Fund by its grantees. In these documents, individual project directors describe features of their projects which may have significant implications for wider use.

REPORTS FROM THE FUND are written by Fund staff. These reports describe groups of projects which have a common theme or address a common problem. The projects are examined, and comparisons are made in order to draw some general lessons from their experiences. These lessons will, we hope, have broad applications in postsecondary education.

Titles and copies of both series of reports may be obtained from:

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We, at the Fund, hope that these reports will be useful to those engaged in the task of providing effective postsecondary educational opportunities for all.

E. Bartell

(Rev.) Ernest Bartell, c.s.c.
Director

PREFACE

In June of 1975, the Fund made grant awards to 11 postsecondary institutions under a special program entitled NATIONAL PROJECT III: *Elevating the Importance of Teaching*. These institutions were selected to take part in the project on the basis of the quality of their programs for elevating the importance of teaching. Among the 11 Associate Institutions receiving awards was the State University College of New York at Oswego; more specifically, the Department of Psychology had developed a creative and unique means of contracting with its faculty for the allocation of responsibilities. The chairman of the department, David King, was Oswego's representative for NATIONAL PROJECT III.

During discussions among the Associate Institution representatives regarding the various activities which have impact on elevating the importance of teaching, the subject of collective bargaining emerged. In part to address the issue of the impact of collective bargaining on faculty development, David King prepared a short working paper to aid in the group's basic understanding and discussion of the subject.

Professor King's paper has been selected as a Report from the Field because collective bargaining has implications that reach further than faculty development alone. A better understanding of its processes and critical features is important for all who are concerned with improving postsecondary education.

Professor King, now Dean of the College of Arts and Sciences at Oregon State University, has provided a useful step-by-step guide through the collective bargaining process and has marked off the critical decision points along the way. His paper will help those of us who are new to the subject to consider the potential use and abuse of collective bargaining more thoughtfully and more objectively.

David Justice
Program Officer
Fund for the Improvement of
Postsecondary Education

Only a few years ago the drive for collective bargaining in higher education was met on most campuses with an attitude of "It can't happen here." Now, the attitude seems to have shifted to a fear or a hope of "how soon" collective bargaining will be endorsed by college faculties. The purpose of this paper is to trace some of the critical choice points in the development of collective bargaining in institutions of higher education.

A deceptively simple question to start with might be, just how wide-spread is collective bargaining in higher education? According to Garbarino,[1] in 1975 there were 394 institutions representing 101,800 faculty members covered by collective bargaining contracts. While this is obviously a small portion of the nearly 3,000 postsecondary institutions, a finer analysis of these institutions shows that the vast majority of them are public. The public-private distinction is important not only in terms of the varying likelihood of faculty unionization, but also because of the different legal basis for unionization of the two cases. Private institutions may be unionized under the legal umbrella of the National Labor Relations Act. Public institutions must, for all practical purposes, await the passage of state legislation (termed *enabling legislation*) before collective bargaining can occur.[2] Nearly half of the states have passed such legislation, but many have not. Thus, any attempt to express the extent or to trace the rate of growth of collective bargaining in higher education must be incomplete because of the lack of enabling legislation in many states. Regardless of the quantitative details, most critics agree that the presence of collective bargaining in higher education is a powerful force which must be examined.

While the legal authority for collective bargaining in higher education is different for public and private institutions, in practice the procedures and results are very similar.[3] Because of this similarity and because collective bargaining is so much more prevalent in the public sector, this paper will follow the development of such bargaining in public institutions.

ENABLING LEGISLATION

Collective bargaining by public employees is young. The first such law was passed in 1959 by the State of Wisconsin. By January 1977, 24 states had passed some form of enabling legislation covering higher education. To be considered here, is a number of larger critical issues involved in collective bargaining.

The enabling legislation that states pass to authorize collective bargaining rights by public employees may vary in breadth or scope in at least two significant ways. Such legislation may apply to all or most public employees in a state. In contrast to the broad legislation, some states may draft a specific bill addressed to higher education alone (Wisconsin's proposed model is an example). It would seem reasonable that the more specifically the enabling legislation is directed toward higher education, the more sensitive it would be to the peculiar problems and needs at that level. On the other hand, some feel that any special form of legislation for higher education will only hamper the bargaining process.

Of far greater importance to the bargaining process is the specificity of items written into the law. Nearly all enabling laws contain the classic phrase "hours, wages and other terms and conditions of employment." Beyond that, however, legislation may vary from including few topical restrictions to the inclusion of many. One way to describe specificity is to focus on what is referred to as "mandatory, permissible, or prohibited" subjects for collective bargaining. If a topic is a mandatory item under the enabling legislation, then either side (union or management) may have the topic included in the negotiation of a contract. This does not, of course, mean that the topic will necessarily appear in the final contract. In order for it to appear, the two parties will have to agree on the substance and the relative priority of the topic for both parties. The point is, mandatory items must be discussed and seriously negotiated. Permissible items or topics, on the other hand, are bargainable items only if both parties agree to their inclusion. Again, inclusion as a topic for bargaining does not mean that the item will emerge from the bargaining process as an element in the contract. *Prohibited items* means just that. No matter what the wishes are of either or both parties, prohibited items are not subject to negotiation. Within this framework, most collective bargaining enabling legislation contains not only the traditional phrase of "hours, wages, terms and conditions of employment" but also a number of specific issues which may be listed as mandatory, permissible, or prohibited subjects for bargaining. These considerations may be designated as enabling legislation of average breadth. Broad-scale enabling legislation contains the usual general terms but adds a few restrictions or prohibitions of topics subject to collective bargaining. This does not necessarily mean that all topics would then be mandatory items. At the other end of the scale is legislation that presents the general terms (and little else) but then adds the phrase "anything not specifically mentioned is prohibited from the collective bargaining process." This is clearly a vary narrowly drawn law. While there is some agreement from state to state, it is entirely possible for the same item to be mandatory in some states but prohibited in others. For example, pension and retirement terms are prohibited topics in Hawaii, Minnesota, New Jersey, and New York but mandatory topics in Kansas, Michigan, and Oregon.

It is the nearly unanimous position of all potential bargaining agents that legislation should be drawn on as broad a basis as possible. On the other hand, many legislators and university administrators feel the need for some topical prohibitions and other restrictions (such as making some areas non-mandatory). It is regrettable that most faculty members have little or no knowledge of the prevailing state enabling legislation when they prepare for a collective bargaining vote. In fairness, it must be added that many administrators also have either not known the content of enabling legislation or have been too timid to point them out to their faculties. This lack of information about the nature and importance of enabling legislation is regrettable in view of the great importance it plays throughout the entire collective bargaining process. Collective bargaining is sometimes pictured as a sequence of events flowing over time (unit determination, election, negotiations, contract administration, etc.). This collective bargaining flow is through a sea of enabling legislation which shapes and forms the process. Clearly, enabling legislation is the single most important aspect of the bargaining process that determines the nature of collective bargaining.

It is most difficult to generalize on the content of enabling legislation in the various states. Nearly all such legislation contains the phrase "hours, wages and other terms and conditions of employment." Other important items that appear frequently in the bargaining process are articles related to an agency or union shop, strike provisions, conflict resolution mechanisms, and what group will represent the management bargaining agent. There may or may not be specific language in the enabling legislation describing its relationship to the state education law. Since there is frequent contradiction between the authority granted to boards of trustees under the state education law and the locus of decision making under collective bargaining legislation, a number of spokespersons feel that the relationship between the two laws should be specified.

Special note should be taken of a number of items which may be written into enabling legislation that have a very strong though indirect effect on the quality of instruction. Some specific items are: class size, changes in class size, school calendar, retrenchment, distribution of resources, organization, policy regarding evaluation of faculty, program content and services, academic freedom, and faculty development.

FACULTY UNIONIZATION

No one knows the causes of faculty unionization. The best that can be undertaken is to look at some of the correlates of unionization and try to make some cautious inferences. Garbarino[4] has done just this. He lists such correlates as a change in the size of the institution. During the 1960's, the size of institutions increased markedly. Another factor associated with unionization is a change in structure. Here the concern is with the development of various systems that have brought together a number of campuses into some larger administrative unit. The State University of New York is a prime example of such a system. A change in function is still another correlate of unionization. A change in function might involve, for example, a community college's expansion to a four-year institution or a state teacher's college's shift to a multi-purpose liberal arts institution. In each of these three changes it seems likely that many individual faculty members will feel a loss of control or decrease in authority. With increases in size, one person's influence is necessarily diluted. Changes in structure involve the removal of a number of decision-making functions from the individual campus to a central administration. A change of this nature is likely to result in a feeling that there has been a loss of control or authority by the faculty. A change in function may be brought about by the employment of a number of new faculty members who have not had experience as instructors in community colleges or teacher's colleges, as the case may be. The shift of emphasis or focus can easily result in feelings of loss of prestige by those faculty members whose interests are no longer central to the mission of the institution. Certainly, it is clear that these three types of changes occur with far greater rate and frequency at public rather than at private higher educational institutions.

Since the importance of enabling legislation has already been discussed it will not be mentioned again in the present connection. Other changes which have appeared to influence the probability of unionization concern the renewed emphasis on accountability and the more permissive legal authorization for collective bargaining in higher education. The emphasis on accountability is reflected in the pressure by boards of trustees, legislatures, executive budget offices, and students to ensure that an institution of higher education is, at least in some way, doing what it is supposed to do. In part, this is reflected in the current popularity of such areas as faculty and program evaluation. To hold someone accountable, however, must involve some consequence if the individual is found delinquent in meeting his/her responsibilities. For many faculty members, this is seen as a hidden attack on the tenure system. While tenure was originally established to protect academic freedom, it has come to play a very important role in employment security. Collective bargaining is one response to the demand for accountability.

UNIT-DETERMINATION

Unit-determination refers to the composition or nature of the group of employees forming the bargaining unit. In a college or university it is the faculty (i.e., those holding academic rank and not serving in administrative positions) that will form the bargaining unit, although in reality it is far from being that simple. One basic choice to be made is whether or not to have a guild union (made up of teaching faculty) or a comprehensive union (teaching faculty, librarians, admissions officers, counselors, and other non-teaching professionals). There are certain advantages and disadvantages to either approach. One obvious advantage, from a union perspective, is that in the comprehensive union there is increased membership (reflected in increased resources) and the opportunity to mold

the interests of assorted groups that might otherwise be in competition with one another. A disadvantage, again from a union perspective, is that many of the high priority concerns of the constituencies of the comprehensive unit are, in fact, incompatible with one another. Even when a guild approach is attempted, unit determination is not simple. Some faculties (medical and law schools in particular) may request to be excluded from the unit or to have their own separate unit. Considering all of the complex issues which may be involved in collective bargaining (and only a few were listed in the section on enabling legislation), unit determination is an important decision-point influencing the nature of bargaining. From the viewpoint of management, it is perhaps safe to generalize that they prefer the more comprehensive unit type of determination. First, the more comprehensive the unit, the smaller the number of individual negotiations in which they will have to take part. Second, a comprehensive unit determination avoids the whipsawing tactics some unions employ. Finally, the comprehensive unit forces the union to rank according to its priority the demands of competing constituencies.

How the question of unit determination is resolved is another matter. There are three basic ways in which a determination can be made. Two are rather unusual. A unit determination rule may be written into the enabling legislation, or under certain unusual circumstances, it may be specified by the appropriate university governing board. Far more frequently, unit determination is the judgment of a labor adminsitrative board. In this case, usually one party, i.e., a given union, will approach the state with a request for a unit determination. The state and the union will each present a case to the labor administrative board which makes the determination.[5] If the state and the union are in agreement, there is a reasonable chance that the labor board will grant their request. With a division between the two parties, which is usual, neither should assume that the board will grant completely either request.

In the area of unit determination, some special problems have frequently been cited regarding specific positions. The department chairperson is most often considered. Generally speaking, management has argued that chairpersons should not be part of the bargaining unit while unions have more frequently argued in the opposite direction. In public institutions, most unit determinations have placed the chairperson within the organizing unit (i.e., a member of labor rather than management). The reverse case might be made with respect to private institutions although in neither group has the decision been clear-cut. In a way, the placement of the chairperson in either group destroys the classic middleman role that the position has usually involved. If the chair is cast in the management role, the occupant will find his/her responsibilities and rewards coming from other administrative officers (rather than faculty colleagues). This will in turn, further introduce the *managerial* system at a department level. On the other hand, the inclusion of the chair as *labor* will, in the long run, probably mean the appointment of sub-deans who will make the recommendations or decisions usually made by chairpersons. In some cases, assistant and associate deans have also been placed in the bargaining unit. As the role of such positions is usually to aid and assist the dean in the execution of responsibilities, this seems a strange ruling indeed.

As far as potential bargaining agents and management are concerned, there has been little consistency in the arguments presented before the labor boards. With one exception, the question of who should and who should not be included in a bargaining unit seems to be argued in terms of local circumstances prevailing at the moment. Put more bluntly, if unions think that chairpersons will be opposed to collective bargaining, they will argue against their inclusion in the unit. This will not prevent them, once unionization has occurred, from returning to the labor board with a request that chairpersons now be included. Management appears to play the same game. The only consistent exception is the American Association of University Professors which has a long history of viewing,

chairpersons as part of the faculty. It should be understood that similar analyses could be made of other questionable unit members (admissions people, non-teaching professionals, etc.)

SELECTING A BARGAINING AGENT

After the unit determination has been made, the next logical step is an election to see which, if any, of the potential bargaining agents will represent the unit. The major alternatives are the American Association of University Professors (A.A.U.P.), the National Education Association (N.E.A.), the American Federation of Teachers (A.F.T.), a local group such as a faculty senate, or, finally, some coalition of the above. For an election to take place, a potential bargaining agent must demonstrate significant interest among those it proposes to represent. This is frequently defined as 30 percent of the potential members. The demonstration of potential support is done by obtaining signatures of faculty on authorization cards. Another potential bargaining agent can gain a position on the ballot by collecting 10 percent of the signatures. Authorization cards should not be signed by those concerned just to have an election and get it over with. If authorization cards are signed by over 50 percent of the potential bargaining unit, a labor board may simply declare that the bargaining agent will represent the unit without an election. In most instances there will be more than one potential agent and an election of some sort will take place.

Let us make the somewhat unlikely assumption that there are three successful applicants approved by the labor board on the ballot. The three major union groups (A.A.U.P., A.F.T., and the N.E.A.) in all likelihood, make a variety of contributions to the local unit in an attempt to influence the outcome of the election. Contributions may involve the granting of funds and/or the sending of guests (sometimes called organizers) to the campus to aid in the election. The three competing organizations will try to outdo each other in selling their strengths and pointing out their rivals' weaknesses. The A.A.U.P. will emphasize its long history of involvement with higher education and excellent record of protection of academic freedom. Rival organizations will emphasize that, until a few years ago, the A.A.U.P. was opposed to collective bargaining in higher education. They will also point out that in some instances potential members of the bargaining unit may not be permitted to be members of the A.A.U.P. The A.F.T. will emphasize its ties with organized labor and their considerable knowledge and experience in the collective bargaining arena. Other organizations will emphasize the differences (real or not) between blue collar unions and an organization of professionals for the purposes of collective bargaining. The N.E.A. will probably emphasize its relationship with the primary and secondary school teachers and their usually strong influence in state legislatures. Rivals will emphasize the possibility that the problems of higher education will be lost because of the N.E.A.'s overall and numerically overwhelming concern with *lower* education. Needless to say, throughout the whole procedure each organization will be promising significant salary increases, protection of faculty rights, adjustment of salary inequities, satisfactory grievance procedures, etc. Appeals to the faculties are made on both a rational and an emotional basis. On occasion, some have expressed surprise at the ease with which faculty members accept *pie in the sky* promises from potential agents.

What the administration is doing throughout this election process is a good question. In most cases,[6] an honest answer would probably be: "Not much." Perhaps things will change with a greater awareness of administrative rights and privileges during the election process. Administrators (management) must not, of course, make any threats or insinuations regarding personnel actions which might come about as a function of unionization. Apart from that, however, administrators are free to present the effects of collective bargaining in their institution as they see it. Potential agents are free to react to administrative presentations, and the unit members are free to evaluate both.

After the electioneering is over, the election itself takes place. The exact nature of the ballot differs with the enabling legislation and labor board decisions. Usually one of three options will be available. There may be what is termed a front end ballot in which the vote is simply between having an agent and having no agent. If the majority of the voters favor a no agent vote, then that is the end of the election. If an agent wins a majority, then a series of elections follows until one agent wins a majority of the votes (usually by eliminating the agent with the lowest vote with each election). A second option is a series of run-off elections between competing options—one of which may be no agent. For obvious reasons, unions usually prefer this form of election. Finally, there may be a series of run-off elections between competing bargaining agents and then a terminal election between that agent and the no agent option.

While organizations do seem to differ somewhat in campaign style, no emphasis has been placed on the consequences of *which organization* wins. An analysis of the contracts of the three major organizations suggests that they all behave in more or less the same way, once they are elected (except for a local senate).

After the elections are over, the agent having a majority of the votes is certified as the bargaining agent for the unit. This certification is done by the State Labor Relations Board.

NEGOTIATIONS OF A CONTRACT

The nature of negotiation in collective bargaining is such that, usually, all items which are to appear in the final contract are agreed upon by both parties before a final agreement or a settlement is reached. This point is important to remember because it tends to force both parties to come to an agreement by compromising on a number of issues.

Obviously, it is the bargaining agent certified by the state labor board who does the negotiating on behalf of the members of the unit. The enabling legislation will probably have determined who will bargain for the management. The bargaining team usually has from five to fifteen members on each side; although this will obviously vary with the size and complexity of the bargaining unit. In addition, there will probably be a large number of technical specialists available to give back-up information to the team members.

A number of simple misconceptions should be corrected regarding the process of negotiations in collective bargaining. Perhaps most important of all, the process of collective bargaining is not an *add*-on process. That is to say, members of the bargaining unit do not automatically retain all of their previous *gains* and negotiate only on those items to be added to their previous benefits. Depending on the specifics of the enabling legislation, many terms and conditions of employment currently enjoyed by members of the unit are subject to proposed changes by management. This is not to say that this will occur, but it should be clear that such negotiations are entirely in order. Like Wall Street, collective bargaining is a two-way street. Another misconception is that the process of negotiation resembles a faculty meeting run by Robert's Rules of Order. Negotiation is a process of give and take with most solutions arrived at by compromise rather than by a series or resolutions resolved by majority vote. Faculty members are not the only ones with misconceptions about negotiations. Some campus administrators make the assumption that nothing can be done in negotiations which might in any way decrease their authority.

The actual process of negotiation involves the presentation of information and the preparation of a set of *demands* by the bargaining agent and counterproposals by management. In recent times, management, as well as labor, has been presenting its own set of *demands* rather than reacting only to the union's proposals. It is important to understand that, when formal proposals are being

discussed, there is usually only one spokesman on each side who makes formal proposals. All, of course, may speak and ask questions of clarifications, etc., but good collective bargaining procedures require a single formal spokesman. It is here at the bargaining table that the full effect of enabling legislation will be felt. The powerful influence of those "mandatory, permissible, and prohibited" specifics will shape the outcome of the agreement in no small way. Much of the real movement in collective bargaining negotiations takes place away from the table in informal conversations between individuals on the two sides who are able to *feel out the limits* of each other's position. This *informal* aspect of negotiations depends very much on the ability of individuals to form a relationship based on mutual trust and respect (but, of course, not on agreement on specifics). Usually, there is an exchange of several proposals and counterproposals with each set working toward some central solution. At first, bargaining tends to be slow with both sides taking doctrinaire positions. Each side tends to express shock and disbelief at the lack of understanding of the needs and problems of the other side. As time continues and the deadline for reaching a contract approaches, negotiations become more serious and specific. At this point true negotiation is taking place. There will be a series of compromises on most articles. In some cases, there may be a number of high priority items that are important to each side, and a trade-off may occur.

If the parties cannot agree between themselves, there is usually a number of procedures available to aid the process of negotiation. The most frequent procedures are mediation, fact-finding, or arbitration. In mediation, a third party, acceptable to both sides, enters the negotiation process to aid the union and the state to reach an agreement. Fact-finding is a somewhat more formal procedure where a third party again enters the negotiations but does so through holding hearings and making non-binding recommendations for resolutions of the issues. Arbitration may be either binding or non-binding. In either case, an outside party, acceptable to both sides, enters the negotiation process and makes a recommendation for the settlement of the outstanding differences.

If the two parties still are unable to come to an agreement or if the agreement reached is not accepted by the two constituencies, a number of alternatives may follow. The classic weapon of labor is the strike. A strike by public employees in higher education is legal in some states but not in others. Some enabling legislation may require binding arbitration over those issues where the two parties cannot agree. In still other cases, there may be an imposed settlement presented to both groups by an outside body (such as a committee of the legislature). Finally, there may simply be no contract. A no contract result usually means that the employees will work under the same conditions which existed for the previous year or that they will have to accept whatever conditions are given by the management.

Because of the strong effect of enabling legislation on the terms of the contract, it is very difficult to suggest a list of important items most frequently found in contracts. Even so, the following section makes an attempt to describe typical negotiated items. They will be more or less applicable to the various states depending on the type of enabling legislation and, just as important, on which topics are held to be mandatory, permissible or prohibited in the legislation. In general, the specific results of the negotiations will depend on the relative priorities of the bargaining agent and the management. Both sides have their lists of *musts* and *must nots* in negotiation. Both sides will have their high and low priority items.

Considering the caveations cited above, the following are some of the typical items to be found in a collective bargaining agreement in higher education:

Exclusivity. This makes the certified bargaining agent the only representative of the unit throughout the length of the contract. This prevents a constant series of challenges by other potential agents and helps prevent *end-runs* by members of the unit who are dissatisfied with their representation. This

clause also helps push a union toward settlement in the next series of negotiations as, usually, a challenge by other agents would be permissible only at the expiration of the contract.

Open Personnel Files. A personnel file is the file of information about an individual on the basis of which personnel actions (promotion, termination, etc.) are taken. There is one personnel file for each employee. This item in the contract states that the employee has the right to read his/her own file. In some cases, it may also state that they have the right to challenge what they believe to be incorrect information contained in the file or to place in it any statement they wish challenging anything they believe incorrect.

Length. Most contracts extend for one year, but some are for longer periods of time. Some multi-year contracts have *openers* for the second and/or following years on specific items such as wages (but not for other areas). Management usually prefers as long a time period as possible to allow for long-term planning and stability.

Financial. All contracts contain information on compensation. Some multi-year contracts may have a provision where the compensation level is set for the first year, and the following years are bargained for in the future. It is perhaps a fair generalization to say that most bargaining agents push for compensation levels based on a non-meritorious basis. That is to say, most agents prefer to have a fixed salary schedule (based on rank, years of service, etc.) or a fixed percentage of increase rather than an increase based on merit. They argue that they are not opposed to merit itself but just to the arbitrary way in which merit decisions are usually made (by management). The long term influence of this practice on excellence is debatable.

Dues Check-off. This is a simple, but for the union, extremely important, bookkeeping device whereby union members have their dues withheld from their check and the funds turned over to the union. Absence of this mechanism significantly reduces union income.

Meet and Confer. Many contracts contain what is called a *meet and confer* provision. This provides for periodic meetings between the union president and the college president to discuss problems of mutual concern. Another meaning of this term is that it is a type of enabling legislation which provides for a weaker form of bargaining between employees and employers (the employer does not have to agree to a contract).

Grievance Mechanisms. Nearly all contracts contain a section concerned with the procedures to be used when an employee charges that the contract has been violated. Such a charge is termed a grievance, and a grievance mechanism is the set of procedures which are to be used to determine whether or not the charge is valid. There are many misconceptions about grievances. Perhaps the major misunderstanding is that there is necessarily anything *wrong* about filing a grievance. The real purpose of most grievances (excluding harassment, etc.) is to further clarify the meaning of the contract. This is necessary inasmuch as any contract language cannot be specific enough to cover al potential questions and problems. Another misconception is that any and all complaints will result in grievances. Most unions retain for themselves (obviously for some officers or executive committee) the decision of whether or not to accept a grievance of a faculty member. This is necessary for a number of reasons. First, many faculty members do not understand the terms of the negotiated contract and think that many things are *grievable* when they are not. Second, it is important to the union that it accepts and agrees to pursue grievances where there is a reasonable chance of success (for political reasons). Finally, grievances should be reasonably important if they have to be followed to the end of the grievance mechanisms (because of the cost involved in such an effort). Most contracts insist that charges of contractual violations can be addressed only through the union grievance mechanism.

A serious, but unintended result of the presence of a grievance mechanism may be a failure to use other channels for resolving complaints. The introduction of collective bargaining on a campus may result in a tendency to have all conflicts resolved through the grievance procedures. This is a very unfortunate development since much of the conflict present on a given campus has little to do with the usual terms and conditions of employment which are elaborated in a contract. Both the union and the management should take care to be certain that other channels for resolving conflict are not eliminated.

Finally, it is important to realize that the grievance mechanism, particularly in the area of personnel actions, may frequently not be of a nature that the faculty expect. The general faculty expectation is that if the administration would just follow the recommendations of the faculty there would be no need for a grievance mechanism in the area of personnel actions. This simply does not seem to be the way it turns out in practice. At the City University of New York, for example, the majority of the personnel grievances against the college presidents resulted from failures to reverse faculty recommendations. This is not to suggest, of course, that the faculty recommendations were always correct or that some of them should not have been reversed. It does, however, put the use of personnel action grievances in a better perspective. In short, the faculty should understand that grievance procedures in personnel actions can, and are, used in an attempt to thwart the wishes of the faculty as well as to support faculty wishes.

Personnel Items. Contracts may contain sections on appointments, promotions, dismissals, and retrenchment procedures. Only a few years ago, the primary emphasis in higher education agreements focused on the question of financial rewards. Because of the multitude of pressures on higher education, basic emphasis has shifted to a primary concern for job security. If a faculty member feels that the contract has been violated for this reason, he/she may file a grievance asking for redress. It is important to note that the complaint may be based on urely procedureal grounds or it may be based on substance (i.e., an incorrect or unjust decision). Whether grievances may be based on procedure or substance (or both) will depend on the enabling legislation, the negotiated agreement, or on labor board rulings. The general union position is that grievances should be reviewed on substance to promote justice (and to hold administrators accountable for their actions). Administrators, in general, are opposed to allowing personnel action grievances which are based on matters of substance. They argue that this would remove the *decision* authority from those who must bear the responsibility. In some cases, grievances may be settled by outside parties. This, administrators argue, removes the authority for deciding who shall be on the faculty to a person or group of persons outside of the academy.

Classroom Related Items. If allowable under the legislation and if of high enough priority in negotiations, a number of items directly related to classroom instruction may appear in the contract. Perhaps the most frequent occurrences are specifications as to class size and/or teaching load. Some contracts have a very elaborate system of determining teaching load. Others are less specific. It should not be assumed that faculty representatives will always negotiate for smaller classes. In general, of course, this will be the bargaining agent's position. On the other hand, when an increase in productivity is needed to finance the requested pay package, the union position on class size may be considerably modified. Possible implications regarding the quality of instruction and similar items should be obvious.

Management Rights and Past Practices. Management rights and past practices are two separate items, although they frequently appear in the same contract. A management rights clause holds that anything not covered in the contract which has been a traditional management right (responsibility of the board of trustees) shall remain so. Obviously, this is a very high priority item for inclusion in the contract by management and an almost equally high priority for exclusion by the union. A past

practice clause indicates that except for items included in the contract, the past practices of the institution shall prevail. Frequently, the past practices clause is used to cover continued faculty participation in governance activity on the campus. Clearly, this will be a high priority item for inclusion by the union. Management is less enthusiastic about inclusion of a past practices clause because it may tend to restrict their freedom to manage. Indeed, management would often like to insert a *zipper clause* into the agreement which is the opposite of a past practices clause. The zipper clause seals the contract and simply states that all of the terms and conditions of employment are contained in the contract and anything not included in the contact is a management right. Needless to say, unions are not pleased with zipper clauses.

In practice, both a past practices and a management rights clause are frequently put into the contract on a trade-off basis. This gives both sides at least one half of their objectives. Of course, this only postpones the problems. If, for example, teaching load is not covered in the contract, management may feel it necessary to increase the teaching load from nine to twelve semester hours. They will do this under the management rights clause of the contract. From the union point of view, this will be seen as a change in the past practices of the institution and they will start the grievance machinery in motion in an attempt to reverse any such action.

A new factor which will be felt in future contract negotiations is the presence of third parties at the table. Several states (e.g., Oregon, Maine) have passed legislation giving students some form of participation in collective bargaining in higher education. Very little is yet known about what effects will result because of the presence of students at negotiations. In mock negotiations,[7] students sometimes side with the faculty (on the need for a cost of living increase in salary, for example) and with the administration at other times (on the need to keep the tuition as low as possible). While many commentators feel that students simply do not have the long-term interest in the topic under consideration in order to be involved, their power, if ever really organized, is potentially massive. There is no reason why other parties (such as representatives of the community) might not also be granted some status at the bargaining table.

ADMINISTRATION OF A CONTRACT

After a contract has been accepted by both parties, it is the responsibility of the parties to live by it. It is also the responsibility of both parties to make the contract work. In some cases, there may be constant turmoil. While generalizations are difficult, some obvious sources of conflict may be listed.

Two major difficulties in implementing the contract are the incomplete knowledge of the actual meaning of the negotiated contract by the faculty and the unwillingness of administrators to accept the realities of collective bargaining. The lack of content-knowledge by unit members is sometimes a function of the unwillingness of the union leadership to clearly explain in detail the implications of the various items in the contract. Union leaders are very much aware of the frequent gross disparity between *election promises* and the actual contractual results. Frequently, this leaves the management in the peculiar position of having to explain the contract to the union membership. Perhaps there is a desire that the message will be confused with the messenger in some cases. But, one has to sympathize with the union leader. The union leader is frequently in the difficult position of having worked very hard at the bargaining table to obtain a settlement. He/she returns to his/her constituency with the contract and is greeted not with praise for efforts expended but with remarks like "Is that all we get!?", "You had to give up what!?", etc. Difficulties with accepting reality exist on the managerial side of the table as well. Some administrators simply are unable to adjust to an altered role under collective bargaining. Perhaps, this is a more serious problem for those administrators with many years of experience under non-union conditions. Some never adjust and move to an

institution without the pressures of collective bargaining, while others soon learn what they can do and what they cannot do.

Another source of potential difficulty is the role of the faculty senate. Prior to collective bargaining, it has been the faculty senate (or some part of the senate) that has served as the mechanism for faculty participation in governance on campus. Under collective bargaining, many of the previous senate functions have become the domain of the unit representative. (This is also one of the meanings of the exclusivity clause in a contract.) Unions have a tendency to wish to spread their influence so that nearly all questions come under the bargaining process (again, of course, depending on the limits of the enabling legislation). There have been some attempts at model legislation[8] to separate the union and the senate, but many critics feel that this does not work in actual practice. One recent study[9] suggests that the survival of the faculty senate role will depend largely on whether or not the senate has had a strong role before collective bargaining.

Another source of conflict may sometimes be found in competing bargaining agents. If a rival union is to eventually take over as the agent for the unit it must first, in some form or other, discredit the present agent in the eyes of the unit members. This is made easy in some ways because of the nature of collective bargaining negotiations. A negotiated contract is the result of give and take between two parties. A rival union need only emphasize those parts of the contract where management has won its points and then claim that it could have done much better.

Perhaps some of the difficulties in negotiation and contract administration in higher education are simply due to the newness of collective bargaining in this area. It may well be that if higher education continues down the path of collective bargaining, it will have to evolve through a stage of heightened conflict before a more harmonious arrangement is reached. This seems to have been the history of many industrial and trade unions. The two parties in higher education have not yet reached the stage of finding and emphasizing obvious and important areas of mutual interest. Some hope is seen in the example of the settlement reached in the Pennsylvania State College System. Under this settlement, a wage and salary adjustment due the faculty was denied by the Federal Cost of Living Council. The two parties[10] agreed to establish a jointly administered trust fund "to provide for activities to enhance the quality of teaching, to strengthen educational programs, and to extend services to the communities of the state colleges and university of the Commonwealth . . . ." Many of the specific activities described would be termed faculty or professional development.

CHALLENGES AND DECERTIFICATION

Just as the various states have developed complicated procedures to certify a bargaining agent for a particular unit, there are other procedures (called decertification) to remove a bargaining agent. Usually, challenges can be made only after the expiration of a contract. One possible challenge would result in having no agent. While this is certainly possible, the record is rather clear in suggesting that decertification of one agent and changing to a no agent classification is rare indeed. At the present time, only one decertification has occurred in higher education.[11] This certainly suggests that one should not enter collective bargaining with the idea that if it does not *work out* the plan can easily be dropped.

Some union leaders have complained about the difficulties they have faced in becoming a certified agent for a higher education faculty. They imply that many administrators have attempted every legal block possible to deny or delay collective bargaining. This may well be true in some cases. At the same time, some administrators now complain that it is nearly impossible to obtain decertification because of union legal maneuvers to block any such action.

FINAL OBSERVATIONS

Collective bargaining in higher education is clearly a most complex process. The effect of collective bargaining will interact with a large number of background factors that vary from institution to institution. The popular game of trying to decide *who wins and who loses* under collective bargaining is really unanswerable in the abstract. In some cases, the faculty senate will lose power and in other cases the administration. Students may lose power and influence under collective bargaining at one school while they may gain power at another. In short, collective bargaining will influence the mode of interaction rather than affect the outcomes.

Administrators and faculty should give most careful consideration to the potential influence of collective bargaining *for their institutions*. Generalizations too freely drawn from the experiences of other institutions are misleading. The nature of the enabling legislation is the most significant element. From beginning to end enabling legislation plays a key role in the nature and form of collective bargaining in higher education.

TECHNICAL NOTES

1. Mimeographed material supplied by Professor Joseph W. Garbarino, Director, Institute of Business and Economic Research, University of California, Berkeley.
2. Collective bargaining can occur without legislation because of a common agreement between the two parties or because of a court rule.
3. One important difference between public and private institutions is the *right to strike* in private institutions. In public institutions, enabling legislation will determine whether or not the strike may be utilized.
4. Garbarino, J.W. *Faculty Bargaining*. New York: McGraw-Hill, 1975 (See especially Chapter 1).
5. In reality, usually more than one union will appear before the labor board on a question of unit determination.
6. The case history of the reactions of the administration at Michigan State University to a collective bargaining election is an example of an exception to this generalization.
7. Personal experience of the author.
8. Perhaps the best known example is found in the "Report of the Regents Task Force on University Governance and Collective Bargaining" by Lavine, J.M. and Lemon, W.L. of the University of Wisconsin System (March, 1975).
9. Kemerer, F.R. and Baldridge, J.V. *Unions on campus*. San Francisco: Jossey-Bass, 1975.
10. Technically, the Pennsylvania State College Educational Services Trust was formed in 1975 as a result of an agreement between the Commonwealth of Pennsylvania and the Association of Pennsylvania State Colleges and University Faculties.
11. On May 5, 1976, New England College voted 32 to 31 to decertify.

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