



1-1-1979

The legal base for collective bargaining in private higher education

Michele L. Ramsey

Follow this and additional works at: <https://newprairiepress.org/edconsiderations>



Part of the [Higher Education Commons](#)



This work is licensed under a [Creative Commons Attribution-Noncommercial-Share Alike 4.0 License](#).

Recommended Citation

Ramsey, Michele L. (1979) "The legal base for collective bargaining in private higher education," *Educational Considerations*: Vol. 6: No. 2. <https://doi.org/10.4148/0146-9282.1959>

This Article is brought to you for free and open access by New Prairie Press. It has been accepted for inclusion in *Educational Considerations* by an authorized administrator of New Prairie Press. For more information, please contact cads@k-state.edu.

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.

References

1. American Federation of Teachers, AFL-CIO. **Your Rights Under NLRB**. Washington D.C., 1973.
2. Carnegie Council on Policy Studies in Higher Education. **Faculty Bargaining in Public Higher Education**. San Francisco: Jossey-Bass, 1977.
3. **Chronicle of Higher Education**. 16, 23 (August 14, 1978), 1. Cornell University. 183 NLRB No. 41 (1970).
4. Hill, Myron G. Howard M. Rossen and Wilton S. Sogg. **Smith's Review: Labor Law**. St. Paul, MN: West Pub. Co., 1971.
5. Rutter, William A. **Gilbert Law Summaries: Labor Law**. Gardena, CA: Harcourt Brace and Jovanovich Law Group, 1977.
6. Walther, Peter D. "The NLRB in Higher Education." **Labor Law Journal**. 29, 4 (1978), 209-218.

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.