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## Review

# 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