Organizing the Academy: Strategies and Structures

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Legal history and labor law concepts are essential tools for analyzing structures of unionization and collective bargaining, and in developing effective strategies. Reductionism concerning labor law can lead to flawed analysis. This powerpoint presentation briefly reviews the history and concepts, and provides fresh data regarding new faculty and student employee unionization, and strikes (Powerpoint, 17-28).

Prior to the creation and application of statutory associational rights, some higher education institutions voluntarily recognized and negotiated with unions representing faculty and other workers on campus. Voluntary recognition, which includes foregoing procedures for certification under the National Labor Relations Act (NLRA) and similar public sector statutes, continues to be used today through agreements that include neutrality by the institution, an agreed-upon unit composition, and card check to determine majority status. A negotiated procedure leading to voluntary recognition is a productive means for avoiding extended disputes over questions of jurisdiction and coverage.

The 1970 decision by the National Labor Relations Board to start asserting jurisdiction over nonprofit educational institutions, along with the enactment of public sector collective bargaining laws in the late 60's, led to the rapid emergence of faculty unionization. The multiple unionization efforts by student employees on campus since the 2016 NLRB *Columbia University* decision, underscore the importance of statutory collective rights (Powerpoint, 25-26).

Collective bargaining laws have certain central similarities: they include an enforceable right against retaliation for engaging in collective activities, exclusive representation, and a duty to engage in collective bargaining with a recognized or certified union. At the same time, they contain major differences that cannot be ignored. The laws can differ over coverage, the use of card check, the right to strike, and unit composition, i.e., whether tenured and tenure-track faculty should be in the same bargaining unit with contingent faculty.

Administrative decisions reveal inconsistencies on the legal question of whether combined or separate units are appropriate for groups of faculty (Powerpoint, 10). A more recent development in the private sector is the concept of micro-units that was utilized in organizing graduate student employees by department at Yale University, and contingent faculty by school at Vanderbilt University (Powerpoint, 11).

While labor laws provide a governmental structure for obtaining unionization, limitations in those laws can retard such efforts. A good example of the latter is the 1980 *Yeshiva University* decision finding tenured and tenure-track faculty at private nonprofit institutions to be managerial, and therefore unprotected by the NLRA to engage in collective action in the workplace. By 2012, there were only 77 faculty bargaining units on private sector campuses (Powerpoint, 17).

An unintended by-product of the increased use of contingent faculty has been the rapid growth of new private sector faculty bargaining units. The *Yeshiva* decision is not a serious legal obstacle to contingent faculty unionization because of their exclusion from or marginalization in shared governance.

In 2016 alone, there was a 30% increase in private sector faculty bargaining units over the number of units found in 2012 (Powerpoint, 19). With the exception of one new unit with tenured and tenure-track faculty, all of the new private sector bargaining units last year were comprised of contingent faculty.

Union density and experience with collective bargaining on campus is much greater in the public sector but only in states with collective bargaining laws that cover higher education (Powerpoint, 17). The more developed experiences in the public sector can help inform the private sector when it comes to unionization, representation, and collective bargaining in the academy.

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