

**American Association of University Professors  
Collective Bargaining Congress - Semi-Annual Meeting  
Orientation of New Delegates - Faculty Collective Bargaining – A Précis**

**I. Collective Bargaining - From Criminal Conspiracy to Legitimacy to Ill Health.**

**A. Private Sector**

- 1806 - Eight Philadelphia workers who engaged in a strike were found guilty of criminal conspiracy.
- 1842 - Massachusetts court held that simply joining a union was not a crime.
- 1881 - American Federation of Labor (AFL) was founded.
- 1890 - Sherman Anti-Trust Act is used to enjoin union activities including strikes; injunctive restraint persists until passage of the Norris-LaGuardia Act (1932).
- 1935 - The Wagner Act (now known as the National Labor Relations Act) grants workers the right to unionize, to engage in concerted activities, and to bargain collectively.
- 1947 - The Taft-Hartley Act amends the Wagner Act and, *inter alia*, allows states to enact "right to work" laws.
- 1959 - The Landrum-Griffin Act (a/k/a the Labor-Management Reporting and Disclosure Act) imposes substantial regulation of internal union affairs.
- 1998 - Union membership is about 15.5 million. Approximately 36% of all government workers were represented by unions in 2004 compared to about 8% in the private sector.

**B. Public Sector**

1. Federal employees - In 1978 only postal workers had collective bargaining; in that year, Congress passed the Federal Labor Relations Act which extended bargaining rights, albeit diluted, to federal non-postal government employees.
2. State employees - Wisconsin, in 1959, became the first state to enact legislation giving public employees (municipal employees) the right to bargain collectively. During the 1960's, 16 states enacted public employees bargaining statutes. Today, 23 states authorize all public employees to bargain collectively; another dozen permit bargaining for some public employees; and 15 states prohibit public employee bargaining altogether.
3. About 38% of all public employees are covered by a collective bargaining agreement; in the private sector, collective bargaining agreements cover only about 10%.

**C. The National Labor Relations Board (and state labor boards).**

The NLRB is the administrative agency charged by the statute to conduct union elections and to prosecute violations of the law (unfair labor practices). The five-member board, appointed by the President, acts in quasi-judicial fashion in deciding cases and interpreting the statute. The General Counsel, also appointed by the President, serves as the Board's attorney general and manages the investigation and prosecution of violations of the law. State labor boards, while they may be differently constituted, serve the same functions as the NLRB with respect to state public employee bargaining laws.

## II. Faculty Unions: The Numbers and the Legal Landscape.

**A. The Private Sector.** Regulated by the National Labor Relations Act (NLRA) and its administering agency the National Labor Relations Board (NLRB). The NLRB first asserted jurisdiction over not-for-profit institutions of higher education in 1970. Faculty unionization in private institutions proceeded apace until 1980 when the U.S. Supreme Court issued its decision in *NLRB v. Yeshiva University* wherein it held that faculty who participate in institutional decisions (e.g. academic policy; faculty personnel matters) are “managerial employees” and thus not covered by the NLRA. Barely a handful of faculty unions have unionized under the NLRA since this decision. ---About 11,000 private sector faculty are represented in collective bargaining at about 60 institutions.

**B. The Public Sector.** Regulated by state law. Twenty-eight (28) states have enacted laws enabling higher education faculty to bargain collectively (one of which, Wisconsin, allows only two-year sector faculty to bargain as was the case in Washington until this year). Several state and territorial institutions have urged their state labor boards to adopt the *Yeshiva* holding (University of Alaska; Wichita State University in Kansas; University of Puerto Rico; and the University of the Virgin Islands). The administrations were unsuccessful in the first two; successful in Puerto Rico; and the “jury” is out in the Virgin Islands.

---More than 250,000 faculty are represented in collective bargaining.

---Of these, about 240,000 teach at public two-year and four-year institutions.

---About 125,000 faculty at public, four-year institutions are unionized.

**C. Partial List of Public Universities at Which Faculty are Represented in Collective Bargaining.** University of Alaska; California State University; UC-Santa Cruz; University of Connecticut; Connecticut State University; University of Delaware; University of Florida; University of Hawaii; Northern Michigan University; Southern Illinois University; Western Michigan University; Wayne State University (including the medical school); University of Montana; University of Cincinnati (including the medical school); Kent State University; New England state universities (Maine; Massachusetts; New Hampshire; Vermont; Rhode Island); State University of New York (including the medical schools); City University of New York; Temple University; University of Medicine and Dentistry of New Jersey; Rutgers University.

### **D. Common Misapprehensions about Faculty Bargaining.**

Collective bargaining:

- will usurp faculty governance;
- levels salaries regardless of discipline;
- is inherently adversarial;
- is unprofessional;
- is characterized by inflexibility.

The union membership rate for wage and salary workers has steadily declined from a high of 20% in 1983, the first year in which comparable data were available to the U.S. Department of Labor's Bureau of Labor Statistics.

The most comprehensive and authoritative data regarding faculty bargaining, from which these statistics are drawn, are assembled and analyzed by the National Center for the Study of Collective Bargaining in Higher Education and the Professions, Hunter College, City University of New York.