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**THE ACADEMIC UNION AS AN EVOLUTIONARY PRODUCT
OF THE TRADITIONAL TRADE UNION**

by

Arnold Cantor

A dissertation submitted to the Graduate Faculty in Sociology in partial fulfillment of the requirements for the degree of Doctor of Philosophy.
The City University of New York.

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This manuscript has been read and accepted for the Graduate Faculty in Sociology in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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Abstract**THE ACADEMIC UNION AS AN
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Arnold Cantor

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This study is an historical survey of the origins of academic unions in the United States with a special focus on the acceptance of academic unionism by the Instructional Staff of the City University of New York. It examines the sociological factors which tend to encourage the acceptance of collective bargaining as a vehicle for professional improvement by the professoriate and it seeks to provide a formula for a *modus operandi* for the successful functioning of a faculty/academic union in today's colleges and universities. It also discusses the impact of the United States Supreme Court decision in *Yeshiva*, and the related determinations of the National Labor Relations Board. It contains statements by highly respected practitioners from among arbitrators, mediators, union leaders, and college and university administrators and

faculty describing the unique qualities of academic unions and their impact on their institutions as influenced by the idiosyncratic dynamics of the academic workplace. The study concludes with a comparison of the similarities with and the differences from traditional trade unions and suggests the relative importance of each.

Dedication

This study is dedicated with love, gratitude and respect to my wife, Meriam, and to our children, Nadine, Duane, Paul, Glenn, and Erica.

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Chapter 1 Introduction

In 1918, Thorstein Veblen (*Higher Learning in America*) observed that, "Professors refuse to join unions or engage in collective bargaining because of a feeling prevalent among them that their salaries are not of the nature of wages, and that there would be species of moral obliquity in overtly so dealing with the matter." The purpose of this study is to analyze the development of the unionization of professors in the United States in order to understand the dynamics of the operational mode of an organization which serves a group of professionals who consider themselves to be, and to a significant extent are, relatively individualistic and autonomous in their professional endeavors, and by many standards, least likely to turn to unionism to further their careers. This study is primarily a historical survey of the beginning of academic unions in this country with attention to their roots and their development into a similar but distinctly different *modus operandi* from the traditional trade union based on the real and perceived needs of the professoriate. Particular attention was paid to the impact of academically oriented issues of professorial status, peer review, salaries, work load, academic freedom, and self-governance on

unions seeking to represent academics. In addition to surveying the literature, interviews with academic union leaders, faculty from unionized and non-unionized institutions in both the public and private sectors and from both large universities and small colleges, college and university management personnel, and professional neutrals such as arbitrators and mediators, plus more than 25 years of first hand experience in the field, establish the background of facts and conclusions in this study. An unpublished Ph.D. dissertation by Gerald H. Grayson at New York University in 1973 entitled *Professors Unite: A History of the Legislative Conference of City University of New York* was a valuable source of information as were the minutes of the Legislative Conference meetings and the monthly newspaper published by the Professional Staff Congress called *The Clarion*. The New York Times was also a valuable source in tracing the history and developments at the City University of New York.

More than one-third of the professoriate in this country is unionized. (See Appendix A) Professionals who had been content to live by individualistic precepts when higher education was the function of a small fraternity are now turning to collective action as a means of protecting both their economic interests and their professional status. The movement

continues to grow at a time when organized labor's ranks are diminishing nationally. This study seeks, among other things, to find out why. An additional goal is to try to identify a working formula for effective academic unions based on the experiences and concepts of the successful organizations and their leaders.

The three major organizations at the national level seeking to organize college and university faculties exert a significant influence, not only on the magnitude of the movement, but also on its organizational and operational philosophy. The National Education Association (NEA) founded in 1906, is by far the largest of the three and got its start, chartered by the United States Congress, as an association of public school teachers and administrators with the higher education component limited to teachers at teacher training institutions who were, for the most part, faculty at what were then called normal schools, now more likely to be schools or departments of education.

The American Federation of Teachers (AFT) founded in 1916, which is the only one of the "big three" affiliated with organized labor (The American Federation of Labor and the Congress of Industrial Organizations, (AFL-CIO) also got its start in the public elementary and secondary schools

but did not and still does not generally accept administrators as members. Because of its more militant organized labor philosophy, the AFT was historically the catalyst behind the movement into formal collective bargaining of, first high school faculties, then elementary school faculties, usually as part of a high school/elementary school district, and later, of higher education faculties.

The American Association of University Professors (AAUP) founded in 1915, always has been exclusively involved in colleges and universities and is known for its "protection" of academic freedom and tenure rather than for its involvement in organizing faculties. A unique characteristic of the AAUP is that it applies "sanctions" to higher education institutions which it determines, after fairly exhaustive investigation, have violated its published and widely circulated "1940 Principles," which are a series of statements dealing with basic rights of faculty and procedures to be followed in matters of tenure and academic freedom. This policy of applying sanctions pre-dates and is unrelated to collective bargaining, although many collectively bargained agreements contain affirmation of the "1940 Principles," which have become widely accepted by the academic world. When sanctions are applied, the AAUP urges faculty not to seek

employment at those institutions until the violative procedures are remedied. Usually, but not always, the management of sanctioned institutions and the AAUP work together to try to rectify whatever was unacceptable to the AAUP in order to have the sanctions removed.

It is generally accepted that both the NEA and the AAUP moved into collective bargaining as a matter of self preservation, rather than as a matter of philosophical conviction, because of the perceived success of the AFT in capturing the loyalties of elementary and secondary school faculty through collectively bargained gains. (Moskow, 1966) Of the three competing national organizations, only the AAUP remains seriously bifurcated into a collective bargaining and non-collective bargaining structure, reflective of the higher education faculties across the United States. A discussion of the historical, economic, philosophical and sociological influence of these three organizations on academic unionism constitutes an important part of this study.

In 1980 the United States Supreme Court rendered a decision in the matter of *The National Labor Relations Board v Yeshiva University* (444 U.S. 672 1980) which dramatically altered the course of collective bargaining in the private sector colleges and universities. The court ruled

that tenured faculty at Yeshiva University are "managerial employees" under the National Labor Relations Act and are therefore not entitled to the protection of the Act in so far as it provides the right to organize and bargain collectively. While the decision was narrowly drafted so as to affect only Yeshiva University, it has since been applied widely in the private sector and has effectively stunted the growth of collective bargaining for those faculty. (Douglas, 1982) In fact, as a result of the court's decision, many faculty unions have lost their right to officially represent their constituents and to negotiate contracts. A discussion of the impact of, and the rightness or wrongness of the Yeshiva decision, gets to the basic issues of the uniqueness of the academic workplace, particularly the concept of peer evaluation and faculty self-governance.

The issue of faculty governance is a critical factor in distinguishing the workplace for academics from that of most other workers. The issues that led to the Yeshiva decision such as the role of faculty in hiring, the granting of tenure, promotions, curriculum development, grading policies, and the like, are also significant factors in establishing the rather unique *modus operandi* which academic unions must adopt which, in some important ways, accounts for their distinguishing characteristics compared

to those of the traditional trade unions. When, as is often the case, a faculty member sits on a personnel committee which has the authority to recommend the reappointment or the promotion of a colleague, said faculty member is acting in a supervisory or managerial capacity. If the decision of the personnel committee is negative, and the affected faculty member wishes to use the collectively bargained grievance procedure, the union which represents the grieving faculty member is actually opposing a decision made by a committee made up of members of the same collective bargaining unit, most of whom are apt to be members of the same union. Because, traditionally, faculty members perform duties which in most kinds of shops would be performed by supervisors or managers, academic unions, unlike their traditional trade union counterparts, must deal almost constantly with the blurring of labor/management lines. It is this blurring of authority in the traditional academic setting which led the court to overrule the National Labor Relations Board in the Yeshiva case.

Despite these sometimes frustrating aspects of conducting union business in an academic setting, many, if not most, academic unionists agree with their non-unionized colleagues that the faculty's "right to govern itself" is sacrosanct.

An examination of important academic unions in the United States constitutes an important part of this study, but the focus is primarily on the Professional Staff Congress of the City University of New York which is among the oldest, most prominent, and most respected academic unions in the field.

One of the subjects generally overlooked in discussions of unions and universities is the question of why faculties have been willing to accept collective bargaining. Much of the literature focuses on the topic of governance, particularly how it might be and has been affected by negotiated contracts or problems related to tenure, tenure quotas, salary settlements, and affirmative action. The fundamental matter of how professors came to accept the modality of trade unionism and its impact with respect to the bargaining process has received relatively little attention. Even less attention has been given to the special dynamics of academic unions, some of which have their roots in and are a part of the trade union movement and some of which came from totally different backgrounds and are not affiliated with organized labor.

The City University of New York, the first major institution of higher learning to adopt collective bargaining, serves as an interesting case

study to illustrate why more emphasis should be given to this general subject. This is so because the reasons why the instructional staff voted for a union can be systematically evaluated, the factual frame of reference is reasonably abundant and relevant to other situations, and the consequences are within the realm of experience and may be readily described.

Additionally, the fact that the union which is the exclusive representative of the full-time and part-time instructional staff at the City University of New York is itself the product of a merger of two formerly bitter adversaries, one of which was a local of the American Federation of Teachers which is a part of organized labor, and the other a local affiliated with the rival National Education Association which is fiercely independent of organized labor, makes the Professional Staff Congress/CUNY (PSC) a very appropriate core case to study. The current national emphasis on "educational reform" in the K-12 sector has brought about a new development which bears directly on the subject of this study. Unionized teachers in the public schools are adopting many of the practices of their higher education colleagues by collectively bargaining issues which, according to standard labor ideology, would be heretical, such as peer review, merit pay, mentor teachers, teacher involvement in policy decisions, etc.. (Polishook,1987) Major aspects of

educational policy are now in collective bargaining agreements in those school systems which are trying new approaches as recommended by the Carnegie (The Undergraduate Experience in America, 1987) and Holmes (Tomorrow's Schools, 1990) reports. All indications are that this trend will grow very quickly. The operational mode of academic unions has established a role model for public school unions which is at the same time unique and relevant.

In fact, there is evidence that all of organized labor is moving in the direction of labor-management relations similar to those which academic unions have established almost naturally as a result of the collegial climate which is pervasive in higher education. If this is so, then this project has the potential to have a significant impact on where labor and management are going as we approach the twenty-first century.

Chapter 2 The History of the Movement

Relatively speaking, the academic union movement has a very short history. Put another way, the unionization of college and university faculty is a recent development in the American labor movement. For the purposes of this study, an organization which engages in collective bargaining as a method to achieve its goals meets the definition of being a union. By that definition, the many organizations discussed in this chapter will be seen for the most part as predecessors to unions even though the word "union" may be part of the organization's name. As early as 1923 Upton Sinclair made reference to union locals at the University of Montana and the University of South Dakota (Sinclair, 1923) and Israel Kugler mentioned the appearance of a number of such locals in the 1930's (Kugler, 1968). But these organizations were protest groups-protesting poverty and unemployment. They were not representing faculty in the sense that that term is used in this context and were not engaged in collective bargaining. For the purposes of this study, the terms "academic union" and "faculty union" will be used interchangeably. While "faculty union" is the more commonly used term, most so-called "faculty unions" represent, in addition

to teaching faculty, academic professionals who are not technically faculty – such as middle management and professional support personnel which may or may not but frequently includes librarians, counselors, audio-visual directors, professional computer personnel, and other non-classroom professionals. The definition of "faculty" differs from one higher education institution to another. Therefore, the term "academic union" would seem to be more precise.

Not surprisingly, socio-economic factors in the education enterprise probably best explain the move toward unionism. Before World War II there were relatively few women in the nation's full-time work force outside of education and nursing. During the pre-war years the only professions that were open to women in significant numbers were careers in teaching and nursing. Teaching was an achievable status position for women. After the war, veterans in unprecedented numbers went to college under the G.I. Bill, resulting in many men entering the teaching profession – at first, mostly at the secondary level. At the same time other professions began to open up to women so that educated women had many choices of a career heretofore denied to them. Teachers in the secondary schools were the first segment of the educational hierarchy to feel the need for collective

action, generally due to very low wages coupled with the fact that there were more men teaching in the secondary schools and that they tended to be the "bread winners" for their families who could not adequately provide for them on teachers' salaries. By contrast, the teachers in the elementary schools tended to be almost exclusively women who were either single or wives and/or mothers whose income was not the primary source of income for the family. In the early part of the twentieth century it was still common for boards of education to promulgate rules forbidding women teachers from marrying, so that the work force in those school districts was likely to be made up of single females, except for principals and superintendents who were almost always male. Nevertheless, some women saw the need to organize or at least to "speak out" against terrible working conditions and lack of opportunity for advancement for women in the schools. In the words of Barbara Solomon, "On the economic level it could not be denied that teaching offered a reliable means of earning a living, but, as Sophonsiba Breckenridge noted bitterly in 1914, for all the so-called feminization of the teaching profession, the schools were run by men – as superintendents and high school principals – with only an occasional female post of authority." (Bledstein, 1976) Notwithstanding that many women teachers, especially

in the elementary schools, tended to oppose what they considered to be the "unprofessional" movement toward the unionization of teachers, some of the early leaders in the movement to organize teachers were women.

Catherine Goggin and Margaret Haley in Chicago, Grace Strachan and Susan B. Anthony in New York, and many others in cities such as Philadelphia, San Francisco, and Baltimore were influential leaders at the turn of the century. (Cott, 1987) Many of the leaders of the suffrage movement were school teachers at one time – for example, Susan B. Anthony, Ann Howard Shaw, and Henrietta Rodman. (Murphy, 1990) There were a variety of organizations formed to represent teachers in order to combat deplorable working conditions. Some were independent and some were affiliated with other organizations such as the NEA and, in some cases, the American Federation of Labor. Within the NEA, organizations such as the Chicago Teachers Federation challenged the traditional leadership by superintendents and principals with its inherent subordinate position of women who were the classroom teachers.

It is undisputed that a major impediment to organizing teachers into unions was the fairly widespread concept that collective action in areas such as seeking better wages and pensions and other fringe benefits was not

"professional" conduct. Unions were seen as perhaps appropriate vehicles for "blue collar" workers but not for "professionals" (this idea is still fairly prevalent even today in colleges and universities).

Even when most obstacles to forming teacher unions were overcome, boards of education and school superintendents wielded powerful weapons against them. For example, teachers in Chicago were forbidden employment if they were members of the Chicago Teachers Federation as long as the CTF was affiliated with organized labor. They were required to state in writing that they would not be members of a prohibited organization during their employment in the Chicago public schools. (School and Society, October 16, 1915) After an injunction barring enforcement of that regulation was obtained, the Illinois Supreme Court reversed by stating that the school board had the "absolute right to decline to employ or reemploy an applicant for any reason whatever or for no reason at all." The board was not obligated to offer reasons for its policy: "It is free to contract with whomsoever it chooses." (The People v. City of Chicago, 278 Ill. 318, 1917)

In the early nineteen fifties when teachers first began to turn to unionization in significant numbers, teacher salaries had fallen even farther

behind those of the other professions than they had been. Also, by this time, in most public school districts elementary and secondary schools within a district had a single board of education which means the elementary and secondary teachers in a school district were apt to be united in the same union, and therefore probably in the same bargaining unit, which is, most agree, very desirable, some would say necessary. The common employer described above was not generally the situation before the centralization of school districts (see below). Ironically, the move to centralize, bitterly opposed by teachers, became a source of strength for the teacher organizations because the central boards of education thus created had the effect of uniting elementary and secondary teachers within a district, giving the teacher representative organizations more unity and thereby more power.

It is important to note that for many years – going back to the early part of the century – teacher "associations" existed in most school systems, particularly in the medium-size and smaller cities and suburban and rural school districts. Many of these early associations were organized by subject matter (discipline) as are many of the national associations in existence today. The majority of the teacher associations were affiliated

with the National Education Association which, although originally formed in the late nineteenth century, was chartered by Congress in 1906 and served as a national voice for advocating the professional advancement of the teaching profession through public statements of policy and trying to influence state and national legislation by various lobbying techniques.

Teacher associations typically included administrators who frequently held elective offices at the local, state, and national levels of the associations. (In the southern states as late as the nineteen fifties there were separate organizations within the National Education Association for black teachers and white teachers.) These associations were not structured and did not function as unions. Conceptually they represented all of the professional segments of the elementary and secondary sector, including managers and supervisors, in dealing with the public and with the various levels of government. Although these organizations were active in trying to improve salaries, pensions, and other working conditions, they operated on a "meet and consult" basis without specific statutory authority, using the powers of persuasion and public relations to accomplish their goals. Also, the "associations" were absent a clear employee/employer dichotomy such as would be intrinsic to a union, largely because of the presence and strong

influence of principals and, in many cases, even superintendents of school districts.

The move toward collective action leading to collective bargaining had its beginnings in the large city public school systems as distinguished from suburban or rural districts. It was in the large cities where organized labor had its strength and visibility through the operation of trade unions in the factories and, later, in the public services areas. An important factor in the move toward collective action was the pressure to centralize school systems in the large cities beginning as early as the late nineteenth century. Schools, especially in the large cities, were being criticized for inefficiency, lack of uniform standards, and incompetency. Too much neighborhood influence and not enough supervision was being blamed. (Rice, 1979) The solution, it was suggested, was to create central school boards in each city thereby assuring more efficient management and uniform academic standards. This pressure to centralize gave teachers, students, and parents a common cause around which to rally in opposition. Centralization, they argued, would certainly diminish the influence of all of the segments of the educational community on their own neighborhood schools. (Murphy, 1990) Another major element acting as a catalyst for

collective action by teachers was (and, to a large extent, still is) a revolt by taxpayers over ever increasing costs of running school systems. As school budgets began to get voted down, teachers came to realize that they needed to organize in order to get their needs and their points of view across to the tax -paying public as well as to the policy -making politicians. In the latter part of the nineteenth century and the early part of the twentieth century centralization and the tax revolts constituted a "double whammy" working against the perceived needs of the public schools and, of course, its teachers. Most authorities agree that in times of increasing adversity the need for organizing becomes more urgent. Teachers looked for ways to fight back against the increasing threats to their professional integrity posed by more and more interference by the political bosses, particularly in Chicago and New York, and by the ever increasing fiscal stringencies being imposed on school budgets. The teacher organizations were becoming more and more attractive to the "grass roots" teachers.

As early as 1916 there was a Teachers' Union in the New York City Schools which was formed by a group of activists formally associated with a magazine called the American Teacher edited by Henry R. Linville, a teacher in the schools.

In the nineteen fifties "Red Baiting" became an issue in the movement because during that period communism was an important influence in many labor unions including the large city teacher unions. In New York City in 1935 communists took control of the Teachers Union causing many members and some leaders to leave the Union and form The Teachers' Guild. (Taft, 1974) The first AFT affiliated local in New York City was the communist dominated Teachers Union rather than the socialist dominated Teachers Guild. It was not until 1960 when the United Federation of Teachers was formed out of The Teachers Guild and the AFT chartered it as Local 2 that the various existing groups got together under one banner, with the exception of the Teachers Union which refused to join with the others and eventually disappeared from the scene.

The Chicago Teachers Union is Local 1 of The American Federation of Teachers, The United Federation of Teachers in New York City is Local 2, and The Philadelphia Federation of Teachers is Local 3. In each of these cities some members of the teachers' unions who also taught at a community college or university part-time or who formerly taught in the public schools and then became full-time college faculty members formed the nucleus of what would eventually become a higher education union. In

some institutions of higher learning existing "professional" organizations were strongly influenced by the collective bargaining activities of teacher organizations or were directly challenged by emerging higher education unions and so became bargaining agents themselves. This is true of some "faculty senates" and, in the case of The City University of New York, it is certainly the case of the Legislative Conference which was formed in 1938 as a "meet and consult" organization to deal with problems of retirement, job security, and salary but without any statutory authority, which found itself being challenged by the much smaller and much younger but much more vocal United Federation of College Teachers, Local 1460 which was an off-shoot of the United Federation of Teachers, Local 2 in the public schools of New York City. This challenge resulted in a major collective bargaining election which has had a profound impact on higher education collective bargaining in the years following.

The unionization of elementary and secondary school teachers in the late 1950s and throughout the 1960s was clearly the predominant influencing factor in bringing about the establishment of academic unions in some higher education institutions in the late 1960s and on into the 1970s. Also, the existence for many years of faculty senate type organizations and

other "meet and discuss" groups, some of which were affiliated with the American Association of University Professors or other national academic organizations in some cases facilitated the transition toward academic unionism.

The strong influence of the unionization of teachers in the elementary and secondary sector who are overwhelmingly in public schools helps also to explain why public institutions of higher learning and especially community colleges, which are closer in character to the public schools, were among the first to embrace the concept of collective bargaining and still constitute the majority of organized faculties in the United States. (See Appendix A) One very notable exception is the faculty of St. John's University in New York, a private institution, which was organized very early in the movement by the United Federation of College Teachers local 1460 of the American Federation of Teachers and which was, as stated above, a direct off-shoot of the United Federation of Teachers in New York City. The story of St. John's University and the activities of local 1460 is important to the history of the entire academic union movement and will be discussed in a later chapter.

The passage by Congress in 1935 of the National Labor Relations Act, commonly known as the Wagner Act, after the New York Senator who sponsored the legislation, and the establishment of the National Labor Relations Board gave the union movement in the private sector tremendous statutory backing for organizing activity. The NLRA was enacted as part of President Franklin D. Roosevelt's New Deal legislation during the depression, and was, in effect, a peaceful revolution in labor relations. The NLRA established employee rights to organize, join unions, and engage in collective bargaining. The NLRA also established employer unfair labor practices, making it unlawful for an employer to interfere with an employee's right to join a union and engage in concerted (union) activities. Employers were required to bargain in good faith with the union and were prohibited from discharging or otherwise discriminating against employees because they engaged in union activities. The Act also established procedures by which employees may elect their bargaining agent. Before passage of the NLRA, employees could secure bargaining rights only if their employer voluntarily agreed to recognize the union or if the employees struck and forced recognition. The NLRA thus dramatically paved the way for peaceful unionization, especially of industrial workers

whose employers had consistently opposed organizing efforts until then. The provisions first enacted in the NLRA remain the basic franchise of American workers. (Feldocker, 1990) However, where private colleges and universities were concerned, it was not until 1970, in dealing with a dispute before the Board involving Cornell University, that the National Labor Relations Board made it clear that those institutions were covered by the act by issuing the following statement:

The (National Labor Relations) Board will assert its jurisdiction (in labor relations cases) involving any private nonprofit college or university which has a gross annual revenue from all sources (excluding only contributions which, because of conditions by the grantor, are not available for use for operating expenses) of not less than 1 million dollars. (NLRB, 75 LRRM 1442)

The NLRB explained its rationale for establishing the 1 million dollar revenue as a plateau by stating that such a figure, in terms of gross revenue, establishes the necessary commercial activity so as to bring the institution under federal jurisdiction. This statement by the NLRB was the impetus for a splurge of activity in the private sector higher education institutions establishing recognized academic unions as bargaining agents until the U.S. Supreme Court in 1980, in an aforementioned decision, overruled the NLRB in the case of Yeshiva University (444 U.S. 672 1980) which

brought an abrupt halt to organizing in the private sector and resulted in some previously certified faculty unions being decertified. The Yeshiva Decision itself and its impact is the subject of a separate chapter in this study. In the public sector the right to strike was almost universally condemned and is still illegal in most states. The Taft-Hartley Act of 1947 was an amendment to the Wagner Act of 1935 but both Acts had precisely the same language concerning strikes by public employees. "It shall be unlawful for any individual employed by the United States or any agency thereof, including wholly owned government corporations, to participate in any strike." (Silverberg , 1959) As late as 1962, President Kennedy's Task Force on Public Employee Relations emphasized the differences between private and public sector bargaining with this statement:

Despite obvious similarities in many respects between conditions of public and private employment, the Task Force feels that the equally obvious dissimilarities are such that it would be neither desirable nor possible to fashion a Federal system of employee-management relations directly upon the system which has grown up in the private economy. (McKelvey, 1967)

The reference in that statement was primarily to negate the right to strike for federal employees but the resulting Executive Order contained no specific provision for collective bargaining as the method of

arriving at the wage and benefit package for federal employees. That Executive Order (#10988), nonetheless, became the impetus for the unionization of federal employees, and for collective bargaining in the federal sector. The Order, specifically required that a labor organization representing federal employees "not assert the right to strike against the United States Government." It also required the labor organization to "not advocate the overthrow of the constitutional form of government in the United States" and "not to discriminate with regard to membership on the basis of race, color, creed, or national origin." On the same day, President Kennedy issued Executive Order #10987 which required federal agencies to develop a procedure for the appeal of administrative decisions adversely affecting their employees. Although the Executive Orders did not mention collective bargaining, they did provide for exclusive recognition procedures and became the vehicle for collective bargaining at the federal level.

For public employees at the state and local levels enabling legislation came principally from each state and didn't begin to happen extensively until the 1960s and 1970s. These enabling state statutes gave statutory authorization for public employees to bargain collectively while generally maintaining the illegality of engaging in strikes. Most of the state

laws provided for the right to organize, to be represented by a bargaining representative and provided for procedures and machinery for determining representation questions. The duty of local governments and state agencies to bargain in good faith and the enumeration of unfair labor practices was also recognized. (Grayson, 1973) These state statutes constituted the impetus for the unionization of public school teachers which, in turn, is generally accepted to be the catalyst for the unionization of college and university faculty. It is important to note that each state law is worded differently, and that in some the statutory authorization extended only to the elementary and secondary sectors and did not include higher education. In some of the state laws the language was ambiguous as to the scope, and in one state (Texas) the law specifically prohibits higher education faculty in the public sector from unionizing. In Wisconsin, as an example, efforts have been underway for many years to achieve legislation which would allow the faculties of the University of Wisconsin at its various campuses to engage in collective bargaining, but to date, only Teaching Assistants – in addition to secretarial and other support staff, including blue collar workers – have statutory support to bargain collectively.

It is also important to note that in many southern and mountain states there are laws which specifically prohibit public employee unions from requiring all employees to join the union or to pay fees to the union. These states are known as "right to work" states, a term which describes the concept behind these laws which is that all workers should have the right to work free of union interference and activity. Twenty-one states have adopted "right to work" laws. They are: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming. (Kelly, 1987) As of the year 1995, 28 states had enacted legislation giving statutory authorization of one kind or another to higher education faculty in the public sector to be represented by unions. The most recent states to enact enabling legislation are Ohio and Illinois. In Indiana an executive order issued in 1990 serves the same purpose. The other states that have enacted enabling legislation are: Alaska, California, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, South

Dakota, Vermont, and Washington. In Arizona, Maryland, and Nevada, Governing Boards provide the authority to organize instead of a statute. (The National Center for the Study of Collective Bargaining in Higher Education and the Professions) As can be seen, some "right to work" states have enabling legislation, but they prohibit the right of unions to require employees to join or pay fees to them.

Obviously, passage of statutory authorization to organize faculty in public higher education is an important and, to a large extent, necessary element in the academic union movement. Historically it can be seen that the unionization of public school teachers, coming many years after the industrial revolution and the "glory years" of the trade unions in the private sector, as an important part of the unionization of public sector employees, formed a logical set of forerunner organizations for the formation of academic unions in institutions of higher learning. But while the model of teacher unions greatly influenced the development of college and university faculty unions, it was the presence of the same conditions of discontent among the faculties as were present in the public schools which accounted for the relatively quick growth of academic unions in a short period of time. Low wages, poor working conditions, a feeling of loss of

control of one's professional destiny, which is of special importance to academic faculty with their traditional roles of self governance, all formed fertile feeding grounds for the establishment of a collective bargaining mode. (Levine, 1967) These factors also help to explain why the very prestigious and "ivy league" school faculties are not unionized. The reality or at least the perception at those schools is that their salaries are already relatively high and working conditions superior to most other institutions- thereby obviating the need for collective bargaining. It is probable that the perceived "prestige" of being a member of the faculty at such an institution tends to cover up, if not compensate for, conditions which might be improved under a collectively bargained contract.

In summary, the history of the movement toward academic unionism can readily be traced to three significant developments – conditions of discontent and fear for the future in the work place, the rapid unionization and increased militancy of public school teachers in the 1950s and 1960s, and the passage of enabling legislation by many of the states. Faculty became aware that, given growing uncertainties about future funding, without strength in the political arena their voice in many important aspects of their professional future would be severely limited. It

became apparent that effective unions had considerable political "clout," and many faculty sought "a piece of the action" by joining and supporting academic unions.

Chapter 3 Collective Bargaining at the City University of New York

The City University of New York, a publicly supported multi-campus university with 200,000 students and 14,000 faculty members was the first major university to embrace collective bargaining for its faculty and non-classroom professionals. The university is funded by a combination of state and city tax-levied monies and student tuition. For many years since its establishment as a university, in fact, going all the way back to 1849 with the founding of the Free Academy which was the forerunner of what is now known as The City University of New York, there was no tuition for New York residents. When the city was in a *de facto* bankrupt situation in 1975-76 and declared itself unable to continue funding the university, it became necessary to impose tuition as part of the price of convincing the state government to come to the university's rescue. The State University had been charging tuition and the upstate legislators, because of the ever-present upstate/downstate dichotomy, were not about to vote huge funding increases for the City University without a similar policy as a matter of political "equity." Most observers of the political scene in New York State agree

that the imposition of tuition, while presented as a fiscal necessity, was in fact, a political necessity for the reason stated above. As will be discussed in greater detail later in this chapter, the Professional Staff Congress/CUNY, the certified collective bargaining agent for the instructional staff at CUNY, played a major role in convincing the state to agree to maintain the university in its current form as a combination of two and four year colleges plus a graduate school, despite significant pressure from several sources to either break up the university or abolish it altogether.

This chapter will explore a brief history of the University and will discuss the factors which led up to collective bargaining at CUNY and some of the effects and results of the unionization of its instructional staff. The City University is the third largest institution of higher learning in the United States (The State Universities of New York and California are larger). It has ten four-year (senior) colleges, eight two-year (community) colleges, a graduate division and an affiliated medical center. The University's history can be divided into five major stages of development.

The first stage was the establishment of four senior colleges and the Board of Higher Education which began with the passage of a referendum creating the Free Academy in 1847. The Free Academy, (it

became the College of the City of New York in 1866) offered a full collegiate course and free tuition from the day it opened. It admitted only men. In 1870 women were offered free higher education when the Board of Higher Education turned the School for Female Monitors into the Normal College, which became Hunter College in 1916. In 1898 the five boroughs were amalgamated into New York City. Up until that time the City consisted of just Manhattan. With that amalgamation came pressure from the other boroughs for their own colleges so as not to have to send their students into Manhattan. In 1930 Brooklyn College was born and in 1937 Queens College was established, both of which were coeducational. With the establishment of the four colleges, the City College System, as it was known, took on an institutional identity of its own while retaining the commitment to free tuition and the basic mission of the Free Academy to "offer a four-year college education to persons who have been pupils in the common school system." In essence the role of the City College System was to offer the children of New York's less affluent families the opportunity to receive an education equivalent to that of their more fortunate peers. (Grayson, 1973)

The second stage of the development of public higher education in New York City came with the establishment of the State University of New York in 1948. The state legislature also, at that time, provided an allocation of state aid to the City College System for teacher training. This allowed the City College System to expand. In the 1950s, Staten Island Community College (1955), the Bronx Community College (1957), and Queensborough Community College (1958) were established by the Board of Higher Education. In the 1950s the number of undergraduate students attending the City College System had grown from 53,345 to 74,365 and the number of graduate students from 5,650 to 12,550. This growth was largely a reflection of the growth of the city - in particular a substantial increase in the school age population and the arrival of hundreds of thousands of Blacks from the South, and of Spanish- speaking migrants from Puerto Rico.

On April 11, 1961 Governor Rockefeller signed the Act amending the Education Law which created the City University of New York . The Board of Higher Education was to continue to be the governing body and its members were to continue to be appointed by the Mayor for nine year terms.

The third stage in the development of the University technically began with the creation of CUNY, but actually began with the appointment of Albert H. Bowker as Chancellor in 1963 to succeed the University's first Chancellor, John R. Everett who had exerted minimal influence on the University because of what he perceived to be vague authority given him over the constituent colleges. Under Bowker the University experienced its greatest period of expansion: the creation of John Jay College of Criminal Justice in 1964, of Richmond College in 1965, of the Graduate Center also in 1965, of York College in 1966, of Medgar Evers College in 1968, and, additionally, the establishment of four more community colleges – Borough of Manhattan Community College in 1963, Kingsborough Community College also in 1963, and Eugenio Maria de Hostos Community College and Fiorello H. LaGuardia Community College in 1968. Also in 1968 the Herbert Lehman College was established at the north Bronx campus of what had been Hunter College and the Bernard Baruch College was established at the lower midtown Manhattan Campus of Mount Sinai Medical School in 1967.

Along with this rapid expansion of the University came an ever increasing feeling on the part of the faculty and staff that more and more

decisions were being made by a centralized administration and less and less decisions were being made by faculty and staff. This perception by its professional employees, whether or not it was true, was very probably an important factor in persuading them to support representative faculty organizations that promised to return to them some of the control of their professional lives which they felt they had lost as the four original colleges which made up the City College System became the largest urban university in the world. Thus, when statutorily supported collective bargaining became an opportunity for them, many embraced the concept enthusiastically.

Along with the University's rapid expansion also came new problems of a different nature, largely caused by the change in the makeup of the City's population. In 1950 non-whites made up 9% of the City's population and 5% of the City College System's student population. By 1960 non-whites represented 14% of the City's population but still only 5% of the student body's population. (Board of Higher Education Minutes, April, 1969) Questions were arising as to whether or not the historic mission of helping to provide social and economic mobility for young people from families on the City's lower socio - economic levels was being fulfilled. In a recognition of the evolving changing needs of the student body, the State

Legislature created for the State and City universities the College Discovery Program in the community colleges in 1964 and SEEK (Search for Education, Elevation and Knowledge) in the senior colleges in 1966. Both programs are designed to provide tutoring, counseling and remediation which are integrated with the regular college - level academic work. Students in these programs receive financial aid in the form of stipends as well as intensive classroom attention until they are ready to join mainstream college programs.

The fourth stage in the development of CUNY began when, in 1970, five years earlier than originally planned, and in response to intense pressure from minority students and minority community organizations involving demonstrations and sit -ins and some violence, the University established the most dramatic program in its history – Open Admissions. The Open Admissions Program guaranteed every high school graduate admission to some CUNY program and promised the necessary remediation to help the student to succeed at the college level.

With all of this growth in size and diversity the University had maintained its fundamental mission as expressed by the Free Academy's first president, Dr. Horace Webster on the Academy's opening day in 1849:

The Free Academy is now to go into operation. The experiment is to be tried whether the highest education can be given to the masses; whether the children of the people, the children of the whole people, can be educated; and whether an institution of learning of the highest grade can be successfully controlled by the popular will, not by the privileged few, but by the privileged many.

The advent of Open Admissions began a period of dramatic changes affecting all aspects of the academic scene at CUNY. Establishment of a multitude of remediation courses, a huge increase, practically all at once, in the number of students admitted, insufficient funding for the almost over - night expansion at nearly all the colleges and in most of the programs and an administration and faculty not prepared for these drastic changes made the transition difficult for everyone involved. Things were further complicated by the fact that some faculty and some administrators did not believe in the concept of open admissions and were less than cooperative. The fact that the program was instituted five years ahead of its planned implementation found the University largely unprepared. Despite all of these problems, and perhaps amazingly, some researchers and many others involved with the program, including some who had doubted its wisdom, and even some who were outright hostile, came to declare the Open

Admissions Program somewhat of a success. (Lavin, Alba, and Silberstein, 1979)

The criteria by which the success or failure of the Open Admissions Program should be judged was and is a matter for serious debate and controversy. Should it be judged on the basis of how many students who were admitted under the program went on to earn degrees? Should it be judged on the basis of the fact that thousands of students were given an opportunity for higher education which they otherwise would not have had regardless of whether or not they earned a degree? Did students who did not succeed in college, even with the remediation offered, benefit from the experience or was their "failure" actually hurtful? Did the Program do for the minorities what it set out to do? Was the University doing all it could or should do to assure the success of the program? The Open Admissions Program actually resulted in the admission of more white students than black and Hispanic students although the number of minority students admitted under the Program as a percentage of the entire student body increased dramatically. (Lavin, Alba, and Silberstein, 1979)

As the Open Admissions Policy took hold it became increasingly apparent that thousands of the newly admitted students were

seriously "under-prepared" for college level work. The resulting proliferation of remedial classes dramatically changed the complexion of the academic setting at most of the colleges. Critics were increasingly questioning what they considered to be the dilution of the academic quality of the CUNY programs and thereby the quality of CUNY awarded degrees. The debate on this issue is still very much alive.

The fifth and most perilous stage in the development of the City University began in the 1975-76 academic year. The City of New York was having more and more trouble selling its paper in the financial market because of the inability of the city to increase its revenue sources so as to meet its existing financial obligations. In other words, the City could not pay its bills and was unable to borrow money because of its dire financial situation. The city was on the verge of bankruptcy and, according to many observers, was actually in a state of *de facto* bankruptcy. In this desperate fiscal crisis every city agency, including CUNY, was experiencing dramatic reductions in funding almost weekly. To make matters more severe, most public employee unions had contracts which had either already expired or were about to expire while, at the same time, the Mayor was asking for

severe sacrifices by all of its employees because the city could no longer afford the existing salary and fringe benefit packages.

What took place on the labor scene in the City during this unprecedented fiscal collapse was also unprecedented – the public employee unions formed two coalitions – one for uniformed services, and one for non-uniformed (or civilian) services – in order to bargain with the City for new contracts and, perhaps more importantly, to work with the industrial, corporate, and banking communities to help the City find its way out of its financial problems. Resulting collectively bargained agreements between the coalition of public employee unions and the City of New York represented the establishment of what came to be called "pattern bargaining" whereby all the unions agree to identical or very similar financial settlements which represent what the employer - in this case the City - can afford to pay. The heretofore unheard of solidarity of the municipal unions and the extraordinary effort and cooperation of the various business interests eventually resulted in a series of actions which did, indeed, bring the City out of its dire fiscal straits and put it on the road to a fairly complete and rather amazing recovery. One of those actions resulting from the coalition bargaining and the cooperation of the business,

banking, and labor communities in the City was the making available of large amounts of monies from several of the large public employee pension systems to be used as collateral to allow the City to borrow money in order to conduct its business. Felix Rohyatan, a highly successful banking investor who was/is well connected in the City's corporate and political arenas, and Victor Gottbaum, the Executive Director of District Council 37, AFSCME, AFL-CIO, the largest public employee union in the City, worked very closely and effectively to actually engineer the establishment of policies and programs which, quite literally, saved the City. The complete chronicle of all of the dynamics of this "rescue" is a subject for another study, but the impact of these developments on CUNY and on its faculty, staff, and students needs to be discussed in order to have an understanding of, not only the history and development of the University, but also the history and development of the Professional Staff Congress at CUNY.

For example, one of the outcomes of the "coalition bargaining" was an agreement that every municipal union would make direct financial sacrifice by either giving up or deferring raises that had been negotiated on behalf of its constituents or by deferring salary increments called for in contracts already in existence until such time that the City was in better

fiscal condition. The leaders of the Professional Staff Congress, who were facing re-election in 1976, decided to recommend that their members agree to defer two weeks pay rather than to defer raises. Their slate was re-elected while recommending such a deferral. That election constituted a strong vote of confidence in the incumbent leadership.

Another direct result of the City's fiscal problems was an agreement by the State to assume full funding responsibility for CUNY's senior colleges and partial responsibility for its community colleges under a formula of a combination of local (in this case City) support plus revenue from tuition plus a per capita (student) formula for specific programs similar to the funding of community colleges in the rest of the state. The State also agreed to provide students with a financial aid program because of the imposition of tuition. This was enacted into law by the State Legislature as an amendment to the Education Law. (the Laws of 1979, sec.6210) This same Act abolished the Board of Higher Education and replaced it with a Board of Trustees – the majority to be nominated by the Governor and the rest by the Mayor, and all subject to confirmation by the New York State Senate. The Governor also has the authority under the Act to name the Chairperson and Vice - chairperson from among the Trustees.

The enactment of this legislation represented a major political triumph for the management of CUNY and the Professional Staff Congress, working together in an extremely difficult fiscal climate to keep the University intact in the face of the City's declared inability and therefore unwillingness to continue its financial support. The task was made even more difficult because there were significant elements within the University calling for the break - up of the University or, in some instances, the closing of certain colleges. There were serious attempts during these times to close the John Jay College of Criminal Justice, York College, Hostos Community College, and Medgar Evers College. Medgar Evers College was actually changed from a four year to a two year college. The presidents of Hunter, City, Queens, and Brooklyn colleges (the four original senior colleges) lobbied the governor and the legislators to absorb their institutions into the State University, arguing that they were the only colleges of high academic quality worthy of being saved. There were some, both within and outside the University, that argued for separating out the community colleges and thereby establishing two separate institutions.

Perhaps the most significant development for the purposes of this study during this period, while some were trying to destroy or break -up

the University and others were trying to save it as an all inclusive institution was the fact that the leaders of the Professional Staff Congress, working with its state affiliate, the New York State United Teachers, which represented the voting strength of its quarter of a million members and their families, were able to make effective contact with the Governor and the power brokers in the State Legislature while the Chancellor of the University and his representatives were frequently denied the same access. In as much as the Union and the University were working toward a common goal of maintaining the University in its current form in the face of conflicting movements by other sources, and in as much as the Governor and the legislators acted in accordance with the lobbying efforts of the Union and the University, the then Chancellor, Robert Kibbee came to realize the importance of the political influence which the Union was able to bring to bear. This realization was the basis for the establishment of a more cooperative and productive relationship between the management of the University and the Union - especially at budget time. As a result of the experience gained by both parties during the 1975-76 trauma, the Union and the University management cooperated in developing their legislative agendas so far as the development and approval of the University's budget

was concerned, thereby creating a situation where both the University and the Professional Staff Congress again with its state affiliate, the New York State United Teachers, were lobbying in Albany for the same priorities and the same dollar amounts. This proved to be a significantly more productive strategy than was utilized previously, where the two parties developed their lobbying strategies independently and often were promoting conflicting policies with the Legislature and the Governor.

The University has been barely able to maintain itself in the face of continued budget short-falls from both the State and the City by raising tuition and through a series of early retirement incentives approved by the Legislature and the Governor which resulted in thousands of the more senior, and therefore the more highly paid faculty and staff, going off payroll and into retirement. In most cases full -time staff have not been replaced, resulting in larger class sizes and fewer offerings. Many more part -time staff have been hired which saves the University substantial amounts of money. However, the University, having made serious cut - backs in programs and staff, and having raised tuition to the point where it is now among the highest in the country for a public institution, is facing the potential of still more budget cuts which almost certainly constitutes an

additional threat to the academic quality of its programs. All of these developments have an obvious and serious impact on the collective bargaining process at CUNY which will be discussed later in this chapter.

Prior to the establishment of the Legislative Conference, one of the ancestors of the Professional Staff Congress, in late 1938, each of the four original colleges had a legislative committee established to monitor what the State Legislature was doing that might affect the colleges. During this period there was in existence an organization called The New York College Teachers Union which was Local 537 of the American Federation of Labor. There was a chapter of the College Teachers Union on each of the four campuses. That organization, while interested in some of the same problems addressed by the college legislative committees was also very involved in international affairs and was perceived to be "too militant" to be part of the mainstream professoriate. (Zeller-Yellowitz interview, 1986) In fact, in the early 1940s the Board of Higher Education removed seventeen faculty members at Brooklyn and City Colleges who were accused of being Communists in connection with their activities with the College Teachers Union as a result of investigations held by a State Legislature appointed committee known as the Rapp-Coudert Committee. (The New York Times.

December 17, 1940). Professor Belle Zeller, who was later to become the long term chairperson of the Legislative Conference, was at the time of the formation of the Legislative Conference, the chairperson of the Brooklyn College Chapter of the College Teachers Union.

While at that time most of the funding for the colleges came from the City, it was frequently the state which strongly influenced how the colleges spent their money through legislative or gubernatorial action. Sometimes the individual college legislative committees worked together but more often they worked independently. Faculty concerns in those days were not very different from those of today -salaries, pension and tenure. There developed among some faculty concerns about faculty representation through the existing legislative committees because of the lack of effective and consistent coordination among the committees at the four individual colleges. This frequently resulted in duplication of effort and sometimes even in faculty working at cross purposes. Late in 1938 Professor Joseph C. Cohen (Brooklyn College) and Professor Jesse D. Clarkson (Brooklyn College) were discussing the problem of what they considered to be inadequate and inefficient faculty representation concerning major issues which had direct impact on faculty. Professor Cohen came up with the idea

that faculty might be better represented if a representative body of the staffs of the four colleges were to meet regularly among themselves and with the Board of Higher Education to discuss needed or desirable changes in by-laws and legislation affecting the colleges. As a result of Professor Cohen's efforts a preliminary meeting was held on December 16, 1938 and another on December 28 at the City College involving representatives of the four colleges. The Legislative Conference of the City Colleges was organized formally on January 6, 1939. (Grayson, 1973) The most important issue as expressed in a resolution approved at the very first preliminary meeting was the establishment of statutory tenure for the faculty. (Legislative Conference Minutes, December 16, 1938) The Board of Higher Education had promised to provide for tenure for faculty by inserting the provision in its by-laws and, in fact, did so effective September 1, 1938 (The New York Times October 1, 1938) but there was a strong desire to make tenure a matter of law rather than a by-law, which can more easily be modified. A major catalyst for this issue among the members of this fledgeling organization was the fact that the New York State Court of Appeals (the State's highest court) declared the Feld-McGrath Law unconstitutional. The Feld-McGrath Law was passed and signed by the governor in 1935 as an amendment to the

Education Law and had been designed to provide statutory tenure for the staffs of the City Colleges. (The New York Times, March 16,1938)

The court ruled that the law violated the State Constitution which prohibited "the extension of a law by reference." (The New York Times, March 16,1938)

The newly formed Legislative Conference, working with other teacher groups, developed language for a bill which would grant tenure specifically to the staffs of the City College System rather than by reference as did the Feld-McGrath Bill. A delegation from the Legislative Conference arranged a meeting in Schenectady with speaker Heck's law partner – a Mr. Brown. (Legislative Conference Minutes, March 30, 1939) The Legislative Conference's bill was introduced into the Senate by Senator A. Spencer Feld who had co -sponsored the previous bill and in the Assembly by Assemblyman Goldberg. (The New York Times, March 22, 1939) The Board of Higher Education opposed the bill on the grounds that "it violated the principle of home rule and the letter and the spirit of the new constitutional provisions broadening that principle." (The New York Times, April 3,1939) The Board of Higher Education also wrote letters of opposition to Senator Feld and other legislators stating in part:

There is no need for the creation of a precedent whereby any dissatisfied member of the staffs of our institutions will run to the legislature for the solution of his problems. There is no need to yield to pressure groups by enacting legislation on matters which should properly be left to the administering agency which is most familiar with them... an attempt to pass the bill before you, many of the provisions of which are detrimental to the maintenance of the high scholastic standards of the colleges, would be a setback to higher education in New York City... (Legislative Conference Minutes, March 30, 1939)

The Legislative Conference continued to pursue the passage of its bill. To help to get the bill passed the Conference appointed Professor Harry Levy of Hunter College, who was also the secretary of the Conference, as its legislative representative and voted to provide funds for a substitute at Hunter as needed so that Professor Levy could spend time in Albany. (Legislative Conference Minutes, April 20, 1939) On May 11, 1939 the Senate passed the Feld Bill. (The New York Times, May 12, 1939) The Assembly failed to act on the bill which killed it for that legislative session.

In its First Annual Report which was presented on June 7, 1939, the Conference indicated its determination to "pave the way for the introduction of a tenure bill early in the 1940 session." (Legislative Conference, First Annual Report, 1939) The Report also chronicled some of

its other interests and activities – especially the Conference's opposition to making incumbent non-instructional employees take Civil Service qualifying exams as part of a transition to Civil Service for the non-instructional staff which became effective September 1, 1939. (The New York Times July 7, 1939) Curiously, the First Annual Report turned out to be also the only such report issued by the Legislative Conference.

In 1940 the Legislative Conference voted to assess each member a fee based on salary earned. (Originally it was \$0.50 per \$1000 but it was later changed to \$0.25 per \$ 1000.) The Conference also voted to charge each participating college a share of the organization's expenses based on the number of faculty and staff at each college. (Legislative Conference Minutes, February 19, 1940)

Back in Albany the Conference's Tenure Bill was introduced into the Assembly on February 28, 1940 by Robert J. Crews from Brooklyn and into the Senate on March 4, 1940 by Senator Frederick Coudert. The Bill was referred to the Senate Committee on Public Education. (Legislative Conference Minutes, March 11, 1940) Professor O'Neill, the first Chairman of the Legislative Conference, stated at that time:

These by-laws of the Board can be changed at will, or suspended at any meeting of the Board. The Board itself has recognized the desirability of securing legislative sanction for its tenure provisions, and has agreed to support the Bill. (The New York Times, April 23, 1940)

The Bill, which in its final form granted tenure only to faculty and not to the administrative staff, was passed by both houses and signed by Governor Lehman. (Chapters 635 and 711 of the Laws of 1940; The New York Times, April 23 1940) This victory by the neophyte Legislative Conference on such an immensely important issue was of great significance in several ways. First, it represented an accomplishment of a major change which was without precedent and which was originally strongly opposed by the Board of Higher Education. Second, it represented a highly visible example of what the faculties and staff working together could accomplish. Most importantly for this study, this legislative achievement was accomplished by a representative organization which had no statutory authority but only its powers of mobilization and persuasion at its disposal and, it happened many years before public employee unions, working in education as we know them today were a viable *modus operandi*.

In the early 1940s leaders of the Conference involved themselves with the protection of the by-law calling for election by the

department faculties of academic department chairpersons which the Board was considering rescinding, and also procedures for hiring and promotion of faculty. Concerning the latter issue, the Conference fought to maintain maximum faculty input into the hiring and firing of faculty, while the Board was concerned about protecting the authority of the college presidents as the chief academic officers of their colleges. At a meeting of the Board of Higher Education on February 15, 1943, the Board stated that compromises were reached on the basis of objections voiced by the Legislative Conference by keeping the elected chairmen provision, but allowing the college president to maintain control over faculty appointments and promotions. However, the President would be required to consult with the appropriate departmental committee and with the personnel and budget committee. (Grayson, 1973)

In March of 1942 a bill was introduced into the State Legislature known as the Moffat Salary Bill. Among the things that the Bill could do to salaries was, "give statutory force to whatever salary schedule and schedule conditions the Board of Higher Education might see fit to adopt and have on file with the Commissioner of Education on July 1, 1942." The Conference strongly opposed the bill, stating:

Under this section the Board would be perfectly free to reduce increments as it pleased, or to abolish them altogether, by action taken between the date of enactment of the Bill and July 1, 1942. (Legislative Conference Minutes, March 20, 1942)

The leaders of the Conference set about doing something about their opposition to this legislation. Meetings were arranged with Chairman Tead of the Board of Higher Education and Mr. Stone, chairman of the Board's Committee on Legislation, in an effort to reach an agreement between the Board and the Conference so that they could jointly have an acceptable salary bill introduced which would replace the proposed Moffat Bill. But such an agreement was not reached and the Conference lobbied heavily against the Bill in Albany. (Legislative Conference Minutes, April 14, 1942) Moffat pulled his bill back for technical reasons, believed to be unrelated to the Conference's concerns, and the bill was not reintroduced.

With the outbreak of World War II many new issues were created for the colleges and for the faculties and staffs. One of these was a recommendation by the Board at its meeting of March 16, 1942, that "... leaves of absence for any reason with or without pay, be discouraged and denied to employees of the Board." (Legislative Conference Minutes, May 12, 1942) Under such circumstances, it would then "... be unnecessary to

consider the question of increments to teachers on so-called defense leaves." The Conference had requested that the Board provide those members of the staff who were serving in the armed forces or other defense related positions be given their annual salary increment for each year of such service upon their return to the college so that they would not have fallen behind because of their war duty. The Board did not enact the prohibition on leaves of absence because of the objections voiced by the leaders of the Legislative Conference. A kind of milestone was achieved by the Conference when, late in 1944, the Chairman of the Board of Higher Education suggested that a delegation from the Legislative Conference meet with the Board on a regular basis. (Legislative Conference Minutes, January 4, 1945) In June of 1946 the Board agreed to change the status of Librarians to make them part of the Instructional Staff and to give them faculty titles (Legislative Conference Minutes, October 3, 1946) – another victory for the Conference. In December of 1946 the Conference sent a large delegation to the Board of Higher Education meeting to protest a proposal made by one of the Board members to have academic department chairs appointed instead of elected as was the existing policy. At its meeting in January of 1947 the Board, in recognition of the Conference's objections, decided not to change

the policy. Another important development was an article in the New York Times on March 7, 1948 reacting to a report by Board Chairman Tead declaring the success of the "democratization" of the management of the University in the ten years since the formation of the Legislative Conference. The Times wrote:

The ten-year experiment in democratic government for the city college faculties has proved successful. Both the administration and the faculty are happy with the results. Progress has been made toward a sound, workable program, in which the teachers play a greater part in the life of the college than is traditionally the case. This is an important contribution in the development of higher education. Working together, the Board, professors and administrators can help build a strong system of municipal colleges.

Another example of support coming from the media was in an editorial in the March 12 1949 edition of the New York Times supporting the Conference's lobbying positions with the State Legislature trying to achieve pension parity with the public school teachers. The editorial stated in part, "The Legislature should provide the same pension rights and protection to the college staff as is now given to the public school teachers."

It should be noted that this important support from the New York Times and the relatively cooperative mode of important members of

the Board of Higher Education constituted critical dynamics in the successes achieved by the Conference. It should also be noted that this kind of support and cooperation did not "just happen" but was the result of the effective activities of the leadership of the Conference.

The significance of these developments for this study is that, as far back as 1938, when there were only the four "original" colleges, a mode of bringing about changes in working conditions through the actions of a representative faculty organization had already been established. While it could not be recognized at the time, the groundwork for the acceptability of the concept of academic unionism was being established at what was later to become The City University of New York. The many successes achieved on behalf of the faculties and professional staffs by the Legislative Conference during those early days would seem to have been a positive factor when decisions about whether or not to vote for a faculty union were being made thirty years later. As a matter of fact, when the Board of Higher Education appointed Albert Bowker as Chancellor in the Fall of 1963, the Legislative Conference passed the following resolution and presented it to the Board:

Because of the fact that the Legislative Conference of the City Colleges has for 25 years been the duly elected representative of the majority of the instructional staffs of the City Colleges and does now, by virtue of such election, represent such majority in its relations with the Board of Higher Education and other governmental agencies, we now request the BHE to recognize the Legislative Conference of the City Colleges officially as the sole collective bargaining agent for the instructional staffs of the City University. (Legislative Conference Minutes, September 26, 1963)

Although the Board did not act on the matter at that time, the fact of the request to be recognized as the "sole collective bargaining agent" was a clear example of the mindset of the Conference's leaders in 1963, four years before the enactment of the enabling legislation by the State in 1967. But by 1963 the public school teachers in New York City had already entered into collective bargaining with the Board of Education and the model – even with its strife and strikes – was apparent for the college staffs to observe.

Another indication of the union or collective bargaining mode being promulgated by the Legislative Conference at that time was the pronouncement in the first issue of The Legislative Conference News in January of 1964 that the Conference would establish a grievance committee at each campus plus a central university-wide grievance committee

consisting of one representative from each college. These grievance committees were to help those represented by the Conference to resolve, at the campus level, perceived injustices committed by management. If the matter could not be resolved at the campus level the Conference's university-wide grievance committee would attempt to resolve it at the university level.

At its meeting on January 25, 1964, the Board of Higher Education approved the Conference's request to authorize a system of voluntary dues check-off from pay checks for those who desired to pay dues to the Legislative Conference systematically and automatically. In the New York Times article reporting that event the Times stated that there were 3,700 full-time faculty and professional staff who would be eligible to authorize the deduction of organization dues from their regular pay checks, and also that "The move was regarded by some observers as a first step toward a collective bargaining election." (The New York Times, January 26, 1964)

In March of 1964 the University management asked the faculties to hold meetings to discuss whether or not they want a collective bargaining contract. The management memorandum requesting that the

matter be discussed stated, in part, "insofar as we are aware this kind of collective bargaining has yet to be applied to a university structure." Belle Zeller, Chairman of the Legislative Conference, said "collective bargaining either by certification or election is the only logical step for enlightened staff relations." (New York Times, March 6, 1964) The United Federation of College Teachers, Local 1460 of the American Federation of Teachers objected to the Conference's request to be the bargaining agent. The Federation, which had relatively few members at that time, had been organized in 1953 as an offshoot of Local 2 which was known then as the New York Teachers Guild, later to become the United Federation of Teachers. The Federation did not request that it become the collective bargaining agent but objected to the Conference because it was a "company union" and therefore should not be considered to become the collective bargaining agent. (New York Times, March 6, 1964) The term "company union" refers to an organization which purports to be a union representing employees, but which is actually in collusion with or is controlled by management.

Another very important factor in the history leading up to the faculty and staff decision to embrace faculty unionism happened twenty

years before these developments when, on November 28, 1944, Belle Zeller, who had been serving as the chief legislative representative for the Conference, was elected to the position of Chairman. (Legislative Conference Minutes, November 28, 1944) Dr. Zeller is a political scientist who wrote what is, to this day, considered to be the definitive work on New York State politics – *Pressure Politics in New York*, 1937, Russell and Russell, New York. Dr. Zeller continued in the position of Chairman of the Legislative Conference until it merged in 1972 with the United Federation of College Teachers, local 1460 of the American Federation of Teachers creating the Professional Staff Congress. She became the first president of the newly formed Professional Staff Congress as part of the terms of the merger. The merger itself, which brought together two formerly bitter rivals, one an affiliate of the National Education Association and the other an affiliate of the American Federation of Teachers, AFL-CIO was a pioneering event with tremendous state and national significance. Although the merger of the two locals did not actually occur, as has been indicated, until 1972, Dr. Israel Kugler, a founding President of Local 1460, The United Federation of College Teachers, wrote to the governing body of the Legislative Conference in February of 1965 requesting consideration of a

merger of the two organizations that were attempting to represent the CUNY faculty. (Legislative Conference Minutes, February 11, 1965)

After some investigation of the matter, the Legislative Conference declined Dr. Kugler's request, principally because of its affiliation with "organized labor" – The American Federation of Teachers which is affiliated with the AFL-CIO. (Legislative Conference minutes, Dec. 16, 1965) The term "organized labor" referring principally to unions which are affiliated with the AFL-CIO, was an anathema to so-called "professional associations" like the Legislative Conference which was an independent organization with no affiliations at that time. But almost seven years later, with both first contracts about to expire and with the Legislative Conference having hired a full- time executive director in 1970 and, in the same year, having affiliated with the New York State Teachers Association at the state level and the National Education Association at the national level, both of whom were opposed to any affiliation with organized labor, and with the perceived need for stronger than ever representational unity, the two leaders, Belle Zeller and Israel Kugler, along with several of their supporters at both the local and state levels, recognized the advantages of trying to work together on behalf of the people they represented instead of continuing the fierce,

counter-productive organizational fighting which was going on at that time. After a series of meetings between the two organization's representatives held at a time when the two locals were challenging each other for representation rights to each other's constituency, a merger agreement was developed and approved by the members of both organizations and The Professional Staff Congress/CUNY was born on April 14, 1972. Where, until then the full-time professoriate and so-called non- classroom professionals were represented by the Legislative Conference, and the part-time personnel and full-time Lecturers were represented by Local 1460, the United Federation of College Teachers, as of the merger, they were all to be represented by one united organization and, hopefully, in one collective bargaining agreement instead of the existing two. Even though the University refused to recognize the new organization until a new representative election was held under the auspices of The Public Employment Relations Board which was created as part of the State's 1967 enabling legislation known as the Taylor Law, the Professional Staff Congress/CUNY was so certified and did go on to negotiate a single contract for all of the instructional staff of CUNY.

Shortly after the two locals merged, the two competing state organizations, the New York State Teachers Association, affiliated with the National Education Association, and the United Teachers of New York, which was the state-level affiliate of the – by then – very large and very influential United Federation of Teachers in New York City and was affiliated with the American Federation of Teachers, merged to form what was eventually to become, after several name changes, The New York State United Teachers, affiliated with both the American Federation of Teachers, AFL - CIO and the National Education Association.

Although the dual national affiliations which were carried into the mergers were rather short lived because of serious disagreements at the national level by the leaders of the two national affiliates, The New York State United Teachers, the product of the state level merger, has become one of the most vibrant and effective state - level organizations of its kind in the nation and is a part of "organized labor" through its affiliation with the American Federation of Teachers which, is part of the AFL-CIO. When the dual national affiliations fell apart, the Professional Staff Congress followed the lead of The New York State United Teachers and withdrew from the National Education Association in 1973 in order to maintain its affiliation

with The American Federation of Teachers. The decision to disaffiliate from the National Education Association was made reluctantly by the leadership of the Professional Staff Congress because of their strong belief in the correctness of merging the two "warring" organizations into one stronger organization as they had accomplished at the local level. But, forced to choose between them, because of the aforementioned differences at the national level, the logical choice in a strong "union town" such as New York City, was to stay with the labor movement.

The fact of the bringing together of the two warring national organizations at the local and state levels even for a relatively short time had a profound impact on the future of teacher unionism as indicated by subsequent developments. The same factors which brought the two local organizations at CUNY and the two New York State organizations together – increasing difficulty in achieving adequate funding for public education and the wasteful costs in both human resources and money of two organizations with essentially the same goals competing with each other have brought about unprecedented levels of cooperation between the National Education Association and the American Federation of Teachers along with serious discussions of merger at the national level.

The constantly recurring budget cuts in the public sector referred to above have forced most public employee unions into a bargaining mode which frequently involves concessions by the unions in order to keep the enterprise afloat. The main areas of cost cutting based on substantially reduced funding from city and state governments have been reduction in staff, reduction or cost sharing in health benefits, and salary freezes. Obviously, these are bitter pills for unions and their constituents to swallow. In as much as unions can be voted out of representative status by members of the bargaining unit, especially if another union is challenging for representation rights, or an incumbent leadership can be voted out by discontented union members in favor of new leadership, the currently existing mode of so-called "concession bargaining" constitutes a serious political threat to some of the unions and their leaders who are in office at the time of making concessions at the bargaining table.

Historically, in any analysis of the important factors leading up to the acceptance of academic unionism by the instructional staff at CUNY, the role of the individual leaders of The Legislative Conference and, later, of Local 1460, The United Federation of College Teachers must be recognized.

Because she was among the very early activists in the College Teachers Union in the 1930s before her involvement with the Conference, and because she served in the top leadership position of The Legislative Conference and The Professional Staff Congress from 1944 until her retirement in 1976 and because of her interest in and expertise in the political arena combined with her demonstrated strong leadership, Dr. Zeller was a compelling force in the movement toward strong, independent, representative faculty organization at CUNY, and, in fact, in the entire nation--in as much as, as has been stated, CUNY was the first major university to embrace collective bargaining for its faculty and professional staff.

Dr. Israel Kugler, a social scientist at the New York City Community College which was formerly the New York Institute of Applied Arts and Sciences and became part of the City University of New York in 1964 (New York City Community College Bulletin, 1972), was a co-founder with William McMillan, also a social scientist at the same institution, of The New York City Community College Chapter of Local 2, New York Teachers Guild which held its meetings off campus . The organization, with its close association with the public school teachers,

became known as more "militant" and "activist" oriented. Under the leadership of Dr. Kugler, Local 1460, The United Federation of College Teachers established membership at the other campuses of the University along with chapters at other institutions in the area- including St. John's University, The Fashion Institute of Technology, The United States Merchant Marine Academy, and also Fairleigh Dickinson University in New Jersey. Dr. Kugler came out of the same liberal political background - the Social Democrats - as did David Selden, who went on to become President of the American Federation of Teachers after being a major figure in organizing and leading the teacher union movement in New York City. and Albert Shanker, who went from being the driving force as President of the United Federation of Teachers in New York City to become, arguably, the most effective teacher union leader in the history of the United States as President of the American Federation of Teachers, a position which he still holds. Dr. Kugler established a reputation as a strong leader and activist advocate in his own right. The United Federation of Teachers provided office space and financial support for Local 1460 as did The American Federation of Teachers. David Selden edited Local 1460's Newsletter in its early years and Albert Shanker's strong support helped to establish Dr.

Kugler as an important figure in the pioneering of teacher advocacy through the academic union movement. As a result of the high profile and strong activist image created by Dr. Kugler's leadership and the strong support from the United Federation of Teachers and the American Federation of Teachers, The United Federation of College Teachers was able eventually to challenge the much larger and longer established Legislative Conference for representation rights for the entire instructional staff of CUNY.

The events at St. John's University in New York City in the mid 1960's also played a major role in the establishment of the still relatively new and still relatively small United Federation of College Teachers as a force to be reckoned with. In December of 1965 St. John's University suspended 31 teachers without giving any reason and without any due process procedures. Local 1460, The United Federation of College Teachers took the position that they were dismissed for supporting the formation of a chapter of the Federation at St. John's and urging its recognition by the University management. The Federation immediately set up picket lines at the University protesting the "arbitrary dismissals" and demanding their re-instatement. The University refused even to respond to

the picketing, taking the position that the Federation was a non-entity with no status whatsoever.

On January 4, 1966 Local 1460 called a strike at St. John's University which lasted technically for many months. The strikers, under the leadership of Dr. Kugler, managed to rally the support of many of the organized labor unions in the metropolitan area as well as other faculty organizations and, most particularly, to force the involvement of the American Association of University Professors which also had a chapter at St. John's. Additionally, The Commission on Institutions of Higher Education of the Middle States Association, the accrediting agency for higher education institutions in that part of the country, became very involved with the fact of the strike because it was in the process of a routine but important part of its evaluation for accreditation of St. John's when the strike happened. The Federation and the American Association of University Professors urged the Middle States Association to withhold accreditation until due process was offered to the dismissed teachers. At first the Middle States Association took the position that the action against the 31 teachers in no way affected their determination regarding accreditation. But as the pressure on Middle States increased, not only from

the faculty organizations, but as a result of ever-increasing publicity in the media, partially as a result of the prolonged duration of the strike. The Middle States Association requested an explanation of the University's actions and issued some statements criticizing St. John's for behaving as it did. Committee D of the American Association of University Professors on Accrediting of Colleges and Universities sent a letter to the Middle States Association in which it stated in part:

We take issue with the stated position of the Commission, and urge it to reconsider its interpretation of the highly important criterion of responsible governance on which it based its judgment, and therefore to reconsider the judgment itself in view of a more enlightened interpretation. (Local 1460 newsletter, Action, November, 1966)

On April 29, 1966 The American Association of University Professors at its annual meeting imposed "the severest censure in its history" on the administration of St. John's University, stating that "none of these professors who were dismissed was informed why and none were permitted even the most rudimentary elements of academic due process." (AAUP Bulletin, June 1966) Committee A of the Association, which recommended the censure, also struck out at the accrediting agency in its official report with the following statement:

The failure of the commission either to disaccredit St. John's University or to place it on probation pending rectification of its unprecedented and shocking action is deeply dissappointing and lends emphasis to the view held by many officers and members of the AAUP that the time is overdue for major faculty participation in the accrediting process. (AAUP Bulletin, June 1966)

On Sunday, November 20th , 1966 the United Federation of College Teachers ran a full-page advertisement in the New York Times which described the events at St.John's from its point of view and which had the endorsement of many organizations and individuals. This ad appeared at the time that evaluating teams from the Middle States Association were visiting the City University of New York and it was calculated to convince Middle States to withhold or revoke its accreditation of St.John's University.

The strike was not successful in getting the 31 dismissed teachers reinstated, The management of St. John's University eventually offered to submit the cases of 13 of them to binding arbitration with mixed results. The importance of this chain of events in terms of the development of academic unionism in general, and at the City University of New York in particular, should not be overlooked. While the strike was not successful in terms of its stated goal, the prominence it achieved became a catalyst for several important happenings. It gave a high level of mostly very positive

visibility to Local 1460 and its president, Israel Kugler. The Union never backed down from its positions and, in fact, was quite successful in portraying St. John's management as the villain in the public eye. This was born out by the extraordinary amount of support garnered for its cause from a variety of sources. It was the occasion for rallying other unions and other faculty organizations in support of a faculty union's activities--a faculty union which had not been recognized officially by the employer. At the national level it helped to get the American Association of University Professors involved in a venture which smacked of militancy at a time when the Association had not yet embraced collective bargaining for the professoriate as a desirable concept. It caused the hitherto sacrosanct Middle States Association to reconsider its decisions. Perhaps most importantly, the publicity it engendered gave a national focus over an extended period of time to the fact that there were such things as unions seeking to represent academics.

All this was happening just prior to the passage of the State's Public Employee Relations Act (The Taylor Law) in 1967, giving faculty and staff at public institutions of higher education and elementary and secondary teachers the right to bargain collectively. It is not unreasonable

to conjecture that the strike at St. John's was a positive influence on the Legislature and Governor in approving this very crucial enabling legislation. even though the law dealt with the public sector and the strike was in the private sector.

The Taylor Law provides for orderly procedures for the selection of bargaining representatives, establishes the principle of the right of representation and the duty of public employers to engage in collective negotiations. The term "collective negotiations" rather than "collective bargaining" is used in the law in an effort to placate opposing organizations in the state. The unions (aligned with organized labor) use the term "collective bargaining " but the teacher unions (aligned with the National Education Association) used, at that time, the term "professional negotiations" The lawmakers, in their wisdom, then coined the phrase "collective negotiations" – using one word from each of the opposing terms. The law also outlaws unfair labor practices on the part of the public employer as well as the public union, and sets up impasse procedures and machinery through mediation, fact - finding, and recommended resolution. It also outlaws strikes and sets severe penalties for unions and their members if they do strike. (Taylor Law, Section 211)

Because it was the first major university to embrace collective bargaining, and because of its size and geographic importance, almost everything that happened in the area of academic unionism at CUNY was a pioneering event, or, at the very least, a precedent or model for other institutions to be aware of and to learn from. Most particularly, the first collective bargaining agreements negotiated in 1968-69 by the Legislative Conference and the United Federation of College Teachers, local 1460, American Federation of Teachers with the City University's Board of Higher Education became landmark agreements for the rest of higher education institutions that were involved or were going to become involved with collective bargaining with their faculty and professional staff. (Zeller-Yellowitz interview, 1986) Additionally, the local mergers discussed above set the stage for similar unifications around the United States. Perhaps more importantly, some of the terms negotiated in the early contracts set standards and goals for other higher education organizations. These first agreements contained salary schedules with yearly incremental steps above an established minimum for each title in the bargaining unit along with funds specifically negotiated for sabbatical leaves, welfare fund benefits, and research awards aimed at junior faculty who traditionally have difficulty in

obtaining research monies from established sources outside the university. They also contained very specific and detailed grievance procedures culminating in binding, outside the university, arbitration. This provided members of the unit a substantial amount of due process for any real or perceived abuses by management with the final say on matters not settled within the university in the hands of professional arbitrators not connected to the university. Subsequent contracts negotiated by what was then the Professional Staff Congress with the Board of Higher Education included more professionally oriented provisions such as Scholar Incentive Leaves and special salary stipends for a new title of Distinguished Professor. The Scholar Incentive Leaves provide 25% of annual salary to allow members of the unit to take advantage of research grants from other sources which are not large enough for them to live on without supplementation. The Distinguished Professor title was established to help the University to attract professors of so-called "star quality" from other institutions by offering salaries that are substantially higher than those provided for in the regular full professor salary schedule.

The initial contract covering part-timers and Lecturers negotiated by the United Federation of College Teachers, which went into

effect on September 1, 1969, provided newly established job security for full-time Lecturers in the form of a Certificate of Continuous Employment after a five year successful probation period. Probably the most significant feature of the initial contract for the full - time professoriate negotiated by the Legislative Conference, which also went into effect on September 1, 1969, was the very highly structured procedures for observation and evaluation of members of the bargaining unit which provided the basis for decisions on reappointment, promotion, and tenure. Prior to the collectively bargained agreement each department at each college developed its own procedures for such important personnel actions which ranged from practically non -existent to the impractical. The negotiated procedures spelled out precisely what was expected of members of the instructional staff and how they were to be judged based on the established criteria with the procedures uniform over the entire university. In an address to a Collective Bargaining Conference of the Institute for Administrative Advancement in Madison, Wisconsin on May 24, 1976, President Belle Zeller said, in describing the goals of the contractual provisions regarding observation and evaluation:

The evaluation system has two stated purposes: 1) to improve professional performance, as a service to probationers, most of whom enter college teaching with no formal teacher training, as a responsibility to the university's students, and 2) to give their peers a sound basis for judging individuals for retention, tenure, and advancement....The difference in the negotiated procedures is that they became systematized, contractually mandatory, and enforceable by grievances. There is all the difference in the world between a faculty handbook pronouncement on due process and a contractual mechanism culminating in binding arbitration.

Given the strong tradition of peer evaluation in higher education, the establishment of these procedures in the collective bargaining agreement which embraced and enhanced the functions of elected departmental and college -wide personnel and budget committees while not replacing or superceding them was a critically important step. This last point of not replacing or superseding the elected faculty qua faculty entities as distinguished from academic union entities takes on added importance because, in every known campaign aiming at unionizing faculty and staff, management has made the argument, usually with vehemence, that if the faculty voted for unionization they would lose their collegiality in the traditional forms of having elected "peers" involved in important personnel and curricular decisions. In fact, during the campaign and election at CUNY being administered by the New York State Public Employment Relations

Board in which the faculty and staff were to vote for either "no agent" or for the union to represent them, Chancellor Bowker and the Board of Higher Education established a University-Wide Faculty Senate with all its members to be elected by the constituent college faculties. (Curiously, this newly created senate ignored the already existing individual college senates and to this day has no structural ties to them.) This action was taken openly to "enhance collegiality at the university" and to suggest to the staffs not to vote for a union because this newly created faculty governance body would provide adequate representation for all of their concerns. Despite the strong opposition of the Chancellor and the Board, the faculty voted overwhelmingly for unionization. It is important to note, because the issue of the faculty's traditional right to govern itself is frequently raised by management as being jeopardized by unionization, that the organization of faculties by unions has, based on actual experience to date, not resulted in a diminution of existing faculty governance structures. (Douglas, 1995)

Donald Savage, Executive Director of the Canadian Association of College Teachers (CAUT) stated in part, in May of 1993:

Those opposed to collective bargaining frequently urged a collegial model which they incorrectly think existed in Canadian universities before the sixties. Essentially collective bargaining

made collegiality real. Academics and administrators now meet as legal equals at the bargaining table. The previous system was one of collective begging. Collegiality as a political slogan in opposition to collective bargaining is simply oligarchy warmed up. (Union of Democratic University Staff Associations News, May, 1993)

At CUNY it is generally agreed that the individual college senates and the University-Wide Faculty Senate are currently as strong as they ever were or stronger – twenty seven years after the advent of collective bargaining. This is so because academic unions in general and the CUNY unions in particular have seen their role as one of nurturing the faculty's right to govern itself and have taken great pains to be certain that the role of the faculty governance bodies and the role of the unions are, in large part, separate and distinct. The academic union appropriately acts as the agent for faculty and staff in matters related to "terms and conditions of employment" such as salaries and fringe benefits, promotions, appointment and reappointment, tenure and job security, and other professional enhancement issues such as the aforementioned research awards. The personnel and budget committees make the actual recommendations on personnel matters and the college senates and the University-Wide Faculty Senate are the bodies that deal with curricular matters, degree requirements, program

offerings, and related matters. While the collective bargaining agreement has the force of law behind it, the governance bodies derive their authority from college and university by-laws which generally limit them to an advisory role subject to the approval of the college president or the chancellor and/or the Board of Trustees. In the same address cited above, President Zeller said in reference to the impact of collective bargaining on institutional governance:

Collective bargaining and governance have had little influence on each other structurally. The nature and scope of collective bargaining are defined by law....The governance rights of faculty have been derived from tradition, and the structures within which those rights have been exercised pre-dated collective bargaining....While the structure of governance has not been appreciably affected by collective bargaining, its effectiveness has. One of the most significant accomplishments of unionism at City University has been to protect the governance rights of the instructional staff from encroachment and abuse, in large part by providing a grievance mechanism for enforcement of the peer judgment process which was a real breakthrough accomplished by collective bargaining.

It is because the academic workplace presents such a blurring of the line between management and labor created by the system of peer evaluation and the historical/traditional right of the faculty to "govern itself" that the distinctions of responsibilities and functions between faculty governance bodies and academic unions is critically important. This

dynamic of shared governance is not only essentially unique to higher education, but it is also a permeating issue in the daily lives of faculty and staff, affecting almost all aspects of their professional activities. It is, therefore, a very important consideration for the academic union in seeking to represent and in actually representing their constituents. It is also, therefore, a significant distinguishing characteristic of a successful academic union as compared to the traditional trade union.

Another distinguishing factor in most contracts bargained by academic unions is the fact that in grievance procedures ending in binding arbitration, which are common to most, the arbitrator's authority is restricted to dealing with procedural matters. Typically, in an academic grievance procedure the arbitrator may not substitute his/her academic judgement for those made by the academic authorities. He/she can negate the validity of an academic decision if a procedural defect is found. He/she may then remand for correction of the procedural defect which may result in a different academic decision by the academic authorities. In a collectively bargained agreement in industry the arbitrator usually has the authority to order reinstatement, or to uphold a dismissal, or to order a promotion, etc. In an academic setting, because of the frequently aforementioned tradition of peer

evaluation and the faculty's right to govern itself, the arbitrator's authority is usually much narrower in scope.

Looking back at the events leading up to the acceptance of collective bargaining and academic unionism by the instructional staff at CUNY, the following factors can be identified as having a significant, positive impact:

- a sense of diminishing control over their professional careers by the instructional staff as the University expanded and managerial authority became centralized and less and less responsive to campus concerns as perceived by the staff;
- the successes over the years in achieving improved job security and pensions accomplished by the Legislative Conference;
- the influence and close proximity of the United Federation of Teachers as they successfully mobilized the public school teachers in New York City;
- the capable individuals in leadership positions of both the Legislative Conference and the United Federation of College Teachers; and
- the enactment of enabling legislation by the State Legislature in the form of the Public Employees Fair Employment Act, known as the Taylor Law after the man who drafted the bill, which became effective on September 1, 1967.

These five factors, while not necessarily of equal importance, were each critical factors in leading up to the faculty and staff acceptance of

unionization at CUNY. When asked by this investigator, Dr. Zeller had this to say:

The growth of the University in the 1960's and the subsequent expansion of the authority of the central administration gave the CUNY faculty and staff a sense of diminished control over the academic governance of their departments and colleges and the premonition of further loss in the future. ...Another factor that helped gain the favorable vote for unionization was the vigorous opposition of the administration, as evidenced by its eagerness to create a university faculty senate to supposedly render a union unnecessary plus the administration's extraordinary publication and dissemination university-wide of a booklet arguing against unionization. Finally, the University had as a candidate for its proposed union the legislative Conference, which over many years of lobbying in Albany and at City Hall and dealing on the faculty's behalf with the University, had established its bona fides as an effective advocate on major salary, pension, and due process issues. (Zeller, March 1996)

Dr. Kugler, in response to this investigator, stated:

The significant reasons for the staff of professionals choosing collective bargaining at CUNY include the following: collective bargaining and the procedure for reaching it were legal in the State of New York and the achievement of collective bargaining by the United Federation of Teachers after monumental demonstrations, and a strike, was a forerunner model for the Professional Staff Congress. (Kugler, April 1996)

The events and facts described herein in regards to the faculty and professional staff at CUNY and their eventual acceptance of unionization are in very close harmony with what Paul D. Montagna states :

"The goal of an occupation's members is to develop and maintain work autonomy." Montagna speaks of three concepts – rationalization, bureaucratization, and professionalization needed to analyze "the dialectic between the rationalization of occupations and occupational autonomy." He sees the growth of unions in some professions as related to the need of those workers to protect or reestablish their autonomy in the face of a growing bureaucratic structure. (Montagna, 1977)

Whether one defines "bureaucracy" to mean any complex organization or, as Weber uses it, to mean a particular kind of complex organization-one organized strictly along principles of formal rationality-the structure of the academic workplace in general, and at the City University in particular, became more and more bureaucratic. With the very rapid expansion of CUNY in the 1960s, layers upon layers of different levels of authority were thrust upon the faculties and professional staff resulting in ever increasing feelings of isolation and loss of control of their professional destiny. Also, as the University expanded, it needed to become more cost efficient because of a greatly increased drain on public funds and it needed to meet competitive pressures from the rest of the academic world on its offerings and academic programs. This rationalization of an

organization – in this case, CUNY – is consonant with what sociologists have determined contributes to the growth and acceptability of the union movement.

Wright, in discussing class and bureaucratic and political dynamics of the social structure in a capitalist society, in addition to stating "Class is a central feature of social structure only in capitalism; other types of societies are structured by other types of social relations," states:

For Weber, the shift from status to market is, above all, a shift in the meaning systems implicated in action. In feudal societies, status orders provide the central principles of collective identity and meaning. The transformation of traditional into modern societies is above all a process of rationalization, in which rational calculation replaces traditional norms as the central orientation to action. Class becomes the central principle of social stratification and collective identity corresponding to this emergent rationalization of systems of meaning. (Wright, 1985)

Friedson, in a discussion of "formal knowledge" or "specialized knowledge" as distinguished from "common knowledge," has this to say:

If there is a single concept by which the nature of formal knowledge can be characterized, the most appropriate is likely to be rationalization, a concept that is central to Max Weber's analysis of the development of Western civilization. Rationalization consists in the pervasive use of reason, sustained where possible by measurement, to gain the end of functional efficiency. Rational action is organized to address both the material and the human world, and it is manifested most obviously in technology but also in law, the management of

institutions, the economy, indeed, in the entire institutional realm of modern society. It is intimately associated with the accounting and management methods that developed with capitalism and the administrative methods of developing predictable social order that rose along with the modern state in the form of "rational-legal bureaucracy.".....(Friedson, 1986)

The seeds of the unionization of the CUNY faculty and professional staff were sown over a very long period of time, and the factors which led up to that happening can be identified as the almost classic ingredients described by sociologists as the dynamics which would likely cause workers in the professions to embrace unions--the perceived and/or real loss of autonomy, the rapid increase in bureaucracy and rationalization in the workplace, and the attendant threat to their professionalism.

At the State University of New York, which is the largest public university in the country, collective bargaining became a reality in the early seventies when an organization known as the Senate Professional Association, affiliated with the National Education Association, won representational rights for faculty and professional staff. The SPA was later challenged in a representation election by both the AAUP and the AFT working together. The SPA was restructured and became the United University Professions which won the election and which is currently the

largest academic union in the United States. Because of the break-up of the AFT-NEA merger at the state level, the United University Professions is now an affiliate of the AFT and a "sister union" of the Professional Staff Congress/CUNY. Together, the two unions represent almost 33,000 faculty and professional staff, which constitutes a formidable power bloc within the higher education department of the AFT and within the academic union movement in general.

Chapter 4 The Yeshiva Decision

On February 20, 1980, the United States Supreme Court held in *National Labor Relations Board v. Yeshiva University* that the full-time faculty members at Yeshiva University were managerial employees and therefore excluded from the National Labor Relations Act's coverage. (444 U.S. 672, 1980) This decision has had a chilling effect on organizing faculty and professional staffs at private colleges and universities and, in some cases, has resulted in the decertification of previously certified academic unions at private institutions.

Yeshiva University is a private university in New York City which includes five undergraduate and eight graduate schools. The Yeshiva Faculty Association sought to represent a unit of full-time faculty members at ten of the thirteen schools, including assistant deans and chairpersons but excluding deans and directors. The University contended that its faculties were managerial, but the National Labor Relations Board disagreed, finding them instead to be professional employees entitled to the protection of the National Labor Relations Act on the ground that "faculty participation in collegial decision making is on a collective rather than on an individual

basis. It is exercised in the faculty's own interest rather than in the interest of the employer, and final authority rests with the Board of Trustees." (Yeshiva University, 221 NLRB, 1975)

The Court of Appeals for the Second Circuit denied enforcement of the NLRB's bargaining order in *N. L. R. B. v. Yeshiva University* (582 F. 2d 686, 2nd Circuit, 1978), rejecting the Board's first and third grounds and finding insufficient evidence to support the second ground. The Court concluded that Yeshiva's full - time faculty exercise supervisory and managerial functions, at times as a body and at other times through committees or department chairpersons. Specifically, the court found "no significant divergence between the interests of the faculty and those of the administration...." (582 F. 2d 701, 2nd Circuit, 1978) The court thus concluded that the faculty members were managers excluded from the Act.

The U.S. Supreme Court affirmed the decision of the Second Circuit by a 5-4 vote, agreeing that the Yeshiva faculty "in effect, substantially and pervasively operate the enterprise." (444 U.S. 691, 1980) In affirming the lower court's holding, the Supreme Court defined managerial employees as "those who formulate and effectuate management

policies by expressing and making operative the decisions of their employer," noting that they are "much higher in the managerial structure than those explicitly mentioned by Congress," and that, although they are not specifically excluded from coverage in the Act, Congress regarded managers as "so clearly outside the Act that no specific exclusionary provision was thought necessary." (444 U.S. 682, 1980) The Court pointed out that managerial employees must be aligned with management and that an employee may be excluded as managerial "only if he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy." (444 U.S. 683, 1980)

The Court stated that the controlling considerations in the case are as follows:

The faculty at Yeshiva University exercise authority which in any other context unquestionably would be managerial. Their authority in academic matters is absolute. They decide what courses will be offered, when they will be scheduled, and to whom they will be taught. They debate and determine teaching methods, grading policies, and matriculation standards. They effectively decide which standards. They effectively decide which students will be admitted, retained, and graduated. On occasion their views have determined the size of the student body, the tuition to be charged, and the location of a school. When one considers the function of a university, it is difficult to imagine decisions more managerial than these. To the extent the industrial analogy applies, the faculty determines within each school the

product to be produced, the terms upon which it will be offered, and the customers who will be served. (444 U.S. 686, 1980)

The NLRB argued that the academic decisions made by the faculty are not managerial because they require the exercise of independent professional judgment which is primarily in the faculty member's own interest rather than in the employer's interest. The Court dealt at length with the argument and rejected it. The Court rejected more summarily two other arguments relied upon by the NLRB in finding faculty members not to be managerial, i.e., faculty authority is exercised on a collective basis and final authority rests with the Board of Trustees. In this connection the Court noted that "collective authority" had never barred a finding of managerial status, and that the fact that corporations invest ultimate authority in their boards of directors has never precluded a finding that there are managerial employees or supervisors within the corporate hierarchy. Although the Court, based on the record before it, rejected the NLRB's third "in the interest of the employer" theory, the Court characterized it as the NLRB's only colorable theory. (444 U.S. 685, 1980)

The Court concluded that the Yeshiva record did not support a finding that the professional interests of the faculty and the interests of the

university are "distinct separable entities with which a faculty member could not simultaneously be aligned." The Court instead held that in fact "the faculty's professional interests as applied to governance at a university like Yeshiva cannot be separated from those of the institution." The Court concluded that the extent to which the faculty recommendations were implemented at Yeshiva University was an "inevitable characteristic of the governance structure of universities like Yeshiva." (444 U.S., 689, 1980) The Court pointed out that divided loyalty is a particularly acute problem for a university "like Yeshiva" inasmuch as the institution is compelled to rely on the professional judgment of its faculty to make and apply managerial policies. (444 U.S., 690, 1980) While it conceded that the faculty at Yeshiva was "less accountable for depatures from institutional policy than a middle - level industrial manager," the Court declined to follow the industrial analogy in the area of accountability because "Yeshiva and like universities must rely on their faculties to participate in the making and implementation of their policies." (444 U.S., 676, 1980)

Although the Court found the full-time faculty at Yeshiva to be managerial employees, based on the record before it, it emphasized that it was "certainly not suggesting an application of the managerial exclusion

that would sweep all professionals outside the Act in derogation of Congress' expressed intent to protect them." The Court noted that architects and engineers who act as project leaders of teams of professionals are deemed employees "despite substantial planning responsibility and authority to direct and evaluate team members" (citing *General Dynamics Corporation*, 213 NLRB 851, 1974) and that Congress approved the NLRB's test in the health care industry of "whether the decisions alleged to be managerial or supervisory are incidental to or in addition to the treatment of patients." (444 U.S., 690, 1980)

The Court referred with approval to the NLRB's recognition "that employees whose decision making is limited to the routine discharge of professional duties in projects to which they have been assigned cannot be excluded from coverage even if union membership arguably may involve some divided loyalty. Only if an employee's activities fall outside the scope of the duties routinely performed by similarly situated professionals will he be found aligned with management." (444 U.S., 690, 1980) The Court stated further that:

Other factors not present here may enter into the analysis in other contexts. It is plain, for example, that professors may not be excluded merely because they determine the content of their own

courses, evaluate their own students, and supervise their own research. Thus there may be institutions of higher learning unlike Yeshiva where the faculty are entirely or predominantly non-managerial. There also may be faculty members at Yeshiva and like universities who properly could be included in a bargaining unit. It may be that a rational line could be drawn between tenured and untenured faculty members, depending on how a faculty is structured and operates. But we express no opinion on these questions, for it is clear that the unit approved by the NLRB is too broad. (444 U.S., 691, 1980)

In light of its affirmation of the Second Circuit's holding, the Court found it unnecessary to decide the issue of the supervisory faculty.

The Court added that:

The record shows that faculty members at Yeshiva also play a predominant role in faculty hiring, tenure, sabbaticals, termination and promotion.... These decisions clearly have both managerial and supervisory characteristics. Since we do not reach the question of supervisory status, we need not rely primarily on these features of faculty authority. (444 U.S., 686, 1980)

The impact of this decision by the nation's highest court on private sector collective bargaining by college and university faculties and professional staffs has, as has been stated, been enormous. In fact, practitioners for both managements and unions frequently use the word "Yeshiva" as a verb, as in "We fear that management will Yeshiva us." Although the decision was written narrowly so as to limit its impact to "institutions like Yeshiva," many questions have been left unanswered.

Several actions have been brought by managements against academic unions based on "Yeshiva" and many faculty organizations have been decertified as a result. The Second Circuit in its finding , which was affirmed by the Supreme Court, stated:

We stress that our function is not to examine *in vacuo* the governance procedures of all four - year private institutions of learning...Given the great diversity in governance structure and allocation of power at such [mature] universities it is appropriate to address ourselves solely to the situation at the institution involved in this proceeding. (N.L.R.B. v. Yeshiva University, 592 F. 2d 686, 1978)

Despite this and other language which is generally interpreted to be a purposeful attempt by both the Second Circuit and the Supreme Court to narrow the impact of their decision, faculty organizations at such diverse institutions as Boston University, The College of Osteopathic Medicine and Surgery in Iowa, and Fairleigh Dickenson University in New Jersey, among others, have lost their certification as the official representative of their faculties under the National Labor Relations Act--all based on decisions, citing the Yeshiva decision, handed down by the NLRB in response to petitions filed by management.

The decertification of the College of Osteopathic Medicine and Surgery Faculty Federation, Local 3474, American Federation of Teachers,

AFL-CIO involved a particularly interesting issue. The NLRB rejected an argument made by the union that a unit should not be able to "bargain itself out of the protection of the Act." The union asserted that the faculty's authority had been gained and maintained solely through an adversarial process of collective bargaining, and that faculty interests are not truly aligned with management. The union feared that if the faculty were unprotected by a collective bargaining agreement the employer could unilaterally remove any managerial authority that the faculty had achieved through collective bargaining. The NLRB, in its rejection of that argument, stated:

Although we recognize the concerns expressed by the Union, we are constrained to reject this contention. The Supreme Court was primarily concerned that a collective bargaining relationship might cause college faculty members to divide their loyalties between their employers and unions. The *Yeshiva* decision does not expressly or impliedly distinguish situations in which managerial authority was gained through collective bargaining from situations in which such authority was more freely granted, and we do not believe that such a distinction is required by the Act. Accordingly, we must look to the extent of managerial authority held by college faculties rather than the manner in which such authority was obtained." (265 NLRB No. 37, Case 18-UC-113)

This decision by the NLRB, interpreting the Supreme Court's decision in *Yeshiva*, clearly indicates that a faculty organization can, indeed,

negotiate itself out of the protection of the National Labor Relations Act by achieving rights for faculty through the collective bargaining process which are deemed to be managerial under Yeshiva.

In any discussion of Yeshiva it is important to take note of the dissenting opinion, signed by four of the nine judges on the Court. While the dissent does not carry the impact of law, it nonetheless provides insight into the thinking of those four judges who sit on the highest court in the land. The dissent states, in part:

Today's decision, however, threatens to eliminate much of the administration's incentive to resolve its disputes with the faculty through open discussion and mutual agreement. By its overbroad and unwarranted interpretation of the managerial exclusion, the Court denies the faculty the protections of the National Labor Relations Act, and in so doing, removes whatever deterrent value the Act's availability may offer against unreasonable administrative conduct. Rather than promoting the Act's objective of funneling dissension between employers and employees into collective bargaining, the Court's decision undermines that goal and contributes to the possibility that recurring disputes will fester outside the negotiation process until strikes or other forms of economic warfare occur. (Citing *Ford Motor Company v. NLRB*, 441 U.S., 1979)

The minority supported their position by reciting the following economic data in Footnote 16 (as of 1980):

University faculty members have been particularly hard-hit by the current financial squeeze. Because of inflation, the purchasing power of the faculty's salary has declined an average of 2.9% every year since 1972. Real salaries are thus 13.6% below the 1972 levels. Moreover, the faculty at Yeshiva has fared even worse than most. Whereas the average salary of a full professor at a comparable institution is \$31,100, a full professor at Yeshiva averages only \$27,100. In fact, a severe financial crisis at the University in 1971-72 forced the president to order a freeze on all faculty promotions and pay increases.

To this the majority replied that such considerations are irrelevant: "...nor can we decide this case by weighing the probable benefits and burdens of faculty collective bargaining....That, after all, is a matter for Congress, not this Court." (Footnote 29)

In response to the argument of the Yeshiva faculty union, the Court points out that the NLRB itself does not suggest "...that the role of the faculty is merely advisory and thus not managerial." But in Footnote 17 the following language appears:

The union does argue that the faculty's authority is merely advisory. But the fact that the administration holds a rarely exercised veto power does not diminish the faculty's effective power in policymaking and implementation....The statutory definition of "supervisor" expressly contemplates that those employees who "effectively recommend" the enumerated actions are to be excluded as supervisory.... Consistent with the concern for divided loyalty, the relevant consideration is effective recommendation or control rather than final authority. That rationale applies with equal force to the managerial exclusion.

The basic thrust of the majority decision is that tenured faculty are not under the umbrella of the National Labor Relations Act and that administration may refuse to negotiate with a union representing faculty if they are "managerial." In simplest terms, the Court has said that the National Labor Relations Board may not certify a union of faculty or require administration to deal with it if the faculty "are endowed with managerial status sufficient to remove them from the coverage of the Act." The question arises as to just what would be the indicia of such a managerial role vested in the faculty? Joel Douglas, an arbitrator and mediator in the higher education field and a recognized "Yeshiva" scholar, describes the criteria in the form of the following three questions:

1. Could the institution properly be described as a typical "mature" private university or college in which authority is "divided between a central administration and one or more collegial bodies"?
2. Are the authority of the faculty under the by-laws of the institution and its practices of such a nature that they can be described as truly managerial?
3. Do the faculty have the power to make "effective" decisions or recommendations "in the interest" of the institution? (National Center for the Study of Collective Bargaining in Higher Education, Newsletter, Vol. 8, No.1, 1980)

Not surprisingly, the most directly affected by the Yeshiva decision are the private institutions of higher education in which faculty unions had already been certified or had otherwise been recognized as bargaining agents for faculty and staff. The Decision offers management at these institutions options which it did not have prior to Yeshiva. Where a contract already exists the parties are probably bound by its terms until it expires. But upon expiration, management may:

1. refuse further recognition of the union;
2. negotiate a new contract, but threaten at the bargaining table that if its terms are not met or if the union insists on raising certain issues, it will refuse to sign a contract;
3. proceed, as formerly, to renegotiate a contract in the interest of maintaining stable relations. (Douglas, 1980)

In those institutions where there was no recognized union, the Yeshiva decision has effectively prevented any further unionization of faculty and staff. Even though the Yeshiva decision does not forbid collective bargaining and/or unionization per se – it only denies the coverage and protection of the National Labor Relations Act to the parties – it makes further organization of faculties and staffs in the private sector highly unlikely. To proceed without the coverage and protection of the Act

would mean that management would have to voluntarily agree to recognize and negotiate in good faith with a faculty union, and even if it were to do so. at almost any time, under Yeshiva, it could change its mind and refuse further recognition and negotiation.

There was an initial finding in 1994 by a trial judge for the NLRB that the faculty at the University of Pittsburgh, a public institution, was managerial under Yeshiva. That finding was eventually overturned by the full National Labor Relations Board which confirmed that the Court's decision was not applicable to public institutions.

Another interesting possibility raised by the Yeshiva decision, although it is not known to have happened since the decision was rendered in 1980, is that a college or university could, by revising its governance structure, conceivably bring its faculty into a framework that would meet the Court's definition of "managerial." It is probable that the reason it has not happened is because of the extraordinary "duality of authority" which exists in academe and is generally not present in industry. Thus, the typical academic structure makes the changing of lines of authority by revising the institution's by - laws in such a way as to deprive faculty of its traditional authority in an academic setting without the consent of the faculty relatively

difficult. To bring the faculty clearly within the parameters of the managerial function would probably require alterations in the traditional model of a balanced duality which, as has been stated, would probably be difficult to accomplish. J. Victor Baldridge, in his work, *Power and Conflict in the University*, described the "parallel authority structure" prevailing in higher education institutions in the following way:

The university's bureaucracy is not only multilayered but characterized by complicated parallel authority structures. At least two authority systems seem to be built into the university's formal structure. One is the bureaucratic network, with formal chains of command running from the trustees down to individual faculty members and students. Many critical decisions are made by bureaucratic officials who claim and exercise authority over given areas. As long as they go unchallenged they are free to exercise their authority. This is more often true in the relatively "routine" types of administration than in the "critical" areas; for example, a bureaucrat might act on his own authority in admissions processing, but in the critical area of changing the admissions standards, he would hesitate to act without consulting faculty. (Baldridge, 1971)

Whether one describes the typical academic authority structure as a "parallel authority structure" or as one of "duality," it is abundantly clear that this "blurring" of the line between management and labor which has been referred to above and which is essentially unique to the academic workplace, is central to the Supreme Court's decision in *Yeshiva*. It is also,

quite obviously, central to the organization, operation, and functioning of an academic union in general contrast to a traditional trade union.

There is also some concern by both management and labor about the possibility that the Court's decision in *Yeshiva* may impact in the corporate world as well as in the private sector of higher education. Those corporations that have employee representatives sitting on their boards of directors or some other form of employee participation in making policy decisions (known as Employee Involvement Schemes) which are deemed to be "managerial" might have their employees declared excluded under the Act consistent with the Court's decision in *Yeshiva*.

In 1992 the NLRB issued a decision declaring workplace committees to be violative of the Act (*Electromation Inc. and Teamsters Local 1049, AFL-CIO*, 309 NLRB 163 1992) In 1993 the NLRB issued a similar decision. (*E.I.DuPont de Nemours & Company and Chemical Workers Association Inc., International Brotherhood of DuPont Workers*, 311 NLRB 88 1993) In both cases the employer created the so-called workplace committees in order to give employees a voice in management. In the *Electromation* case the employer filed an appeal of the NLRB's decision and the U.S. Circuit Court of Appeals upheld the NLRB's decision declaring

the employer's workplace committees to be violative of the Act because they were employer controlled. (*Electromation Inc. v. NLRB and Teamsters Local 364*, CA-,92-4129) It is important to note that in both of these cases the unions involved (even though *Electromation* was not a unionized shop) opposed the committees on the very grounds on which the NLRB and the Circuit Court found that they violated the Act--employer established and employer controlled. More specifically, in *Electromation* they found the Action Committees to be unlawfully dominated labor organizations, and in *DuPont* they found that the employer unilaterally promulgated safety committees at unionized facilities in violation of section 8(a)(2) of the Act. While neither of these cases involved the exclusion of employees as managerial as in *Yeshiva*, they are based on the same National Labor Relations Act.

While so-called Employee Involvement Schemes have been associated only with industrial America, there is a growing apprehension that these two NLRB cases may obstruct collective bargaining rights for other professions, including college faculty. The unionized faculty in a higher education community presents a model in which cooperative behavior in the faculty senate need not be viewed as an impediment to union

representation and organizing. Collective bargaining in higher education is perhaps the only industry with a history of co-existence between collective bargaining and worker cooperation with management. It demonstrates a functional representation of how a workplace behaves through a shared governance model.

In academia, there has existed for quite a few years a governance system akin to Employee Involvement Schemes involving both faculty senates and certified faculty bargaining agents participating in the decision making process. With over one-third of the professoriate represented by certified bargaining agents and approximately 1,000 campuses organized, this paradigm is firmly in place and serves as an experimental laboratory for employee involvement within a unionized setting. (Douglas, 1992) It is of some concern that the Electromation and DuPont decisions by the NLRB may destroy that model by a finding that a faculty senate is an employer controlled employee organization and, therefore, in violation of the Act. On the other hand, it may turn out that the academic model of shared governance can be superimposed on the industrial model of authority delegation so that some forms of Employee Involvement Schemes may be found to be permissible under the Act. What the actual

outcome will be will, in all probability, be determined by future adjudications by the NLRB and/or by the courts or, by changes by Congress in the controlling legislation.

Significantly, both the industrial community and the higher education community have serious and major concerns as a result of the Supreme Court's decision in *Yeshiva* and the recent determinations in *Electromation* and *DuPont* by the National Labor Relations Board which have been upheld so far by the District Court. One result of this relatively recent creation of a community of interest might be closer cooperation between the industrial community and the academic community by utilizing their combined resources to overturn or modify the decisions which have had what many perceive to be negative effects in both worlds. While the unions generally oppose employer created and/or dominated committees and therefore support the NLRB's findings in *Electromation* and *DuPont* there is a realization that the NLRB may have used "too broad a brush" in its determinations which could have a negative impact on all types of employee participation in decision making. In *Yeshiva*, college and university managements generally applaud the Court's decision but, as has been stated, there is concern by management in the industrial community that *Yeshiva*

might be an additional inhibiting factor in trying to establish an Employee Participation Scheme which the company believes to be in the interest of good management and good employee - employer relations.

The dynamics and cross -currents of this rapidly developing dilemma, which confronts not only management and labor in all sectors of the economy, but also the courts and governing agencies, might well create the potential for important changes in labor - management relations in the not too distant future.

For example, there is a bill in the United States Senate known as the Team Act which has already been passed by the House of Representatives, which would amend the 1935 National Labor Relations Act to make clear that employers can establish worker-management groups to talk about issues like quality, productivity, and efficiency. The bill is supported by the Republicans and vehemently opposed by the Democrats and the unions. Those in opposition claim the bill is a "poison pill" that would undermine workers' rights and allow the creation of company dominated unions. The Republican support for the bill is so strong that their leaders have threatened to hold up other important legislation such as an increase in the minimum wage unless the Democrats support the Team Act.

(The New York Times, May 9, 1996) Obviously, this bill is an attempt to negate the rulings by the NLRB in Electromation and DuPont. This may well be only the beginning of the anticipated attempts to modify important legal aspects of labor relations in this country as discussed in the paragraphs above.

Chapter 5 The Hierarchical Structure of Academia

If one is to understand the organization, structure and functioning of an academic union, it is essential that the hierarchical structure of the typical institution of higher learning in which the academic union must function be examined. While there are, of course, variations among the multitude of colleges and universities, there is a core organizational structure common to almost all of them.

However unique the academic workplace may be, the dynamics recognized by many sociologists – occupational prestige, bureaucratic structure, rationalization, professionalism, and the interaction of culture and society are all clearly present. Interestingly, the literature makes only passing and relatively inconclusive reference as to what sociological/socio-economic factors are at work in the steadily, if slowly, growing national movement to unionize academics.

Bauman (1968) in discussing the interrelationship of culture and society states:

Human behavior, whether individual or collective, is invariably the result of two factors: the cognitive system as well as the goals and patterns of behavior as defined by culture systems, on the one

hand, and the system of real contingencies as defined by the social structure on the other. A complete interpretation and apprehension of social processes can be achieved only when both systems, as well as their interaction, are taken into consideration.

The literature is consistent in describing the difficulty of developing a model which reliably describes the the structure of a workplace where the professional is an employee earning a set salary in the same sense that a "blue collar" worker is an employee, but where the professional practices his/her profession with a considerable amount of professional autonomy.

Friedson (1986) argues that most organizations which employ professionals deviate substantially from the abstract model of "rational-legal bureaucracy" calling into question its usefulness as a "schematic representation of the realities of work in any large modern organization." Walton and McKersie (1965) expound on the behavioral theory in a collective bargaining context which stresses the importance of action rather than structure as the significant dynamic in determining the nature and function of workers and organizations.

The hierarchical dynamics of the professoriate are particularly fascinating and, of course, directly related to the typical academic and

organizational structure of the institution. Promotion through the ranks from instructor/lecturer to assistant professor to associate professor to full professor carries increased prestige along with additional salary for each rank. However, typically, the job assignment does not change with each promotion. In most cases the associate professor does not have supervisory responsibilities over the assistant professor, nor does the full professor have supervisory responsibilities over the associate or the assistant professor. In actuality, as a professor is promoted through the ranks in recognition of academic accomplishments such as publishing and research, the job expected to be performed is essentially unchanged from that of the lower rank. In fact, it is not uncommon for persons in the highest professorial rank to be given less responsibility than colleagues of a lower rank. This is at variance with the traditional structure in the corporate world which assumes not only enhanced prestige with a promotion, but also significantly more responsibility. The academic setting usually does not even provide for a clear line/staff relationship where department chairpersons are concerned. Not until the level of dean does one find a degree of traditional supervisory authority over professors. In a multi-campus university, even the over-all chancellor has limitations on his/her authority vis a vis the individual

college or campus presidents. These relatively unique elements in the structure of the academic setting are the result of the traditional concepts of faculty self governance and collegiality which are pervasive in the academic world. If an academic union is to function successfully in this kind of setting, it must structure itself so that it can function effectively as a union while not encroaching seriously on the faculty's traditional professional and academic rights involved in governance and in the traditional collegial environment.

The college or university in a given situation is structured organizationally in accordance with tradition and its perceived needs as to operational efficiency in order to carry out its mission. Obviously, the existence of an academic union and its impact on the structure and organization of the institution was not part of the planning at the time that most colleges and universities were established. The vertical structure of a higher learning institution would typically have a board of trustees at the top, constituting the "final" authority at the institution. The concept behind the establishment of a board of trustees in the private sector is similar to the concept of a board of directors in the corporate world. The trustees are generally reflective of the founders or principal backers and supporters of

the institution and they have the overall responsibility to make policy and to approve policy in every aspect of institutional operation and planning. Most private institutions (they frequently refer to themselves as "independent" rather than "private" because the former sounds less exclusionary) receive some public funds from state governments, either as straight subsidies or in the form of tuition assistance or both. Almost all institutions receive some federal monies in the form of grants for special projects or subsidies for special programs.

In public colleges and universities the trustees are usually political appointments. The concept behind a public board of trustees is usually to be a "lay" board with the same responsibilities as trustees in the private sector, but with the added responsibility of looking out for the "public good" in terms of how tax money is spent within an approved budget and in determining public policy. Because they are political appointments, trustees of public colleges and universities, in addition to their normal responsibilities as trustees, usually have an allegiance to a particular political party and/or a particular politician. This political allegiance, may compel a trustee to support a policy not necessarily in the best interests of the institution but important to a political party or politician

inorder to get appointed as a trustee in the first place, and inorder to be reappointed.

A vivid illustration of the kinds of difficulties which can arise because of this politicizing of the trustee appointment process is the recent resignation of Chancellor Thomas A. Bartlett of the State University of New York. He was appointed in 1993 by the then Democratic Governor Mario Cuomo. Governor George Pataki, a Republican, was elected Governor in 1994. As vacancies occurred on the University's Board, the Governor appointed trustees who are "loyal" to him. By 1996 he had appointed enough trustees to be just one short of a majority on the Board. The Chancellor resigned in May, 1996, effective June, 1996 stating that he could no longer function as Chancellor because of interference with his duties and lack of support by the minority members of the Board – particularly in inhibiting the University's and the Chancellor's ability to protest huge cuts in its operating budget and in student tuition assistance being proposed by the Governor. The Chancellor also felt that the newly appointed trustees were attempting to micro-manage the University by refusing to approve his recommendation for Provost and by attempting to

diminish the authority of the central administration against his recommendations. (New York Times, May 7, 1996)

At the City University of New York, another example of the political process and political involvement in the affairs of a public institution is the lead editorial in the Daily News of July 22, 1996 entitled "On CUNY, Just Say Go." The editorial reads, in part, as follows:

The pieces are in place for a desperately needed transfusion of new blood and new ideas into the City University of New York. All that's lacking is for Gov. Pataki to give the word.

This unique opportunity to rescue CUNY from its dead-end course as a second-chance high school comes because Pataki's appointees, teamed with those of Mayor Guliani, have just gained a majority on the university's governing body, the 15-member Board of Trustees. After a wasteful delay, the state Senate finally approved nine new appointments in the waning days of the legislative session.

The Board of Trustees has ultimate power over the 215,000 student system, from the physical plant of the 20 campuses to the curriculum; from admissions requirements to hiring a chancellor to carry out its policies. That's why this is a singular moment, with Pataki and Guliani, like minded in their reform plans, now having a solid board majority. Each has five representatives, with five members appointed by former Gov. Mario Cuomo still sitting. That's 10 votes for new thinking, or 11 if Cuomo pick Herman Badillo, a top Guliani adviser, joins the reform team....

Under a new chair, the board must work with the governor and the mayor to return CUNY to the mission of education. And end the politicized waste of university resources on side issues like

resistance to the historic welfare reforms instituted by the city. Indeed, that resistance perfectly illustrates the backward thinking that too often characterizes university leaders.

The trustees also need to reevaluate the 25-year legacy of open admissions. While the idea was well-intended and has benefited many youngsters who otherwise might have been denied a chance at college, the growing flood of unprepared students has had a corrosive effect on the university....

Aware of the political minefields, Pataki and Guliani have stepped gingerly around the question of a shakeup. They no longer have that luxury. The current leadership has made it abundantly clear that change will not come without a strong push from a new and demanding board.

The time for that push is now. As soon as it starts, CUNY will begin the long climb back to the top ranks of public universities.

The opinions expressed in this editorial by a newspaper which has one of the largest circulations in the country are certainly within appropriate bounds of freedom of expression by the media. But the intricacy and importance of political influence on all phases of a public university are graphically illustrated by its direct, some would say blatant, appeal to the governor and the mayor to impose their political philosophies on the academic, as well as other policies at CUNY.

There are, of course, valid arguments in support of having the trustees of public institutions accountable to the taxpayers. The normal

political process is the way of establishing that accountability. But the situations described above at the State University of New York and the City University of New York, while probably extreme examples of political interference, are an illustration of the down side of politically appointed trustees which constitutes a significant dynamic in analyzing the structure of a public institution of higher learning. This political dynamic is an important factor which must be dealt with effectively by a faculty union functioning in the public sector.

In both the private and public sectors the trustees appoint what, in the corporate world would be known as the CEO----Chief Executive Officer, and in the academic world is known as a Chancellor or President who serves at the pleasure of the Board of Trustees. Next in line will typically be various Vice-Chancellors or Vice-Presidents, each responsible for a specific phase of the institution's operation. In many institutions a Provost is appointed by the President or Chancellor to be in charge of the over-all academic program. Continuing the vertical structure analysis, Deans, appointed by management, responsible for particular schools or programs within the institution would be next in line of authority. Then come the associate and assistant Deans reporting directly to the Deans.

Academic department chairs, either appointed by management or elected by members of the academic department from among the faculty are next in line. If the academic chairs are appointed, they are an extension of management at the department level. If, however, the academic chairs are elected by members of their department, they then take on a duality of roles – part manager and part faculty member and, in some institutions, are included in the collective bargaining unit with the rest of the faculty. Non-faculty professionals, support staff and students, usually in that order, fill out the rest of the structure of authority in the traditional academic setting.

Burton R. Clark, in describing the status of the academic department, states:

The department becomes the basic unit of organization because it is where the imperatives of the discipline and the institution converge. It is a different vessel for academic labor than is the chair unit so common around the world, operating to diffuse status and power from the one academic to the many, enhancing collegial authority at the expense of personal dominion. ...Unabashedly committed to the single discipline, the department provides a supporting environment for master specialists and their apprentices at whatever cost to the integrated learning of neophytes. And it is particularly the power of disciplines behind departments that diminishes managerial hierarchy inside academic organizations. The tendency of professionalism to flatten bureaucratic hierarchies, now noticeable in business organizations and public bureaus as they switch to greater use of

human capital and the resources of knowledge, has long had its strongest expression in the academic world. (Clark, 1987)

Except for the role of elected academic chairs, the vertical managerial structure in higher education institutions is not unlike that of traditional corporate managerial structure with the exception that in many institutions the line/staff relationship which normally exists in the corporate model is less clear in the academic setting, again reflective of the collegiality/self- governance tradition. Obviously, the profit motive of the corporate sector is not a major factor in an academic setting, and not a factor at all in the public sector, nor are there stock holders involved. But there are tax payers and governmental politics involved in the public academic institutions and, in the highly competitive private or independent sector, parents must be willing to send their students and pay ever -increasing tuition and dormitory expenses. Also, in the private sector donors must be impressed enough with the work of a particular college or university to keep endowments at levels high enough to allow the institution to function at a desirable level. In recent years more and more public institutions are seeking donations and endowments from alumni, corporations, and

foundations in response to severe and constant reductions in the amount of public funds available to them.

An analysis of what might be called the horizontal hierarchical structure of a college or university illustrates the uniqueness of the enterprise. Here is where the faculty prerogatives of self-governance are the dominant factors. Governance plans and structures vary somewhat among American colleges and universities, but the description herein is typical, or, at least representative of most. A faculty senate at a college or university is generally an elected, representative body with major advisory responsibilities in the areas of curriculum, program offerings, degree granting, grading and academic standards. At multi-campus institutions there might be a faculty senate type organization at each campus with a university-wide senate functioning centrally. The actual authority granted to a faculty senate is usually defined in the institution's by-laws and/or governance plan. The faculty senate usually will have a multitude of sub-committees to make recommendations in each of its areas of responsibilities and interests, appointed from among the senators by the senate leaders, who are themselves elected by the senators. Some faculty senates have administrators, appointed to the senate by management, in some instances

with vote and in some instances without vote. There are some senates which have student representation as well.

Institutional by-laws usually establish what are known as personnel committees or personnel and budget committees which are not related to the senate bodies but which are primarily responsible for making recommendations in the areas of hiring, retaining, promoting, and tenuring personnel and, to some extent, budget allocation. These personnel committees usually exist and function at the academic department level and they make their recommendations to a college-wide or university-wide personnel committee which then recommends or fails to recommend to the college or university president or chancellor who in turn recommends or fails to recommend to the board of trustees. In large institutions there may be a personnel committee at the division or school level functioning between the department committee and the college or university-wide committee. Members of departmental personnel committees are typically elected by the members of the department and the committees are chaired by the academic department chairs. Members of personnel committees at division, school or college or university-wide levels are generally members by virtue of the position they hold – chairs of departments, deans of

divisions or schools, and the like. Usually the top level committee will be chaired by the president or chief academic officer of the institution. Some governance plans provide for student representation on personnel committees. Because of the very important and significant nature of the responsibilities of these committees, membership on them, especially at the department level where they are elected, carries some prestige for the individual. It is generally agreed that these personnel committees, made up largely, if not exclusively, of faculty, are performing the basic managerial functions which, in the corporate world, would be performed by supervisory and administrative personnel, and which, the United States Supreme Court found to be managerial to the extent of excluding Yeshiva University's faculty from the protection of the National Labor Relations Act. (444 U.S. 672, 1980) In addition to the governance structure described, each academic department or other form of academic entity at a college or university usually has its own internal committee structure to recommend departmental or school or division policies. It is apparent that committees and senates are an important part of academic life and that they are pervasive in the enterprise.

In addition to these campus or institution based entities, many faculty belong to and participate in professional organizations which promote their subject-matter disciplines, such as the Modern Language Association and its equivalent organizations for history, mathematics, English, and most of the other identifiable professional disciplines. They operate at the national, and sometimes international level. Most are based in Washington, D.C. and carry on some lobbying activities with Congress and other governmental agencies related to securing funding for research and to promoting the professional endeavors in their discipline. They also organize national and regional conferences which bring together the professoriate in their particular field for the purposes of keeping current with changes and discussions of the status of the discipline. Another function of these conferences can be , and often is, to present individual professors with opportunities to present professional papers in their disciplines, which not only enhance the individual's prestige, but frequently help them obtain promotions at their own institutions.

Students at most colleges and universities have their own governance structure provided by the by-laws of the institution which generally parallels the faculty senate structure. Student governments vary a

great deal among the institutions, but they typically have an over-all representative student senate elected by the students with responsibilities in the areas of student activities, student interests of all kinds, and the recommending of policies to faculty and to management which the students want to see modified or new policies which the students want to see established. In the larger institutions there are sometimes student "political parties" formed to advocate policies or individuals in the elections for the student senates. In many institutions students, acting through their elected leaders, have considerable influence on the daily operation of the institution. In public institutions student governments frequently become active in political activities such as lobbying for more funding for the institution or increased tuition assistance for students.

Students, after all, along with their parents, are the consumers in academia. In the corporate world consumers exert their influence and control by either purchasing or not purchasing the product. In academia, students and their families exercise the same kind of control to an extent, but there are some different factors at work. Employers, more and more, are demanding college degrees and society seems to be mandating higher education as the route to upward social and economic mobility. So that, in

some sense, a customer may have more latitude in deciding whether or not to purchase a specific product such as an automobile or a sofa than a student has in deciding whether or not to seek a college degree. Of course, the choice of which college to attend depends on many factors such as academic standing, ability to pay, programs being offered, geographic location and getting accepted – all of which keeps the entire endeavor competitive in nature.

It can be seen that, while there are similarities between the hierarchical structure of an institution in the corporate world and that of the academic institution, there are also distinct and important differences. Shared authority is much more prevalent and of much greater significance in the academic setting. This sharing of authority in the workplace is the single most complicating dynamic with which an academic union must cope when compared to a traditional trade union in industry. The factors of self-governance and collegiality frequently form the basis for arguing against the unionization of faculties by those opposed. Typically, the argument against is that, because of these unique factors, the so-called "industrial model" of the trade union is not appropriate in academia.

A successful academic union, must meet its obligation to its constituents to function as a union in the traditional mode of improving working conditions, salaries, fringe benefits, job security, promotional opportunities, and other terms and conditions of employment. It must also meet the expectations of its constituents by protecting and even nurturing, without interfering with, faculty governance bodies and the elaborate process of peer evaluation which are at the very core of the hierarchical structure of the academy. Professor Irwin Yellowitz, a labor historian at the City College of New York and an elected officer of the faculty union at CUNY wrote in an article published in *ACADEME*, a journal of the AAUP entitled, "Academic Governance and Collective Bargaining in the City University of New York":

Despite the myth that unionization destroys collegiality, the fact is that academic unions respect traditional governance where it has been well-established and is functional. Although union leaders believe a contractual relationship is a more effective tool for faculty than the consultative procedures of traditional governance, they respect the academic functions and responsibilities of senates and other bodies. (*ACADEME*, November-December 1987)

Herbert A. Shepard, in an article appearing in the *Administrative Science Quarterly*, December 1956, describing the

difference between industrial structure and science laboratory structure stated in part:

The scientific and professional organizational traditions are based on assumptions that are different from those of industry in some respects. In the first place, power is supposed to be exercised not from top to bottom, but sideways.... Unless a colleague's competence or honesty becomes suspect, he is expected to make all decisions relating to his work for himself. The idea of a boss is an anathema, as are the other external controls imposed by industrial methods of organization – in fact, they are held to be inconsistent with the basic tenets of professionalism. Professional people work as "senior" and "junior" rather than as "boss" and "subordinate" ...the professional thinks of a project as a group project, with each member of the team having independent responsibility vested in him.

This analysis, while describing the structure of a scientific laboratory in an industrial setting rather than the academic setting in a college or university, is in some ways similar to the vertical and contrasting horizontal structures described above as being typical of academia. Shepard was certainly not contemplating the unionization of the professionals in a science research laboratory in writing his description of the differences between the industrial and professional structures. If he were to contemplate such a possibility, he would almost certainly classify the unionization of these professionals as an anathema to professionalism along with his

characterization of a "boss" and "external controls" as "inconsistent with the basic tenets of professionalism."

The structure of the typical institution of higher learning, with its relatively unique, multi-faceted and diverse sources of internal and external authority and management, plus its preponderance of very highly educated professional staff, is a principle reason for examining the academic union in terms of its significant differences, if any, from the traditional trade union. The professoriate, it is generally agreed, constitutes a group which, by traditional criteria, is unlikely to embrace collective bargaining and unionism. The fact that more than one-third of the professoriate in this country is already unionized and the number is growing, albeit slowly, (The National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, CUNY, 1989) constitutes somewhat of a phenomenon at first glance, but further analysis seems to establish that when the same sociological and economic factors are present, professors react not unlike their blue and white collar counterparts in a work setting.

Caplow (1954) emphasizes the importance of occupational status in discussing what he identifies as "the three general trends which can be discerned in modern industrial society" – aggregation, differentiation,

and rationalization. He analyzes many different scales developed by several different researchers in an attempt to establish a reliable socio-economic classification of occupations. He notes that "prestige" appears to be a significant factor in all of the various scales, but that careful examination leads him to believe that there are enough other significant factors so as to conclude that "prestige" alone is not a reliable indicator of occupational status in a socio-economic sense. In fact, in discussing their views on the theory of occupations, Bauman (1968), Montagna (1974), and Friedson (1986) all tend to affirm, in their own ways, the difficulty of developing a model which reliably describes the structure of a workplace where the professional is an employee earning a set salary in the same sense that a "blue collar " worker is an employee, but where the professional practices his/her profession with a considerable amount of professional autonomy. The dynamics which they discuss of occupational prestige, bureaucratic structure, rationalization, professionalization, and the interaction of culture and society are all clearly factors in the academic workplace. The relative importance of each in influencing the professoriate toward embracing unionism is tantalizingly elusive.

The American Medical Association and the American Bar Association provide for their constituencies what Friedson speaks of as a “special form of protection from competition in capitalist labor markets.”

He goes on to describe this “special form of protection” as:

...one that benefits from labor market shelters. This protection can vary in its source and in its strength, with different outcomes for members of what are normally the same occupations in different countries. In the United States, and probably to a lesser extent in the United Kingdom, the means lie primarily in political activity on the part of occupational associations that seek to organize a loyal membership identified with the occupation itself and that negotiate with the state for the official support of market shelters for that occupation. (Friedson, 1986)

This “special form of protection” is also what the national and state affiliates of academic unions seek to provide to their constituents. With “political activity” and “negotiating” and lobbying “with the state on behalf of the occupation” the affiliates do provide “labor market shelters” as well as a sense of class with its accompanying enhanced prestige and, to some extent, increased control of their profession. The American Association of University Professors was the earliest of the national affiliates in the field, early in the century, to advocate protections and advancement for academic freedom and tenure. The American Federation of Teachers and the National Education Association entered the higher

education field much later (in the late 1960s) but sought to provide the same kind of “special form of protection” and feeling of enhanced dignity and control. History would indicate that while the AAUP was the principal (perhaps the only) provider of “market protection” to academics for many years, the AFT and the NEA now represent more professional academics for collective bargaining purposes. Arguably, the AFT has done a better job of providing its members with a sense of class than have its competitors, indicated by its relatively rapid acceptance by so much of the profession.

Chapter 6 Non-Faculty Unions in Academia

There are many unions which fit the label of a "traditional trade union" involved in the academic enterprise. In many institutions maintenance workers, elevator operators, boiler men, security personnel, carpenters, electricians, engineers, construction workers and the like are represented by unions. Most frequently the unions which represent these personnel are active in the industrial world, such as the Teamsters, the United Automobile Workers, various District Councils within national and international public employee unions, particularly those of the American Federation of State, County and Municipal Employees (AFSCME) which is the largest public employee union in the country, and the Service Employees International Union (SEIU) which is also very large, plus myriad other unions, most of which are affiliated with the AFL-CIO. Secretarial and office personnel are also unionized in many colleges and universities.

In a small but growing number of institutions graduate students are organized separately from faculty, sometimes as independent unions and sometimes represented by established trade unions. In some situations graduate students, even those who teach part of the time, have been ruled by

statutory supervising agencies to be students and not employees and therefore not entitled to bargain collectively under the law. In other situations, either with different laws or different interpretations of the law, graduate students who teach are considered to be part-time employees who are entitled to the protection of the prevailing statute.

The unionization of non-faculty employees is receiving heightened interest partly as the result of high visibility union organizing successes at Yale, Columbia, Harvard, and the Universities of Illinois and Minnesota. A survey conducted in 1991 and 1992 of 2,720 campuses by Richard Hurd and Elizabeth O'Leary of the Cornell School of Industrial and Labor Relations found that 383,689 non-faculty personnel are covered by collective bargaining agreements on 836 campuses. This exceeds the number of reported unionized faculty by 154,842. However, 922 campuses in the survey reported that faculty are covered by collective bargaining agreements – 86 more than those reporting at least one non-faculty bargaining agreement. Overall 38.7% of the campuses responding to the survey reported at least one non-faculty bargaining unit. The survey also showed that, similar to faculty unionization, public campuses are more likely to have unionized non-faculty units, with 55.7% of public and 16.8%

of private reporting one or more non-faculty bargaining units. They also found that non-faculty unionization is notably more prevalent in the Northeast, the Midwest and on the Pacific coast than elsewhere, and that this also parallels faculty unionization. The survey also reports that, among non-faculty employees, approximately 43.8% of blue collar employees are unionized compared to approximately 31.1% of white collar employees. The total number of blue collar workers reported as being covered by agreements is 93,207. The total number of white collar workers reported covered by agreements is 204,167. The survey reported that 86,324 employees are in mixed white collar/blue collar units. In terms of absolute numbers, many more non-faculty white collar employees are unionized than non-faculty blue collar employees. Among white collar workers, approximately 40.4% of clericals are represented by unions, compared to approximately 24.4% of professional and technical workers.

Significantly, Nebraska, Nevada, South Dakota, Tennessee and Texas reported certified non-faculty bargaining units in this survey and reported none in a previous survey approximately two years earlier. Additionally, in this survey 135,663 more non-faculty personnel were reported covered by collective bargaining agreements than in the earlier

survey. A total of 61 more campuses reported having at least one non-faculty collective bargaining agreement in this survey than in the previous one.

Approximately 34% of the campuses with non-faculty bargaining units report single units while approximately 64% report multiple units. Of the 281 campuses with single units, 44 have clerical locals, 5 have white collar mixed locals, 2 have professional units, 137 have white collar/blue collar mixed locals, and 93 have blue collar locals. Of the 555 campuses with multiple units, the breakdown is as follows: 288 have clerical locals, 202 have white collar mixed locals, 171 have professional locals, 143 have white collar/blue collar locals, and 397 have blue collar locals.

The survey also reveals that the presence of unions among non-faculty employees in the private sector is heavily concentrated in the Northeast. Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania account for 53.7% of the private sector campuses with blue collar unions and 74.1% of those with white collar unions.

Interestingly, while the survey confirmed that public sector colleges and universities are more apt to have unionized faculty and non-

faculty employees, the survey also showed that private sector institutions are more apt to have unionized blue collar employees. Of the 159 private institutions of higher education reporting at least one collective bargaining agreement for non-faculty employees, 136 or 85.5% employ unionized blue collar workers. The comparable figure for the public sector is 53.0%.

In determining which unions represent non-faculty employees the survey reported that at least fifty different national unions represent subgroups of non-faculty employees in higher education. In four out of five occupational categories (clerical, white collar mixed, blue collar, and white collar/blue collar mixed), The American Federation of State and County Municipal Employees (AFSCME) and the Service Employees International Union (SEIU) are, in that order, the two leading unions. It is only in the professional category that these two unions do not lead. AFSCME represents clerical employees at 168 campuses and SEIU represents clerical employees at 32 campuses according to the survey. The American Federation of Teachers (AFT) represents clericals at 32 campuses and the National Education Association (NEA) represents clericals at 27 campuses. The Office and Professional Employees International Union (OPEIU), which has an established tradition of representing clerical employees, has

units on 20 campuses. In the white collar mixed category, AFSCME has units on 57 campuses and SEIU has units on 46 campuses. Also in that category, AFT has units on 52 campuses and NEA is present on 15 campuses. In the blue collar category, AFSCME has 173 campuses, SEIU has 93 campuses, the Teamsters have 54 campuses, and the United Automobile Workers have 24 campuses. The skilled trades are represented by the Operating Engineers on 86 campuses, the International Brotherhood of Electrical Workers on 50 campuses, combined Building and Construction Trades on 35 campuses, the Carpenters on 29 campuses, the Laborers on 25 campuses, and the Firemen and Oilers on 25 campuses.

In the professional category, the Nurses have units on 96 campuses, AFT has units on 59 campuses, AFSCME on 27 campuses, and NEA on 14 campuses. In the white collar/blue collar category, AFSCME has units on 107 campuses, SEIU on 55 campuses, NEA on 37 campuses, AFT on 19 campuses, and the Teamsters on 16 campuses. Independent unions, with no state or national affiliation, were also reported in the survey. They are particularly frequent among professional employees, and in some cases represent workers at multi-campus institutions. An example of such an

independent union is the University Association of Physicians and Dentists which represents professional employees in California.

This more recent survey establishes that the unionization of non-faculty workers in higher education institutions is significantly more widespread than it was only a few years before. A relatively high rate of unionization of clerical workers has been confirmed. The geographic concentration of unionization at private sector institutions in a half dozen Northeastern states is new and valuable information. It should be noted here that non-faculty are not affected by the United States Supreme Court's *Yeshiva* Decision that faculty, under certain conditions, are management and therefore not entitled to the protection of the National Labor Relations Act. (444 U.S 682, 1980)

Although the survey does not include this kind of breakdown, it is apparent that non-faculty employees are unionized at some "elite" or "ivy league" institutions where faculty are not unionized. This is particularly true of clerical employees in the Northeast such as those at Yale University, New York University, and at Barnard College to name just three. The high visibility referred to at the beginning of this chapter is a product of coverage

in the print media of strikes and demonstrations by non-faculty employee organizations, especially when any kind of disruption takes place.

At Yale, the Federation of University Employees represents, not only clericals, but also, in a separate local, cooks, janitors, and researchers. Both locals had waged strikes early in 1996 over the issue of Yale's right to contract out tasks currently performed by union personnel. Although the workers are back on the job, they have been working without a contract since January, 1996, almost six months prior to this writing. At the time of Yale's 1996 commencement ceremonies the AFL-CIO and the Federation of University Employees staged a parallel ceremony nearby which they called "The People's Commencement" and which drew busloads of workers from across the Northeast. The Reverend Jesse Jackson was the main speaker, which probably accounted for a good deal of the publicity. He called attention to the fact that workers making as little as \$23,000 a year in one of the country's wealthiest states at one of the most heavily endowed universities were struggling to save their jobs. Although the crowd was estimated to be about 4,000 people, and although the organizers had threatened to disrupt the University's commencement exercises, the rallyers

took pains not to disrupt the regular commencement proceedings. (The New York Times, May 28, 1996)

At Barnard College, also at commencement time in 1996, some graduating seniors had their diplomas temporarily withheld and were subject to disciplinary hearings because they participated in demonstrations in support of organized clerical employees represented by Local 2110 of the United Auto Workers who were on strike.

At New York University, (a private institution) although the faculty and professional staff are not unionized, clerical and other support staff are represented by Local 3882 of the American Federation of Teachers which has conducted strikes against the University in past years. Although there have been no strikes at the City University of New York, the second largest union, next to the Professional Staff Congress, is Local 384, District Council 37 of AFSCME which represents secretarial personnel.

Moving toward the Midwest, the University of Cincinnati saw its clerical workers, represented by District 925 of the Service Employees International Union strike for three days in September of 1992 in order to force the resumption of negotiations. On September 28, clerical workers walked off their jobs at the University's five campuses. On October 1, the

University agreed to resume negotiations. (Government Employee Relations Report, October 5, 1992) While there have been strikes and job actions over the years by faculty unions affiliated with each of the three national unions representing faculty – the National Education Association, the American Federation of Teachers, and the American Association of University Professors, the non-faculty unions, which generally threaten and cause more disruption, seem to attract more media attention. When faculty organizations decide to withhold their services the teaching faculty frequently hold classes off campus so as not to interrupt their students' progress. Also, experience has shown that typically, a significantly smaller percentage of faculty members support their union's strike activities than do non-faculty. This results in less disruption which tends to weaken the impact of the strike. On the other hand, institutions cannot easily function for long periods of time without the services of maintenance workers, secretaries, heating engineers, security personnel, etc. Inasmuch as these are the workers who, as has been stated, tend to support their striking unions in large part, the disruption of the normal functioning of the institution is apt to be substantial. Students frequently sympathize with the issues raised by these relatively lower paid employees and sometimes join the picket lines or other activities sponsored

by the striking union (as they did at Yale and Barnard) which generally enhances the impact of the strike. The media tend to generate more news coverage when there is disruption and when students get involved, which also enhances the impact of a strike.

One does not need to look far to find the reasons behind the increase in the unionization of non-faculty employees in academia. In times when organized labor is experiencing dramatic losses in membership throughout the nation, the academic arena presents the opportunity for substantial numbers of new members with its attendant increased financial benefits as well as potentially increased vitality and influence. Organizing non-faculty in academic institutions does not present the difficult problems of the perceptions of professionalism generally held by the professoriate nor the innate problems of the faculty's right to govern itself and the concept of peer evaluation. This fertile "new" territory can perhaps be best appreciated in terms of its importance to organized labor by reference to the following comparisons of the percentage of unionized workers in seven industrialized countries furnished by the National Bureau of Economic Research in 1993:

Table 1: Rates of Unionization

Country	Unionization Rate
United States	16%
Sweden	96%
United Kingdom	51%
Italy	45%
Germany	43%
Canada	36%
Japan	28%

There are various estimates being published in 1996 which put the unionization figure for the United States anywhere from 13.5% to 15%. The Bureau of Labor Statistics released the following figures on the decline of union membership in its report in 1993 which would appear to give credence to such estimates:

Table 2: The Decline of Union Membership

Year	Union membership (in thousands)	Percent of work force
1974	18,090	23.6
1975	18,218	22.2
1976	17,403	22.1
1977	19,335	23.8
1978	19,548	23.0
1979	20,986	24.1
1980	20,095	23.0
1981	N/A*	N/A*
1982	N/A*	N/A*
1983	17,717	20.1
1984	17,340	18.8
1985	16,966	18.0
1986	16,975	17.5
1987	16,913	17.0
1988	17,002	16.8
1989	16,960	16.4
1990	16,740	16.1
1991	16,568	16.1
1992	16,390	15.8

*Due to changes in recording standards, no data is available from the Bureau of Labor Statistics for 1981 and 1982.

Regardless of which figures are the most accurate, it can readily be seen that organized labor is suffering from a serious decline in its influence concomitant with its decline in membership. The organization of public employees has been increasing fairly steadily over the last twenty - five years which has kept the over-all union membership percentage from being even lower than it is. Without the obstacle presented by an adverse Supreme Court decision, the organization of non-faculty employees in an academic setting can be expected to continue to increase for the foreseeable future.

Academic unions, particularly but not exclusively those affiliated with the American Federation of Teachers, and thereby also with the AFL-CIO, generally establish productive, or at least cooperative, relationships with non- faculty unions on their campuses and in their communities. In urban areas faculty unions frequently participate as members of central labor committees and/or municipal labor committees which are made up of trade unions from the particular geographical area. As described in another chapter, in New York City, unions representing the faculties and professional staffs at the City University of New York and the Fashion Institute of Technology joined with all of the other municipal

employee unions as participants in the coalition bargaining precipitated by the *de facto* bankruptcy of the City in 1975-76. To this date, health insurance benefits for all public employees in New York City, including those in the public colleges, are negotiated with the City by the Municipal Labor Committee on which the academic unions are represented and in which they actively participate. It is also not uncommon for academic unions and the rest of the trade union movement in a particular governmental sub-division to work cooperatively on legislation which is mutually beneficial. The same may be said in terms of cooperation in political campaigns at local, state and federal levels. Another area of cooperation relates to job actions by one union being supported by other unions, including academic unions, by walking picket lines, supplying strikers with food and drink while they walk the picket lines, advertising support for the job action in the media, and, not infrequently, providing financial support.

An unusual example of cooperation between a national industrial union and an academic union took place in Michigan in 1972-73. The faculty and professional staff at Wayne State University, a unit of the public universities in the state, voted to be represented by the American

Association of University Professors in a representative election in 1972. When it came time to negotiate their first contract with the University, the AAUP Chapter at Wayne State received considerable assistance, both directly and indirectly from the United Automobile Workers of America. The UAW, which, of course, is the predominant union in the Detroit area, and had been a part of the labor scene at Wayne State through its involvement over the years with the non-faculty unions which achieved recognition status in 1970, was not only supportive politically of the unionization of the Wayne State faculty and professional staff, but also shared its expertise in contract negotiations with the AAUP Chapter, which had no experience in negotiations, by providing staff assistance and advice during the negotiation of their first collective bargaining agreement. The UAW also provided training and assistance to the AAUP Chapter at Eastern Michigan University when it began to bargain collectively in 1973. (National Center for the Study of Collective Bargaining in Higher Education Proceedings, Baruch College, April, 1983)

If current trends of reduced funding, increasing tuition rates, institutional down-sizing, and generally increasingly difficult times for the higher education enterprise in this country continue, there is every reason to

believe that, just as the competing national unions involved in representing faculty (NEA, AFT, AAUP) are moving closer and closer to becoming a unified force in order to better serve their constituents, all the unions involved in the academic world will be compelled to work more and more closely together as a matter of self preservation, regardless of differences in affiliations and regardless of any historical or traditional competitiveness that may exist.

Notwithstanding the many areas of cooperation between some academic unions and some industrial/trade unions, it would not be accurate to state that academic unions and the rest of the union world function as an integrated unit. The National Education Association and the American Association of University Professors are "outside" the organized labor movement. Not only are they not part of the organized labor scene, the two national organizations mentioned above have a history of very strong opposition to becoming a part of "labor" as they generally refer to the AFL-CIO organizations. Historically this opposition has been based mainly on the perception that it would not be in keeping with their image of themselves as "professionals" as differentiated from "workers," or worse, "laborers." This concept of it not being in keeping with

"professionalism" to be a part of the AFL-CIO has been the principle argument used against the AFT in representation campaigns at colleges and universities throughout the country. Robert Nielson and Irwin Polishook in an article entitled "Higher Education and Collective Bargaining, Past, Present, and Future," published in the Summer/Fall 1985 edition of The Journal of the College and University Personnel Association state, in the opening paragraphs:

In each college level collective bargaining election undertaken by the American Federation of Teachers, the common opposition theme, no matter who the opponent, can be summarized in a single sentence: 'The AFT will bring industrial-model collective bargaining to the university.' This idea stands as a politely vulgar accusation that an AFT (AFL-CIO) local will, by some crude metamorphosis, industrialize the university. By this simple phrase, all those who understand that a university is not a factory are gathered under the same umbrella. As a piece of campaign rhetoric, the 'industrial model' is pure magic. It appeals to anyone who wants the slightest excuse to vote against a union and usually encompasses those who have honest reservations about the appropriateness of collective bargaining. (Robert Nielson was director of Higher Education for the AFT and Irwin Polishook is an AFT Vice-President as well as the current President of the faculty union at CUNY)

The "industrial model" referred to above is commonly accepted to mean a *modus operandi* wherein the union is adversarial on practically all matters promulgated or advocated by management and where the line

between labor and management is clearly defined – in contrast to an academic setting.

In the 1960s the same argument was used in the representation campaigns in the elementary and secondary schools by the NEA against the AFT. Somewhat ironically, an important factor in the success of the AFT, especially in the urban areas, and especially in the elementary and secondary sector, has been the more militant stance of the AFT locals, and their involvement with organized labor. In 1973, in a publication called *Professors, Unions, and American Higher Education*, Ladd and Lipset stated:

The changes in the self-conception and activities of the AAUP and the NEA clearly have been precipitated by recent successes of the AFT . Not until the 1960s did teacher unionism really gain momentum, starting with the victory of the AFT New York City affiliate, the United Federation of Teachers in a 1961 collective bargaining election. The union then began to win representation rights and contracts with school boards in major cities and assorted communities across the country.

The animosities by some parties, especially in higher education, on the matter of being part of the AFL-CIO continue to be so strong, that even as the NEA and the AFT move ever closer together through cooperation in seeking what have become common goals, including

serious discussions of merger, the prevailing thought is that, should a merger be accomplished, each formerly NEA local will be allowed to determine for itself whether or not to affiliate with the AFL-CIO. While the leaders of the AFT are not overly pleased with that kind of an arrangement, they realize that a merger with the NEA would not be possible if affiliation with the AFL-CIO were to be mandatory. There is some speculation that the NEA at the national level would be willing to work out some working arrangement with the AFL-CIO, but it is well known that many, if not most, NEA locals would be opposed. For its part, the American Association of University Professors is staying on the sidelines as far as formal talks about an NEA-AFT merger are concerned. It is, however, on friendly, and to some extent, cooperative terms with both organizations and is being kept informed of developments on that front. In the event a merger does occur, the AAUP and the newly merged organization would probably agree on the advantages of working out a formal cooperative arrangement between them. It is likely, based on their history, that many of the local chapters of the AAUP would be even more violently opposed to an affiliation with the AFL-CIO than the NEA locals.

Non-faculty unions are an important and growing segment of the academic workplace. As long as there continues to be serious disagreement among the various faculty/academic unions in regards to being a part of organized labor through affiliation with the AFL-CIO, (a factor which is almost non-existent among the non-faculty unions) faculty unions will probably not become a fully integrated part of the labor movement and, thereby, will probably remain on the fringes of the movement. Being on the fringes of the organized labor movement instead of becoming integrated with it may well cause faculty unions some degree of loss when it becomes desirable or, perhaps even necessary, to marshal the combined strength and utilize the resources of the entire union movement. It is, of course, possible that ingrained attitudes and policies will change, and that the resistance of many academics and their representative organizations to becoming a part of organized labor that now exists will dissipate. The same dynamics which have brought the NEA, the AFT, and the AAUP to a point where they are working more closely together than ever before in their history could, conceivably, hasten the time when perceived or real differences between the professoriate's image of themselves as "professionals" as opposed to "employees" or, even worse, in some

instances, "workers," will no longer constitute a seemingly insurmountable hurdle to bringing about the integration of academic unions with the rest of the union movement. If organized labor in this country begins to achieve some successes, and, even if that does not happen, if the financial woes of the higher education enterprise continue (and they are very likely to, at least for the foreseeable future), tapping in to the resources of the entire union movement, not only those involved in higher education, may become attractive enough and necessary enough for the opposing factions within the professoriate to change their policy.

Chapter 7 Opinions on Academic Unionism

In 1969, in an attempt to determine the attitude of academics toward collective bargaining by faculty, the Carnegie Commission on Higher Education and the United States Office of Education, Department of Health, Education And Welfare sponsored a survey of teaching faculty administered by the Survey and Research Center of the University of California, Berkeley, with advice and technical assistance from the Office of Research of the American Council on Education. Responses to the Carnegie Survey numbered 60,028. (It is important to note that this survey was conducted in a year when faculty unions had not yet appeared in any significant numbers.)

Nearly three-fifths (59%) of all academics in the survey gave general endorsement to the principle of collective bargaining by rejecting the proposition that "collective bargaining by faculty members has no place in a college or university." Almost half (47%) were in agreement with the statement that "there are circumstances in which a strike would be a legitimate means of collective action for faculty members."

In 1972, three years after the Carnegie Survey, during which there was a very substantial growth in the number of colleges and universities at which faculty unions had emerged, Ladd and Lipset conducted a much smaller survey of 471 academics who had responded to the Carnegie Survey. In the later survey 43% agreed "that the recent growth of unionization of college and university faculty is beneficial and should be extended," while 44% disagreed, and 13% entertained conflicting assessments. (Ladd and Lipset, 1973) In their 1973 publication entitled *Professors, Unions, and American Higher Education*, which received a great deal of attention and was considered to be the "definitive work" of its kind at that time, Ladd and Lipset concluded that "a fairly high measure of abstract support for collective bargaining and militant action existed in spring, 1969, and, that after three years in which unionization had made considerable headway, academe was evenly divided as to its benefits."

They went on to conclude in that publication that:

Faculty employed in the lower tier of academe – in terms of scholarly prestige, financial resources, and economic benefits – and those who are in the lower ranks, lack tenure, and who are younger, are much more likely to favor organized collective action. Not surprisingly, considering the traditional association in society of support for trade unionism with liberal views, and the historic experience of the AFT, our data show liberal to left

professors much more pro-union than their conservative colleagues. Those who perceive themselves on the political left – i.e., have backed liberal candidates, hold liberal attitudes on a variety of community political issues, support compensatory programs for blacks, are favorable to campus activism, support greater power for students within higher education, and want to change the governance system of higher education to increase faculty power – are more likely to endorse collective bargaining and faculty strikes and to view increased unionization as a good thing.

They stress what they describe as the "class interest" hypothesis – "professors of low scholarly achievements give greater backing to the principles of collective bargaining than do their more productive colleagues; untenured professors more than those with tenure; and academics with low salaries are more supportive than their better-rewarded associates."

Halsey and Trow, in their publication entitled *British Academics* published in 1971, found a comparable pattern in Great Britain regarding support for the Association of University Teachers (A.U.T.), an organization comprising about 60% of British university teachers that is half-way between a full fledged trade union and a traditional professional association. They note that: "The A.U.T. had its origins before World War I 'among the non-professional staff of the new civic universities.' It has

continued to be weakest among the 'higher ranks' and in the ancient elite centers, Oxford and Cambridge."

Aussieker and Garbarino, in their publication entitled *Measuring Faculty Unionism: Quality and Quantity* reported similar findings in a March, 1973 study which showed that: "Two thirds of faculty who have selected bargaining representatives are to be found in schools of the 'low category' or in two year community colleges." They go on to state: "No high quality universities are currently represented and most of the unionized staff classified as 'medium quality' schools are in the extremely heterogeneous and multi-campus New York public universities."

Somewhat surprising are the data in the aforementioned 1969 Carnegie Survey which show that, at the schools classified as "elite" – where collegial conditions are believed to be the strongest, and where faculty are paid more and are generally believed to be better off than their colleagues at other institutions, 38% agreed, compared with 29% at the "lowest tier" institutions, that junior faculty have too little to say in departmental decisions. Forty-seven percent agreed, compared with 38% at the "lowest tier" institutions, that a small group of senior faculty holds disproportionate influence, and 42% agreed, compared with 38% at the

"lowest tier" institutions, that undergraduate education would be improved if faculty and students had full control.

Ladd and Lipset explain the apparent fact that faculty at the "elite" institutions recognize, in greater proportions, problems and weaknesses of existing governance structures than do those in the "lowest tier" institutions by the following analysis:

Elite school faculty, while operating in environments that generally are more 'democratic' – that is, with greater scope for individual initiative – are at the same time more demanding. They bring much higher expectations. College teaching at places of low academic standing less resembles a profession, so faculty in such positions thereby see less of a clash between their status and the norms of unionism. But they are not, at the same time, the most critical of existing governance practices. (Ladd and Lipset, 1973)

In their analysis of sources of support for faculty unionism they report:

Analysis of the 1969 and 1972 surveys of academic opinion sustains the interpretation that support for faculty unionism and collective bargaining has two independent sources – apart from the general economic and political climate in which higher education finds itself. Large, apparently growing, segments of the professoriate occupy positions that give them a kind of "class interest" in the development of unionism. They are at institutions where faculty have less professional independence, are relatively poorly compensated economically, or receive low recognition. The least professional – i.e., "profession like" – sectors of academe are the most supportive of faculty unions. At the same

time, views on unionism are a function of general ideological orientations. Academics have long been distinguished by a disproportionate commitment to liberal-left politics, and this has deepened during the recent period of anti-war protest and student activism. (Ladd and Lipset, 1973)

In further analysis of why "upper tier" professors do not support faculty unionism as strongly as those at "lesser four year institutions and community colleges," they note:

Professors at upper-tier schools, and highly achieving academics in general, are significantly cross-pressured with regard to faculty unionism: their liberalism would incline them to support it; but their objective interests and the general structure of their academic values bring them into opposition....The relative lack of support for unionization among professors of high attainment exists not because of, but in spite of, their broad ideological commitments, and is testimony to the strength of competing interests and values. (Ladd and Lipset, 1973)

It is interesting to note that, in all of the above mentioned surveys and publications – The Carnegie Survey, Ladd and Lipset's survey and publication, Halsey and Trow's publication, and Aussieker and Gabarino's publication – strong emphasis is placed on grouping both institutions and professors into categories, more or less arbitrarily arrived at, by perceived status, labeled variously as "elite center of higher education," "lesser institutions," "low scholarly achievement," "schools of the low category," "more productive colleagues," "lowest tier," "academically

weaker institutions," "professors of high attainment." To many observers this kind of arbitrary classification of both institutions and professors in to "high," "medium," or "low" categories would seem excessively subjective and, probably, to be unabashedly elitist. But, within the higher education community, these kinds of delineations are generally accepted as an intrinsic characteristic of the enterprise. Burton R. Clark states:

In a system so much given to diversity, competition, and hierarchy, there are powerful reasons why inclusive bodies in the form of unions are stongest where discipline and status matter least, and weakest where discipline and status count the most. Issues left for unions are then largely economic and managerial in a domain where leadership and stature flow to those who most effectively attend to their focused scholarship and take up the roles of salaried entrepreneurs. For their members, the disciplinary associations, able to build on a substantial consciousness of kind, are often impressive symbols of professional community. The NEA, the AFT, and sometimes the AAUP, in contrast, have only a weak base of common consciousness upon which to operate as vehicles of shared identity. Their base lies in local strains between "workers and management." (Clark, 1987)

On the issue of categorizing faculty on the basis of the perceived academic prowess of the institution at which they work rather than on the value of their work to society, the union movement is in strong disagreement.

In a sociological discussion of “class determination” the Marxist concept of class would be defined as either being “bourgeoisie” or “proletariat.” If the “bourgeoisie” are defined as “those who either own or control the means of production” it is doubtful that academics fit into that class. That leaves the “proletariat” class in which to place academics. The criteria describing the “proletariat” class are generally agreed to be “working class/industrial wage earners possessing neither property nor capital and living by the sale of their labor.” Academics do not seem to fit comfortably into that class either. Many sociologists agree that there is a need to describe and define a middle ground of wage earners and so-called “non-productive workers” who do not fit easily into the polarized definitions of class limited to the “bourgeoisie” and the “proletariat.” Some argue that the various non-proletarian, non-bourgeois positions constitute a new class in its own right. This new class has been defined in various ways. Barbara and John Ehrenreich argue that the new class - “the professional-managerial class” in their analysis - is defined by common positions within the social relations of reproduction of capitalist class relations. They view this new class as a new kind of subordinate class within capitalism. (Walker, 1979)

Erik Wright raises the question as to whether or not the “new class” rubric makes clear how the diverse categories of intellectuals subsumed under that class definition share common interests based on exploitation or occupy a common position within the social relations of production. He has proposed a different conceptualization of class for the “middle class” which he calls “contradictory locations” which involves combining characteristics of both the exploited and those who exploit, and which he is continually modifying in efforts to more effectively define the class characteristics of those who don’t fit comfortably into either the “bourgeoisie” or the “proletariat” class distinctions. (Wright, 1985) Unions have historically and traditionally embraced the concept of the exploitation of the proletariat as a class as the catalyst for their very existence and activity.

Academic professionals probably cannot easily be identified as part of a class within an established sociological class grouping, whatever the nomenclature, because of their relatively unique status of being, to some degree, entrepreneurs while at the same time being “workers” in the traditional sense. However, if one were to embrace Ladd and Lipset’s concept of “class interest,” then one might conjecture that among academics

there are readily identifiable sub-classes: faculty at the so-called elite institutions where they have more control over production, faculty at the rest of the colleges and universities where they have less control over production, and faculty at the two-year institutions where they have very little or no control over production. Additionally, within each of those sub-groups the academic professional support staff other than faculty who have many of the same interests and concerns of faculty but also frequently are not seen as on the same academic or prestige level as faculty, may constitute a distinguishable group. It is important to note that faculty can and do move from one group or sub-class to another with relative ease as opportunities present themselves and circumstances change.

The American Association of University Professors, in a 1987 statement on collective bargaining, expressed the following point of view on faculty unionism:

Collective bargaining should not replace, but rather should assure effective traditional forms of shared governance.... From a faculty perspective, collective bargaining can strengthen shared governance by specifying and assuring the faculty role in institutional decision making.... From an administration perspective, contractual clarification and arbitral review of shared governance can reduce the conflicts occasioned by ill-defined or contested allocation of responsibility and thereby enhance consensus and cooperation in academic governance. When

legislatures, judicial authorities, boards, administrators, or faculty act on the mistaken assumption that collective bargaining is incompatible with collegial governance, they do a grave disservice to the very institutions they seek to serve. (Statement on Academic Government for Institutions Engaged in Collective Bargaining, AAUP, 1987)

In an effort to ascertain attitudes toward faculty unionism and to identify perceived differences between academic unions and trade unions held by faculty, administrators, union leaders, and professional neutrals (arbitrators and mediators) currently working in higher education, this investigator interviewed subjects from each of those classifications. While the numbers of those interviewed are not large enough to form the basis of scientifically reliable data, representatives from public and private colleges and universities, unionized and non-unionized institutions were interviewed. In some instances, where interviews were not practicable, written responses were solicited. Thirty faculty were interviewed--ten each from a small, private, liberal arts college for women where the faculty is unionized and represented by a local chapter of the AAUP, a large, comprehensive, private university where the faculty is not unionized, and a multi-campus, public university where the faculty is unionized and was formerly jointly represented by an NEA/AFT local, and is currently represented by a local of

the AFT which also has a working affiliation agreement with the AAUP.

Nine of the most prominent academic union leaders from different parts of the country and different kinds of institutions, five professional neutrals, also from different parts of the country, and ten representatives of academic management from different kinds of institutions, from different levels of management, and from different parts of the country have contributed their thoughts and opinions to this study. Wherever statements are attributed to specific individuals, permission has been received to do so.

Faculty members at Marymount College in Tarrytown, New York, about 30 miles north of New York City, expressed general satisfaction with their AAUP representation and the collective bargaining agreements achieved on their behalf. The college is a small, private, liberal arts school for women and has been involved in collective bargaining since the late seventies. Several of the faculty interviewed expressed appreciation and admiration for the work done by their elected union leaders – all on a volunteer basis. All agreed that collective bargaining is an appropriate vehicle for collective action by faculty and that it is in keeping with acceptable standards of professionalism. They described the labor-management relationship at the college as basically non-adversarial in the

sense that there is little or no vitriolic rhetoric between the parties and that there is unlikely to be an occasion for a job action by the faculty. In response to a question asking if they thought they were better off professionally in terms of working conditions and salary as a result of collective bargaining, there was unanimous affirmation. Those interviewed represented different disciplines and included three academic department chairs as well as teaching faculty, and relatively new faculty as well as senior faculty. The high degree of unanimity of responses probably reflects an institution where 100% of the faculty belong to the faculty union and where the suburban setting and religious foundation of the college with a relatively small, all women, student body establishes a relatively tranquil environment. However, even in the relatively harmonious climate which seems to prevail at the college, several of the interviewees expressed the opinion that, while the union is a positive factor, it nonetheless should have been able to achieve more in improving salaries and working conditions in the collective bargaining agreements than it did. Some expressed the thought that there is a lack of the "militance" required to achieve more and better concessions from management. Most who indicated such concerns were quick to recognize that the faculty itself tends to turn away from

"militance" by way of explaining the union's stance. Two of the faculty spoke at length about the strength of the "religious order" and its dominance in policy matters at the college. One, a political scientist, pointed out that when the union was first formed in the early seventies, some faculty in addition to the religious order were very much opposed to the concept of academic unionism, but that, over the years, attitudes have changed and the union now has a high degree of acceptance from faculty and management alike. No one thought that the union had in any way diluted the faculty's right to govern itself. Not surprisingly, there was some expressed concern about the future of the college in terms of its sustaining its enrollment and the continued support of the religious order.

Syracuse University, which is a large, comprehensive, private institution located approximately 260 miles northwest of New York City, enjoys a reputation for excellent academic programs and athletic programs. The faculty does not engage in collective bargaining. There is a fairly active AAUP Chapter which has been in existence for many years – long before academic unionism came on the college and university scene.

In answer to a question about the advantages and disadvantages of unionizing the faculty, there was no one who thought a faculty union is a

good idea at Syracuse. The consensus was that the individual faculty members are better able to negotiate their own salaries and other terms and conditions of employment in a more professional setting than if a union were doing it. However, nearly all expressed the point of view that the AAUP is effective in its role of protecting academic freedom and tenure and in serving as a kind of "watch dog" to "keep management honest." There was some concern on the part of the younger faculty that the local AAUP Chapter had not reached out to the newer faculty over the years, and as a result, the Chapter is perceived to be dominated by the older, senior faculty to the exclusion of others. In answer to a question asking their opinion as to whether or not collective bargaining was "unprofessional," most were non-committal. Several expressed the opinion that, in times of stress, or if management is behaving unreasonably, it might be desirable to have the protection of a strong union and a collectively bargained agreement, but that under "normal conditions" there is no need for a union in an academic setting. Not surprisingly, in accordance with the findings of Ladd and Lipset, the younger members were clearly more sympathetic to the concept of academic unionism than their older colleagues. Everyone interviewed believed that strikes are not in keeping with the appropriate professional

image for the professoriate. Almost everyone agreed that it would be very difficult to identify an issue which could garner strong faculty support for a strike, or even for a lesser job action – this, after being reminded that strikes and other job actions are legal in the private sector. There was general satisfaction expressed with salaries and working conditions at the University, and no one seemed unduly concerned about their professional future. The general impression given to this interviewer was that faculty are reasonably satisfied with the status quo, and therefore, barring some unforeseen major threat to their well being, are not seeking a change in their mode of representation. This is not to say that the faculty at Syracuse University is so satisfied that they didn't express concerns about professors in society in general being under -paid, and about the under- prepared students that were entering college, and some individual "gripes" about their own situation. But there seemed to be a sense of acceptance of the realities of the academic enterprise along with the conviction that the situation at Syracuse is relatively good. There was a definite sense of job satisfaction from almost all of those interviewed.

At Queens College, which is one of the "original four" colleges comprising the City University of New York, the responses were more

diverse than at either of the previous institutions discussed above. The college is considered to have some of the highest academic standards in CUNY and often refers to itself as "The Jewel of the University." Although it is in the Borough of Queens and is part of New York City, it enjoys a large and attractive campus, more typical of colleges and universities in non-urban settings.

Faculty interviewed at Queens College expressed a wide range of concerns about their job security, their workload, the under-preparation of students, the politics of the city and state and its impact on funding, and the effectiveness of the faculty union. The interviews were conducted at a time when large reductions in funding of the university had taken place and, as a result, programs were eliminated and some faculty and non-classroom professionals had been retrenched. Also, the Governor had announced his intention to further reduce funding for the state and city universities. While all agreed that they were generally better off because of the union, two of the interviewees felt they would be earning higher salaries if they were allowed to negotiate for themselves rather than be bound by a union-negotiated salary schedule. Three of the respondents said that the union had done an excellent job in the early years of collective bargaining, but had not

done so well in more recent contracts. Several thought that the union leaders were "too cozy" with university management. None of the faculty interviewed thought that faculty unionism was "unprofessional." When asked what issue might be important enough for the faculty to support a job action by the union, "fooling around with tenure" was the most frequent response. Four thought that "salary issues" might be important enough, and one mentioned "academic freedom" as possibly important enough for faculty to "support a strike." All those interviewed were reminded that strikes and organized job actions in the public sector are illegal. There was general agreement that the faculty union at CUNY and the faculty senates work relatively harmoniously together. (The University Faculty Senate and the Professional Staff Congress jointly filed a successful law suit against University management charging that the University was wrongly retrenching faculty and staff in 1995 in violation of the University's own rules. (New York State Supreme Court, IN 119332/95)

In answer to a question about the differences, if any, between an academic union and a traditional trade union, the prevailing opinion expressed by faculty at all three institutions is that academic unions are "less adversarial" than trade unions. When pressed for a more detailed response,

the "collegial atmosphere" which prevails in colleges and universities and the "high degree of professionalism" were cited as the factors contributing to the "less adversarial" mode of operations of academic unions. It is of interest to note that the faculty responses on this issue did not vary in any significant substantive way whether in the large, small, public, private, unionized or non-unionized colleges and universities involved in these interviews.

Another area in which there was substantial unanimity in the responses had to do with one aspect of the degree of satisfaction with the performance of the faculty organization compared with the expectation of the individual faculty member. Almost everyone, even those who seemed to be most satisfied, stated in one way or another that they think even more could or should have been accomplished. The reaction of union officers to that statement typically is that, to some extent, they are probably correct, in the sense that one can always "do better," but, to some extent, that sentiment is the result of the "over-selling" of collective bargaining during election campaigns and membership drives.

Irwin H. Polishook, President of the Professional Staff

Congress/CUNY, and a Vice-President of the American Federation of

Teachers had this to say:

The union as an institution is not unique. What makes academic unionization different is the strong emphasis on professional issues. It may be that the 'traditional' trade union no longer exists, if its solitary goal is to represent members with respect to the now outmoded definitions of 'terms and conditions of employment.' Academic unions may be unique for their commitment to professional values, but this has now become a dominant theme adapted to all forms of unionization.

Virginia Ann Shadwick, Past President, National Council for

Higher Education, NEA and Past President of the California Faculty

Association states:

I think there was initially significant difference between academic unions (at least as found in higher education) and the traditional trade union found in the blue collar private sector. However, with the need for modern management to begin including workers in production line and other decision making traditionally reserved for management, I think these lines are rapidly blurring.

She further states:

Academic unions evolved in a context of a tradition of 'collegiality,' in belief if not in actual practice. I have always contended that if collegiality had really existed no union would have existed.

Philip Y. Nicholson, President of the Nassau Community College

Federation of Teachers, Local 3150, American Federation of Teachers

located in Garden City, New York, stated:

Our academic contracts place great emphasis on peer review and evaluation and seek active participation in professional decision making (governance). Traditional trade unions seek structural job protection through seniority rights and due process grievance systems. Hiring, promotion, and termination are almost entirely management prerogatives. Skill or craft unions control their training and membership through apprentice programs, hiring halls, and work rules, but management authority is clearly delineated on the job.

Caesar J. Naples is Vice Chancellor Emeritus and Trustee Professor,

California State University and a practicing mediator and arbitrator. Asked

about the difference between academic unions and traditional trade unions,

his response in part was:

Academic unions typically focus on a broader range of issues than do traditional trade unions. Institutional governance, evaluation of employee performance, direction and mission of the enterprise, and assessment of (and sometimes, election of) managers are among those subjects frequently at the heart of bargaining concerns raised by academic unions not usually the focus of trade unions.

He went on to say:

A faculty union (and the collective bargaining process) regularizes faculty personnel practices and promotes institution-wide equity and equality of treatment. It contributes to the

articulation of performance standards for administrators and scrutinizes their adherence to these standards; in this way, the institution can rest somewhat more easily, secure in the knowledge that it is probably not treating faculty different from one another. A faculty union is an institutionalized watchdog with a long-term memory. It contributes to the fundamental fairness and acceptability of an institution's policies and practices. Give me an experienced and strong union almost any time over a disorganized or balkanized faculty.

Estelle S. Gellman, President of the AAUP Chapter at Hofstra University, a private, liberal arts institution in Hempstead, N.Y., which does engage in collective bargaining, sees the differences as follows:

Members of academic unions seem to be less likely to view themselves as labor, or, for that matter, to even see themselves as members of a union. I suspect very strongly that many of the AAUP collective bargaining chapters, ours included, could not have been successfully organized by one of the traditional unions. The faculty sort of rationalize that the AAUP is really a professional association and that, even though we act as a union and do what a union does, we're really more like the American Medical Association and representing their professional rights...many faculty see themselves as professionals who see themselves as having professional responsibilities separate and apart from their association with the institution. A big part of it is that they really don't see themselves as working for the administration and don't view administrators as supervisors or bosses.

Brian H. McDonald, Associate Vice-President (Academic Administration) at the University of Alberta, Canada, where the faculty and

staff bargain collectively represented by the Canadian Association of University Teachers (CAUT), responded in part:

I think academic unions, by their nature, will be less militant and more attuned to the thinking of management than traditional trade unions.... I also think that faculty are very conservative when it comes to change (outside their own disciplines) and to the running of the university. On the management side, most managers have been regular faculty before getting into management and many will return to faculty positions after stints as heads, deans, etc.. This must influence the relationship with the union.

In answer to a question about whether or not the existence of a faculty union made his job as a manager more difficult, he stated:

The existence of the faculty union implies disputes – because there are two sides on many issues, often difficult to resolve. On the other hand, anarchy and dictatorships have costs too. On balance, I think I would prefer to deal with one (reasonable) head of the union than a multitude of individuals on an ad hoc basis. So, from that standpoint, the existence of a union could be said to make the job of a manager less difficult. But so much depends on the people on both sides of the coin....

Walter J. Gershenfeld, Immediate Past President of The Industrial Relations Research Association and a practicing arbitrator based in Pennsylvania, views the comparison of academic unions with trade unions as follows:

A union of academics is similar to a trade union with the principal exception that a group of professionals seeks much more control

over the way in which their service is provided than is generally true for a trade union. Academics in higher education generally have had strong input with regard to hiring, tenure, promotion and curriculum even before collective bargaining. Unfortunately, in my estimation, Yeshiva missed the point that academics also have a life as employees, and many aspects of workplace life are suitable for negotiation, regardless of the strength of faculty input into academic matters. I note that public higher education entities have generally not followed Yeshiva and there are a number of high-quality public universities with unionized faculty.

Norman Swenson, long time President of the Cook County College Teachers Union, an AFT affiliate representing the community college faculties in Chicago and in the surrounding county, and a pioneer in collective bargaining in higher education, believes that faculty unionism is more of an outgrowth of faculty senates and other faculty governing bodies than of the trade union movement. A veteran of several strikes and other job actions by his union, sometimes resulting in his being arrested, Professor Swenson had this to say when asked about the differences:

I believe the chief difference is the ability of members of a faculty union to mask their fears and desires with multisyllabic words and euphemisms. Members of traditional trade unions with more limited vocabularies and imaginations are more honest about their feelings.

Belle Zeller, President Emeritus of the Professional Staff Congress/CUNY expressed her views as to the differences with the following statement:

The main difference between unions in academe and elsewhere is the primacy of professional values among the interests of their members. Of course our members have always cared about salaries and pensions, like their brothers and sisters throughout the labor movement. But their interest in their service to their students and in the excellence of the instructional program, sets them apart from their fellow unionists. Witness the priority given by the PSC over the course of its history and the tremendous amount of resources it has invested in lobbying on behalf of the University's budget. Also beyond the bread and butter of traditional unionism are such contractual provisions as faculty development, the Research Awards Program, the Scholar Incentive Awards and the Distinguished Professorships, all perceived by the union and the people it represents as advancing the professional interests of the instructional staff.

Frank R. Annunziato, former Director of the National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, CUNY, and currently Executive Director of the Professional Staff Congress/CUNY had this to say:

The powerful role of the collective faculty voice in academic governance matters, as evolved in the tradition of higher education, has meant that the bureaucratic and Taylorized model of collective bargaining has experienced a hostile environment in which to establish a firm foothold. When academic managers want professors to act more like workers on the assembly line, the faculty rebels at such treatment and demands its rights to control important academic decisions, such as in the areas of appointments, tenure, promotions, academic standards, etc. Academic trade unionists, aware of the faculty's historical role in governance, have developed collective bargaining agreements which share power with various faculty governance institutions, like faculty senates, where the *faculty qua faculty* must exercise

control. A student of collective bargaining would have a difficult time in discovering trade unionism in any other industry in the United States so willing to share its legal prerogatives with another non-collective bargaining organization. Academic trade unionism must work cooperatively with faculty senates and with faculty departmental and school committees to guarantee that the faculty voice is heard in academic matters, as well as in collective bargaining matters.

Daniel J. Julius, Associate Vice President and Director of The Center for Strategic Leadership, University of San Francisco, a religiously affiliated, private institution, answered the question about perceived or real differences by stating:

There is a great deal of similarity between craft unions in industry and academic unions. Comparisons between industrial unions and academic unions will probably not be meaningful except for those unfamiliar with the collective bargaining process.

When asked about the impact of the faculty union on his job, Dr. Julius had this to say:

Yes, my job is more difficult because of the faculty union. It is also more challenging and compensated at a far higher rate because of the faculty union. Indeed, I would not be at USF were it not for the presence of the faculty union.

Laura S. Schor, Provost, Hunter College, CUNY expressed her views as to the differences thusly:

The traditional union is based on an acknowledged adversarial role between employer and employee. The former tries to maximize

profit; the latter to improve work conditions and wages. The academic union is not so clear. Faculty move in and out of administrative roles, especially chair positions; faculty share in governance through the Senate; the administration of the College is both employer and an employee of the State.

William E. Scheuerman, President, United University

Professions, Local 2190 of the American Federation of Teachers, the faculty union representing faculty and professional staff at the State University of New York, the largest public university in the United States, responded as follows:

On one level academic unions and traditional trade or craft unions are pretty much alike. In fact, I suspect academic unions are similar to the old craft unions of the late 19th and early 20th centuries. We do the same basic things that craft unions do. We protect our crafts against those social and political forces that would kill us and destroy our professions. We do this the usual way – by negotiating and administering contracts, conducting political campaigns, organizing new units, educating the membership, etc.... The difference is in the nature of our crafts. Rather than producing widgets that accountants can measure on the bottom line of a profit and loss statement, academic unions produce abstract products called educated students, new knowledge, etc.... It's difficult to measure the abstractions we produce. So real differences emerge when we discuss productivity issues in the realm of exchange value (producing a good for profit) and in the academic realm of use value (production of a good, in this case an abstract good, as an end in itself). This distinction needs more clarification and is probably more deeply rooted in the difference between public-and private-sector production than in the question at hand. But I do think it's important....

Thomas M. Mannix, Associate Vice Chancellor for Human Resources at the same institution, the State University of New York, stated:

By and large, I see little differences between unions representing faculty in higher education and unions representing musicians in symphony orchestras, dancers in ballet troupes, actors and actresses in movies and television, professional engineers and architects, and nurses. I do see differences between higher education unions and the printing trades, building and construction trades and the railroad unions.

In response to the question about the impact of the faculty union on his job, he had this to say:

My job, whether at Western Michigan, University of California or SUNY, exists because faculty were organized. For me, dealing with an exclusive collective bargaining agent is highly efficient. Developing a working relationship with an exclusive agent is preferred to having to deal individually with faculty in each department, program, school, college, and/or campus. In SUNY, without an exclusive faculty agent to work with, labor and employee relations issues at the 29 State-operated campuses would lack consistency and cohesiveness. Once an organizing campaign is over and the first contract has been negotiated, the parties need to learn how to live with one another. Without slighting any of the decisions made during negotiations, the decisions made during the contract administration phase of a bargaining relationship, I believe, have at least an equal impact on what happens in the long run. In the absence of a faculty agent, I would lack a partner in implementing those decisions. I would, therefore, be less effective.

Thomas M. Carroll, Dean, Human Resources and Labor Relations, New York City Technical College, CUNY, responded with the following statement:

I think the difference between academic unions and traditional trade unions lies in the educational level of its members.... I think that academic unions are more difficult because its members want the benefits of unionism but also want to maintain their professional status and independence. I always felt that, regardless of the issue, the PSC could never pull off a successful strike. I do not lay the blame for that on the PSC, but rather on its membership. Faculty wants its 'cake and eat it.' They want the benefits from the contract but they have also demanded to keep its governance rights at both the university and college levels. It may not rise to the level of a direct contradiction but it gets close.

On the question about the impact on his job, Dean Carroll's answer was:

Faculty unionism has probably made my job easier. Certainly the existence of the union clearly delineates the lines between faculty rights and administrative rights and when rights are clearly defined, it makes life easier. For example, without a grievance process, faculty complaints would be much more difficult to deal with. Two friends of mine who have similar positions without benefit of a faculty union find that the playing field is hardly ever level and that the ground rules can change from year to year and even month to month. If one has established a trustful working relationship with his union, there can still be basic disagreement but at least both sides are playing by the same rules and can trust one another to deal fairly....

Matthew Goldstein, President, Baruch College, CUNY stated:

I would observe that in university settings academic unions do not necessarily represent people who are doing the same kind of work. For example; in large research universities where faculty would not typically be represented by a union, graduate students may indeed be represented by a bargaining unit. However, the graduate students as part of the learning environment for jobs as professors, teachers, and researchers may indeed be teaching similar if not identical classes to those who are not represented by some other bargaining group. I've always viewed this as an anomaly and one that really doesn't make too much sense.... Issues around tenure and academic freedom are unique to university settings and very much set the tone for bargaining. These are issues very far removed from those that trade unions are dealing with. Of course, the issue of job security which is fundamental to both types of unions is one that is being challenged in both worlds by the advent of technology changing how we all do business. Courses being developed and available over the internet lessen the need for faculty to physically be in front of a class. And robotic technologies are greatly reducing the need for as many hands on the significant issue for both academic and trade unions.

On the issue of job impact, Dr. Goldstein had this to say:

I have always believed a strong union would make my job...easier. I believe this in part because a strong and secure union brings a sense of professionalism, a sense of rational debate, and a sense of predictability in discourse. A union that is weak and indecisive and is seeking to make splashes, in the end creates more entropy and uncertainty into deliberations making the job of a chief executive more complex.

Yolanda T. Moses, President, The City College, CUNY identified the differences as follows:

The differences I perceive between academic unions and traditional trade unions is one of collegiality versus a difference in kind. University and college administrators are very often faculty or have come from the faculty, so the language that is spoken needs very little translation. Both groups use the same language based on the same collective experiences of what it means to be a member of the academy. I don't think the same is true for traditional labor workers and management. The gulf is much wider between their experiences.

In answer to the question about the impact of the faculty union on her job as President, she stated:

I consider my job to be difficult – period! The union in some ways actually makes my job easier, because it spells out what faculty responsibilities are. But most of my interaction and that of my administrators with faculty are around issues of mutual concern. We want what is best for the institution. The union contract rarely comes up. It is not the document that guides our daily actions; but a sense of collegiality does.

Israel Kugler, former President of the United Federation of College Teachers, Local 1460 of the American Federation of Teachers, and Deputy President Emeritus of the Professional Staff Congress/CUNY responding to the question about the differences between academic unions and traditional trade unions emphasized the historical background of unions and colleges and universities in stating:

I don't consider the suggested dichotomy as being persuasive. Traditionally unionism began in the blue-collar field of production of goods and services. Before the National Labor

Relations Act or similar state laws, it was achieved by organizing and dependence on strikes and threats of strikes. Usually successes occurred during prosperous times. In times of recession, lower profits of the employer, and wide-scale unemployment with its threat of scabs militated against collective bargaining. Many of these early unionists were able to raise the family standard of living, to have some of their children attend higher education institutions, secure the appropriate credentials and become professors. This gave rise to a social psychological generation gap. The arrivee professor pondered as to why should he embrace the institutional device of collective bargaining associated with his parents and grandparents. We have to turn to a bit of history for more light on this subject. In the High Middle Ages the first universities were established – Oxford, Cambridge, Bologna, Paris, Padua – on the principle of Universitas.

The sovereign gave the professors complete authority for student selection, grading, fees, curriculum, buildings, etc. and protected Universitas against the Town. In America, the earliest institutions were theological trade schools. In Germany, the thrust of scientific knowledge created departmentalization, specialization, and administrative bureaucracy. In America, the industrial revolution and the growth of big business and finance gave birth to the corporate structure, which became the model for governance of the universities.

Boards of Trustees, or in the terminology of Yale – the Yale Corporation, was the ultimate authority. These bodies chose the CEO – the president, chancellor, and the congeries of deans to run the day-to-day show. They assigned several duties to the professoriate which had to be performed for considerations of appointment, reappointment, promotion, tenure, workload and compensation. The devices used were committees – purely advisory to the hierarchy in the case of differences, but having the objective effect of doing the hard work outside the classroom and laboratory, which the administration could not do.... The AAUP, the oldest organization, founded in World War I, sought to protect

academic freedom in the face of the anti-German, anti-pacifist sentiment.... The entry of the AFT and later the NEA into higher education bargaining provided a threat to the AAUP and caused it to set up sectors to seek collective bargaining rights.... The Yeshiva Decision of 1980 gave higher education administration in the private sector a powerful weapon which has destroyed collective bargaining in some institutions.

June M. Weisberger, Nathan Feinsinger Professor of Law

Emerita, University of Wisconsin at Madison, formerly on the Faculty of the Cornell University School of Industrial and Labor Relations, and a practicing arbitrator and mediator in public sector colleges and universities. identified the differences between academic unions and traditional trade unions as follows:

Of course, it should be noted that there are many similarities between academic and traditional trade unions – particularly on issues such as wages, health insurance, pensions, and job security. Another similarity between faculty and other unions is their increasing sophistication in using the traditional political processes and lobbying to attain their goals- in addition to traditional collective bargaining. I do not often see any significant differences in various unions' resort to lobbying and the political process to gain or retain benefits for their members.

However, the differences are numerous. These differences in my judgement, include:

- A. Faculty unions often co-exist with traditional institutions of faculty governance (such as a Faculty Senate, and/or departmental autonomy in some places) and have to operate in a setting with a fair amount of decentralized

decision making developed over many years. Traditional trade unions, in contrast, exist in a more authoritarian setting with clearer lines of authority within management. In addition, faculty unions cover many bargaining unit members who are members of national professional organizations which are very important in their professional disciplines. When faculty members strongly identify with their national professional organizations (organized by academic disciplines), that may create special internal and divisive problems for faculty unions which other unions do not have to deal with.

- B. Even more than public school teachers, higher education faculty usually expect a very high degree of autonomy in how they teach – and even what they teach.

Research plans are rarely limited except by funding constraints. Peer review is the norm in a number of key areas of a higher education faculty member's professional work life. This is in direct contrast to the working conditions of members of bargaining units represented by traditional trade unions. Thus academic unions and traditional trade unions must develop very different organizing and bargaining strategies and priorities.

In summary, the above (and additional) factors necessitate differences in organizing, scope of bargaining issues, and negotiations strategies.

In answer to a question about the differences from a professional neutral's point of view, Professor Weisberger had this to say:

- A. Mediating grievance disputes in faculty union cases (versus traditional union cases) is usually more difficult (and settlements are more rare) because:

1. The structure of large public universities is very complex and confused. It is difficult to identify the appropriate management officials with sufficient authority to settle--and it is even more difficult to find the necessary financial resources to fund a settlement. (It is difficult to evaluate whether this last point is used by university officials as an excuse for refusing a 'reasonable' compromise or whether it is a genuine problem based on university budgeting restraints.)
 2. Faculty members often present their grievances as issues of 'principle' where compromise is very difficult. In addition, there may be several different routes to raise an issue of contract violation and this may also make grievance procedure settlements less attractive and frequent due to the conflicting interests the parties may have in reaching a 'final' settlement using mediation during the grievance procedure.
- B. Arbitrating grievance disputes in faculty union cases (versus traditional trade union cases) are often different because:
1. Many relate to the tenure granting process. (Although some civil service employee unions bring grievances relating to bargaining unit members with disputes involving their permanent civil service status, generally traditional trade unions are not involved in tenure-type issues.) For faculty unions, some of their grievances may present unique issues because the grievant is disputing the academic judgement of colleagues who are also bargaining unit members.
 2. Faculty unions are much more likely to raise constitutional due process issues in grievances (and court litigation) than are traditional trade unions.

This is probably due in significant part to faculty members' greater awareness of these rights, the numerous court decisions favoring faculty members where due process

issues have been raised. (Of course I have arbitrated grievance disputes involving faculty unions where the issues were identical or substantially similar to those raised by traditional trade unions.)

Analysis of these statements from professionals representing the various segments of the higher education community shows that professionalism (particularly as it concerns autonomy), bureaucracy, rationalization, and considerations of class are very much a part of the academic workplace. Goldstein's comments about new technology taking over much of the work (and autonomy) of professors points to a threat to the class position of the professoriate. Many of the respondents speak about professionalism – prestige – control – autonomy – concern for professional issues beyond the so-called “bread and butter” ones. Zeller's statement, particularly, speaks of the “primacy of professional values” among the professoriate. Gellman talks about “faculty not perceiving themselves as part of labor” which may be a problem of class perception. She also states that “faculty see themselves as professionals who see themselves as having professional responsibilities separate and apart from their association with the institution” – an indication of the perceived entrepreneurship intrinsic to academics. Shadwick's comments about increasing employee participation

in the production lines in private industry point up the need to break down the traditional lines of bureaucratic authority in private enterprise. They, at the same time, constitute a commentary on the relatively heavy participation in decision-making enjoyed by academics which, however, is currently being eroded.

Kugler cites history in explaining what he perceives to be the subservient role of the professor in relation to the hierarchical management of universities and in explaining how the corporate world structure has invaded academia. This is not far afield from the Marxist concept of the exploitation of the proletariat by the bourgeoisie. Carroll's comments about the duality of the professoriate highlight the dichotomy of "professional" verses "unionist," typical of what some sociologists call the professional-managerial class.

Taken in their entirety, the statements by all of the respondents, all of whom are professionals working in the field, and who, collectively, represent the various professional segments of the academy – faculty and administrators at public and private and small and large colleges, universities, and community colleges, and professional neutrals – can easily

be seen as a microcosmic description of the sociological dynamics which are at work in the academic workplace.

Chapter 8 Summary and Conclusions

In examining the origins and the evolution of academic unions, the uniqueness of the academic workplace with its extremely blurred line between management and labor, created by the historical base of the academy with its attendant self-governance and tradition of collegiality, permeates almost every aspect of analysis. These are the very characteristics which would appear, at first glance, to prohibit or, at least, inhibit the development of faculty unions. In fact, at the so-called "elite" research institutions of higher learning, such as Yale, Harvard, and the like, they apparently have. That said, it is also apparent, as a result of investigation, that when the conditions of the academic workplace are right, despite the characteristics described above, faculty unions can and do develop, and, in many instances, thrive.

Not unlike their brothers and sisters in the industrial sector, when college and university faculty and professional staff perceive that they are losing control of their professional lives by experiencing diminished prestige and a loss of autonomy caused by invasive administrations or governmental agencies, or by changes in the political climate, or by society's

increasing demands upon them, or by any combination of the above, they become receptive to the kind of support, assistance, and advocacy that a union can offer.

A very recent case in point is the situation at Southern Illinois University-Carbondale, where 62% of tenured and tenure-track faculty voted to have the NEA local represent them in collective bargaining. Faculty at that University, which is considered to be a major research institution, would not ordinarily be expected to embrace unionism. The NEA position in winning the bargaining rights in the election was based on the statement by associate professor Jim Sullivan that lamented about “the growing pressure to treat higher education as just a business, with students as consumers and learning as a product.” He went on to say that “The faculty felt we were losing control over the integrity of our own profession. That lies at the heart of our election victory.” NEA spokesperson Rachel Hendrickson stated: “Too many managers in higher education want cheaper, disposable employees. They think it takes too long to lay off tenured people and favor quick, unilateral decision making over the deliberation of shared governance.” (NEA Today, 1997) A more classic

instance of the acceptance of faculty unionism as a direct result of the rationalization of the workplace would be difficult to find.

Sociologically, what took place in academia as a college education became more and more of a necessity for economic and social upward mobility, was the bureaucratization and rationalization of the enterprise in order to meet the demands brought upon it by society. Starting with the G I Bill after World War II in the mid- 1940s and virtually exploding in the late 1960s and early 1970s, colleges and universities were overwhelmed with demands for more and more programs and offerings by a rapidly increasing amount of applications for admissions and an equally heavy increase in the amount of competition from other institutions of higher learning. The academic workplace became not only larger but also more complex. More and more departmental and programmatic structures came into existence with an ever increasing amount of layers of authority. With the proliferation of Deans and Associate Deans and the expansion of non-academic departments such as Admissions and Financial Aid with their attendant Directors in charge of them, faculty began to feel more and more subsumed and isolated by the bureaucracy that had grown around them. Along with the increased bureaucratization caused by the rapid expansion,

the higher education enterprise was forced to become more responsive, efficient, and fiscally accountable to its sponsors and constituents in order to remain competitive. Suddenly academics began to lose their jobs through retrenchment caused by diminishing financial resources. Many who did not lose their jobs found themselves being forced to teach more and larger classes and/or to work more hours. Faculty found themselves losing decision making authority to newly established quasi- academic entities. This ever-increasing rationalization of the enterprise, with its accompanying ever increasing bureaucratization, contributed heavily to the feeling of loss of control on the part of faculty. This loss of control of their own professional destiny with its attendant loss of prestige, helped to make the concept of collective bargaining and unionism more palatable to many who had heretofore considered them to be “unprofessional” and beneath their dignity.

At The City University of New York, the focal institution of this study, the main factors contributing to the acceptance of collective bargaining by the faculty and professional staffs, were the growing conditions of discontent and fear for the future in the workplace caused by its continuing expansion which brought with it a loss of autonomy and

increased bureaucracy and rationalization, the rapid unionization and increased militancy of public school teachers in the 1960s, and the passage of enabling legislation by the state in 1967. Dr. Polishook, speaking as the President of the Professional Staff Congress/CUNY, put it this way:

The acceptance of collective bargaining by the CUNY faculty and professional staff should not be viewed as a radical undertaking. What faculty members everywhere want is a recognition of their professional status which requires active and meaningful participation in the academic process and product. The threat to this autonomy, whether from college managers or politicians, is what triggered the initial movement to academic unionization at CUNY and elsewhere in the nation.

The existence of enabling legislation is, of course, a critical element in almost every situation in creating an environment which is conducive to the formation of not only academic unions, but indeed, any kind of union. Without the underpinning of statutory authority, unions are heavily handicapped in practically all of their normal endeavors. In the private sector the *Yeshiva Decision* by the United States Supreme Court (444 U.S.672, 1980) has brought the organizing of academic unions and collective bargaining to a standstill.

The lack of enabling legislation in the southern states, and, the existence of so-called "right to work" legislation in most of the southern and

mountain states accounts for the fact that, not only academic unions, but unions of any kind are relatively small in number in the south of the country and, where they do exist, they are generally less powerful and influential compared to other parts of the country.

It is clear that the northeast, the midwest, and the west coast are the fertile areas of the United States in which academic unions have developed and become important factors in the professional lives of large numbers of the professoriate. It is also clear that where academic unions exist they become important factors in nearly all aspects of the functioning of the institution. This is so because of the nature of the academy, which is, and has been traditionally, driven largely by its faculty and staffs through committees and representative organizations such as senates and, more recently, academic unions. To be accepted and to succeed, the academic union would apparently be well advised to accommodate the existing traditions of self- governance and collegiality present in nearly all of the country's higher education institutions by not only co-existing with them, but actually nurturing them. This requirement is generally unique to the academic workplace compared to the rest of the organized labor movement.

Unions in industry would normally oppose the existence of any other representative organization on their "turf" serving the same membership.

Another relatively unique dynamic of the academic workplace with which a faculty union must deal is the fact that, because of the environment of collegiality, coupled with the self concept of the professor of being a "professional" rather than an employee or worker, there is typically a strong inclination against the kind of activism known as "militancy" which is occasionally deemed desirable or necessary to accomplish the goals of the union in dealing with management.

Victor Vroom in reporting the results of a 1960 survey of employed males states that the category responding in the highest percentages (42%) that they were very satisfied with their jobs was the "professional and technical." (Vroom, 1964) A high degree of job satisfaction does not usually provide the context for unions to organize.

William Goode describes the "special community of profession" by the following traits:

1. Its members are bound by a sense of identity.
2. Once in it, few leave, so that it is a terminal or continuing status for the most part.
3. Its members share values in common.

4. Its role definitions vis-a-vis both members and non-members are agreed upon and are the same for all members.
5. Within the areas of communal action there is a common language, which is understood only partially by outsiders.
6. The community has power over its members.
7. Its limits are reasonably clear, though they are not physical and geographical, but social.
8. Though it does not produce the next generation biologically, it does so socially, through its control over the selection of professional trainees, and through its training processes it sends these recruits through an adult socialization process. (Larson, 1977)

It is generally agreed that the more “professional” a group perceives itself to be – having some control over its production, enjoying relatively high prestige and respect, possessing some of the characteristics outlined by Goode – the more difficult it is to unionize. Doctors, lawyers, and engineers are among the least unionized professionals in this country, precisely for those reasons.

Eliot Friedson states:

...the university's importance does not lie solely in its role in training those who engage in knowledge-based pursuits in the world outside, many of whom compose the practicing professions. Perhaps more important for the substance and role of formal knowledge is the fact that the university itself provides a professional pursuit to most of the intelligentsia and the intellectuals who are concerned with the transcendent and the teleological. That profession is university teaching. (Friedson, 1986)

Almost everyone, including the professional neutrals (the arbitrators and mediators) that this investigator questioned seeking to identify the perceived differences between an academic union and a traditional trade union – mentioned the collegial atmosphere and the concomitant relative lack of adversarial relationships in characterizing the academic union. If one were to try to identify the most important or the most prevalent distinguishing features of the academic union in comparison with the typical trade union it would almost certainly have to be these kinds of accommodations, generally not faced by unions in the industrial sector – the co-existence with faculty governance entities and the multiple ramifications of the collegiate climate.

There is a body of opinion in the field as expressed by some of those interviewed which says that academic unions are similar to the craft unions which existed prior to and during the industrial revolution and gained considerable importance and strength in the late 1880s in the United States. These unions generally represented workers with special skills who worked at relatively small places of business-such as cigar cutters, barrel makers, brick layers, carpenters, and plasterers. These skilled workers thought of themselves as self-employed artisans. In today's societies the

craft unions are very different. They are the unions representing workers in the building trades, in printing, metal, and maritime trades and railroad employees. These modern craft unions are almost indistinguishable from the rest of the union movement and bear little resemblance to academic unions in the ways in which the academic unions are unique.

Some who were interviewed expressed the view that academic unions are not very different from other unions representing professionals, such as ballet dancers, actors, symphony orchestra players, and professional athletes. Probably the closest model among unions of professionals to the academic union would be those representing symphony orchestra players where there is frequently an element of "peer evaluation" provided for in the collectively bargained agreement. In typical contracts involving the major symphony orchestras and their players there are provisions for participation by orchestra members in the auditions for new members . Usually, the player being auditioned sits behind a screen in order to insure that only his/her playing ability is considered in the evaluation and a committee of current orchestra members plus the conductor and the musical director, sitting in the audience, make the determination as to which candidate, identified only by number, is to be offered a position. This constitutes a very

limited form of peer evaluation, which includes only the recommendation for new members of the orchestra, but not any other kinds of personnel actions. A possible exception might be the choosing, again by audition, and in competition with outside musicians, first-chair players for the various sections, including the concertmaster. Given this modest degree of similarity, it is difficult to establish any real comparability with the amount of and the importance of the peer evaluation process involved in the academic workplace. In most other professions in which the employees are unionized, the concept of self governance and/or peer evaluation is either non-existent or very limited.

Any comparison of academic unions with the rest of the union movement must recognize the many similarities which exist. The actual process of negotiating a collectively bargained agreement does not vary significantly by the workplace involved. In a public university or college, negotiations may have to involve the governmental agency responsible for funding, in addition to the management of the institution. This is true of non-faculty unions on campus as well. But the basic methodology involved in the negotiating process remains pretty much unchanged, regardless of venue. Also, lobbying activities by unions aimed at acquiring new benefits or

retaining existing benefits for members are substantially similar, regardless of the type of workplace involved.

Organizing activities aimed at forming new unions, certifying existing unions as bargaining representatives, or gaining new members for unions do not differ in any significant way from union to union. An argument could be made that such organizing activities in an academic setting need to be more subdued or perhaps, even more subtle, than in an industrial setting, but this varies with the "climate" at a particular campus, and, besides, a similar argument could be made regarding different plants and work sites in private industry. The most important similarity between the academic union and other unions is the very reason for its existence. Like all other unions, the faculty union exists to protect and improve the working conditions and job status of those it represents. Also, like all other unions, if its members become dissatisfied with the performance of their union, the mechanism exists to either change the union leadership by voting the current leaders out, or to vote to be represented by another union.

Unions are among the most democratic entities in our society. While they are self-governing in the sense that decisions are made by the elected leaders, elections for officers are frequent and members usually

have the authority to vote to accept or reject collectively bargained contracts.

The Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act, 1959) which was enacted to combat corruption in some unions.

establishes guarantees of democratic procedures and the integrity of union elections, and covers all unions engaging in interstate commerce.

Notwithstanding some of the unique characteristics of the academy, if the academic union does not protect and enhance job security, salaries, and fringe benefits- such as health insurance, vacations, retirement benefits and other terms and conditions of employment, it will probably not be able to survive for any period of time. Exactly the same can be said in regards to any union – traditional or not. It is in this area of the fundamental reasons for the existence of a union that it can probably be stated, without fear of contradiction, that academic unions, are not different from any other type of union.

If it is true that academic unions are not unlike traditional trade unions in terms of their basic mission and their responsibilities to their constituents, and in the areas of lobbying, political activity, organizing activities, and negotiations, then what are the identifiable differences that set them apart from other kinds of unions? The uniqueness of the academic

workplace, which has been mentioned repeatedly, mandates a *modus operandi* which is significantly dissimilar to that of unions which function in other kinds of shops. The traditions of the academy of peer evaluation and self-governance, which pre-date the development of faculty unions, set standards and mandates for faculty unions which are not found elsewhere. Faculty unions must co-exist with governance entities which represent their constituents in important areas of their professional well-being, which in other settings, would be the exclusive domain of the union. Certainly the decision-making in the areas of hiring, retaining, promoting, and tenuring employees in most shops would be made by management. In the academy these kinds of determinations are made principally by faculty committees consisting, in most cases, of members of the bargaining unit represented by the union. This presents the faculty union with frequent occurrences in which a grievant being represented by the union is alleging a violation against him or her attributed to the actions of other members of the same bargaining unit. Obviously, this kind of a situation can and often does create special problems for the union.

Faculty senates, which exist in most institutions of higher learning, and which, in most cases, pre-date the existence of the faculty

union on campus, consist generally of members of the bargaining unit and they operate in areas closely aligned with the terms and conditions of work with which the union is primarily concerned. While efforts are made to clearly define the areas of responsibilities between the two organizations to avoid overlap and possible conflict, this is no small task, and it presents an ongoing "ticklish" situation with which the faculty union must deal.

The existence of faculty personnel committees is another fact of academic life with which the academic union must contend. These are the committees which normally recommend the appointment, retention, promotion, and tenuring of their colleagues. They, again, are made up of members of the bargaining unit and their principle functions, if it were a non-academic setting, would normally be carried out by management personnel. In some academic departments, each member of the department gets to vote on certain personnel actions before the departmental committee considers them. It is, therefore, possible that every professorial member of the bargaining unit actively passes judgement on his or her colleagues at one time or another. This situation presents the faculty union with a set of conditions which unions of other types would not normally have to face. These characteristics of the academic workplace are also what led to the

Yeshiva Decision by the U.S. Supreme Court (444 U.S. 672, 1980) stating that professors at that institution were, in fact, managers – not entitled to protection under the National Labor Relations Act.

An interesting dynamic of the responses from the management people to the question about whether or not the existence of the faculty union makes their job more difficult is the overwhelming consensus that an effective union is helpful to the institution in establishing uniform application of the rules and regulations and in establishing a "level playing field" when disputes arise. While that kind of response is, perhaps, not surprising coming from administrators whose principle responsibility is dealing with the unions and collective bargaining on campus, those administrators who have broader responsibilities such as college presidents and others responded in a similar fashion.

The results of this study lead to the conclusion that the academic or faculty union, with its beginnings in the late 1960s and early 1970s, evolved in large part from the large scale unionization of public school teachers in the elementary and secondary education sectors in the 1950s and 1960s, and, in smaller part, from the historical and traditional

existence of self-governance entities in the academy such as senates and personnel committees.

Recognizing that the aforementioned public school teacher unions themselves evolved from the more traditional industrial/trade unions in the public sector and in the private sector, the nexus between the so-called traditional trade union and the academic union is established.

In answer to the question of just how different or unique the academic union is typically when compared to the traditional trade union, several responses are necessary. It is abundantly clear that the academic union functions in a workplace and serves a clientele which is essentially unique in comparison to almost any other setting. It therefore follows that, an academic union, in order to be successful, must adopt an organizational and operating style which is distinctive from the more traditional unions and which is responsive to the unique characteristics of the context in which it functions.

Having recognized the differences however, it must be stated that academic unions are unions in the traditional sense in terms of their mission. They are unions in the traditional sense in the way in which they provide services to their members by negotiating benefits and multiple types

of improvements in the terms and conditions of work for those they represent. They are unions in the traditional sense by providing grievance procedures and due process guarantees for their people. They are unions in the traditional sense in the ways they lobby legislators and in their activities in the political arena. Perhaps most significantly, they are unions in the traditional sense when the factors which need to be present in the workplace in order for a union to become accepted by academic professionals are considered.

In his work entitled, *The Sociology of Work*, Theodore Caplow (1954) cited a quotation from Adam Smith which has relevance when discussing the similarities and the differences among different groups or classes of workers:

...the very different genius which appears to distinguish men of different professions, when grown up to maturity, is not upon many occasions so much the cause, as the effect of the division of labor. The difference between the most dissimilar characters, between a philosopher and a common street porter, for example, seems to arise, not so much from nature, as from habit, custom, and education.

In analyzing and/or comparing academic unions with traditional trade unions, it may be accurate to use the words of Smith:

"The difference between the most dissimilar characters...seems to arise, not so much from nature, as from habit, custom, and education."

Based on investigation, the literature, and the opinions of practitioners in the field, it is fair to say that, when all is said and done, the academic union is first and foremost a union in every commonly accepted sense of that word, and only secondarily an academic instrumentality.

Appendix A

The Distribution of Faculty Unionization by Two-Year and Four-Year Campuses – 1991

Four-Year Private Campuses	Unionized: 71	Non-Unionized: 1,368	Total Campuses: 1,459	% Unionized: 4.9 %
Four-Year Public Campuses	Unionized: 339	Non-Unionized: 227	Total Campuses: 566	% Unionized: 59.9 %
Two-Year Private Campuses	Unionized: 14	Non-Unionized: 357	Total Campuses: 371	% Unionized: 3.7%
Two-Year Public Campuses	Unionized: 565	Non-Unionized: 370	Total Campuses: 935	% Unionized: 60.4%

Total Public Campuses Unionized: 904 or 60.2%

Total Private Campuses Unionized: 85 or 4.7%

Total of All Campuses Unionized: 989 or 29.7%

Source: National Center for the Study of Collective Bargaining in
Higher Education and the Professions, Baruch College,
CUNY

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