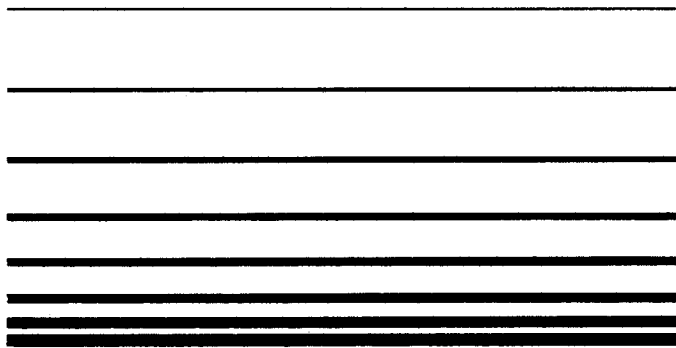


# LIVING WITH COLLECTIVE BARGAINING

A Case Study of the City  
University of New York



**Bernard Mintz**

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# FOREWORD

The author of this book has played a unique role in higher education. As Chairman of the City University of New York (CUNY) table team in faculty collective bargaining in 1969 he played a key role in the negotiation of the first major university faculty collective bargaining contracts in the nation. After leaving his CUNY Central Office Vice Chancellorship in 1972 for the Executive Vice-Presidency at the Bernard M. Baruch College in the CUNY system and after a hiatus of four years in direct collective negotiations, he had the opportunity in 1975 to return to the front line as a member of the table team charged with responsibility to re-negotiate the third collective bargaining agreement between CUNY and its instructional staff.

What follows are the insights of a concerned educator who believes that the dilemma of accommodating faculty collective bargaining within the traditional frame of reference of collegiality is one of the major current challenges in higher education.

This book is in essence a case study that speaks to issues in faculty collective bargaining which apply universally. It is the author's belief that it would prove a useful tool to those who are about to be involved in collective bargaining for the first time and to those who have had varying degrees of active exposure. For the student of administration in higher education it should provoke much thought and discussion.

# Chapter I

## CLIMATE 1968

When one attempts to look back at a time period some years removed, recollections are not sufficient to document the story. Researching notes, files, speeches, etc., is the usual method of recall and reconstruction. In doing just these things the author came upon the following:

A university is composed of students faculty and administration. There is a history of shared governance and shared powers. Today there is no doubt that students view themselves in a role of power, a role in which they see themselves as a countervailing influence to "the establishment," "the stagnant university administration," and the *nouvele vague* "the silent majority." That there is a militancy among students is clearly evident. However, student militancy may now have to 'move over' and make room for the developing power thrust of teachers on all levels.<sup>1</sup>

In the same article attempting to prophesy the future the author stated:

Another problem of great significance to higher education — a major issue as yet to be tested is whether or not the traditional role of the faculty will be altered as a result of the introduction of collective bargaining to the university campus. Faculty members have in the past shared governance and administration. They are in a legal sense employees but in that the Board had delegated to the faculty, subject to Board review, the right to appoint, reappoint or discharge and promote themselves, faculty members are also agents of the Board. Thus, in a sense, they are employees and employer at the same time.<sup>2</sup>

Currently, if one were to be asked what is the major concern in the administration of higher education in relation to organization and structure, the answer would probably be in the form of a further question - Does faculty collective bargaining spell the doom of collegiality in the traditional meaning of the term?

## HOW DID IT ALL BEGIN?

In September 1963 when the newly appointed Chancellor of City University of New York (CUNY), Dr. Albert H. Bowker, arrived at his desk one of the first documents

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<sup>1</sup> Bernard Mintz, "Labor relations in Higher Education - An Overview" in *Critical Issues in Education*, ed. by Frank J. Macchiarola (New York: The Bernard M. Baruch College, 1970), p. 37.

<sup>2</sup> *Ibid.*, p. 46-7.

he found in his correspondence was a request from a faculty organization called the Legislative Conference (LC) for recognition of the LC as the exclusive collective bargaining representative of all CUNY faculty. Shortly thereafter he received a similar request from another employee organization called the United Federation of College Teachers (UFCT), Local #1460, affiliated with the American Federation of Teachers, AFL - CIO.

The Legislative Conference, then an independent, unaffiliated employee organization, was founded in 1938. As its name implies, its concerns were mainly those of a lobby group for the faculties of the then four City Colleges of the City of New York (City College, Hunter College, Brooklyn College and Queens College) all four-year baccalaureate granting institutions. The major thrust of the Conference was to work for improvements in faculty salaries and working conditions throughout the city and state legislatures. The conference was comprised mainly of senior professors but offered low dues membership to almost all groups within the academy including such college employees as clerical assistants, laboratory assistants, etc. Sometime thereafter the Conference excluded clerical assistants who were covered into New York City's Civil Service program and eventually went on to form their own union organization within the major New York City Civil Service union arm. Specifically, the Conference was instrumental in achieving such faculty gains as salary schedules with mandated annual increments, statutory tenure, pension plan improvements, etc.

The UFCT was a much younger organization and had its beginnings as a local within the New York City based United Federation of Teachers. It was spun off from the UFT in 1963. Its initial stronghold in the CUNY system was the New York City Community College, the oldest public two-year college in New York City, which brought with it an active UFCT chapter when it came under the aegis of the City University of New York in 1964. In its earliest years the UFCT drew its strength mainly from the younger and newly developing community colleges in the CUNY system and thus was presumed to be more trade union-like in its approaches and somewhat more militant in its positions than the more conservative LC.

It should be noted that although it had a chapter on each of the four year CUNY college campuses, the AAUP never was a factor in the drive to organize CUNY faculty. This despite the fact that the AAUP had an active chapter on the City College campus as early as 1931.

In the period from 1963 through 1967 the prospect of an organized faculty, like the proverbial sword of Damocles, hung over the head of the Board of Higher Education and the Chancellor of CUNY. The Board itself had, as early as 1956, gone on record in terms of its positive position concerning the recognition of employee representation. How else could a public body representative of highly unionized New York City go?

Within this clearly enunciated principle Chancellor Bowker adopted the policy of meeting with the two faculty organizations at their request. It should be noted that these meetings were not regularized, were conducted on a very informal basis and

could not in any manner whatsoever be construed as bargaining sessions. Topics discussed covered the broadest range — from more telephones for faculty to salary increases. At the beginning, among the most frequently discussed subjects with the LC were (1) the CUNY annual budget battle, (2) pending legislation (retirement system benefit improvements, mainly), (3) salary increases, (4) more promotional opportunities, (5) reductions in workload (the CUNY standard was then 15 contact hours per week), (6) workmen's compensation, (7) faculty rank for professional library staff, (8) faculty advisory participation in choosing college administrative officers, including presidents, (9) liberalized sabbatical leave provisions, (10) regulations concerning "over-load" teaching assignments, (11) development of improvements in fringe benefits - faculty welfare programs — and then later recognition as an exclusive bargaining agent for faculty.

Discussions with the UFCT covered a similarly broad range of topics with perhaps two major differences. Firstly, an additional emphasis on individual and special group problems and grievances. Some examples include the following: (1) the why of greater dollar increases for full professors as compared with those given to instructors and senior college staff vs. community college staff, (2) pleading the case for increased salaries for college laboratory assistants (3) opposition to increased size of lecture classes, (4) the low rate of compensation for "lecturers" — the low man on CUNY's academic totem pole, (5) status and working conditions for library and registrar staffs, (6) increased rates of pay for part-time Lecturers in the evening sessions of the University. Secondly, a much earlier drive for a collective bargaining election and an earlier interest in instituting a membership dues check-off procedure which was possible under New York City regulations even though there had been no recognition of a faculty collective bargaining agent.

It seemed fairly clear as to how the battle lines between the LC and the UFCT for faculty support would be drawn. The LC's pitch, totally in keeping with the organization's historical image, was to be toward tenured faculty and career type academic professionals. The UFCT approach was to be aimed at the lower paid rank faculty where job security would be a major concern.

#### THE TAYLOR LAW

In 1967, the New York State Legislature passed, and Governor Rockefeller signed into law, the Public Employees' Fair Employment Act commonly known as the Taylor Law named after Professor George Taylor who was the chairman of a special panel appointed by the Governor to recommend legislative policy covering public employee collective bargaining.

The main provisions of the Taylor Law, which became effective on September 1, 1967, were:

- (a) it granted public employees in New York State the right to be represented by employee organizations of their choice;



(b) it granted rights of collective negotiations for terms and conditions of employment, including settlement of grievances;

(c) it directed public employers to recognize and negotiate with duly certified employee organizations, and to enter into written agreements with them;

(d) it established the Public Employment Relations Board (PERB) to establish rules of procedure and rules for the administration and enforcement of the Law.

On November 22, 1967, the LC petitioned PERB for certification as the exclusive negotiating representative for all members of the instructional staff of City University. Shortly thereafter, the UFCT filed an intervening petition also requesting certification as the exclusive bargaining agent for the City University faculty. Each of these petitions provided more than the minimum number of required faculty petitioners.

#### **Unit Determination - Three Views**

In February and March 1968, hearings were held before a PERB trial examiner to determine the appropriate collective bargaining unit. The Board of Higher Education represented by special counsel requested a single bargaining unit for all members of the instructional staff. Both employee organizations sought to divide the instructional staff into two separate units, although the organizations differed in the manner in which they wanted the units to be constituted. The Board of Higher Education sought to prove the need for one unit based on structural unity of the University's instructional staff and its belief that any two unit structure was contrary to the administrative and educational needs of the university.

It is interesting to note that both the LC and UFCT bargaining unit positions were based on their evaluation of major strengths. The LC, because of its image, wanted to divide the University Staff by setting up a separate unit for full-time and part-time Lecturers, the fluid bottom in CUNY's rank hierarchy. However, it sought to retain in its tenured faculty unit certain non-tenured but career type positions such as Higher Education Officers, Business Managers, etc. It could be concluded that at this point in time there was still present in the LC leadership a philosophical reluctance to trade off its status as a professional organization for the trade union label since it appeared to be desirous of ducking the Lecturer's job security issue. The UFCT strategy was even more startling. By attempting to carve out a separate unit for a small number of para-professionals classified as College Laboratory Technicians in which it had demonstrated membership strength, the UFCT appeared to be admitting that it did not have much confidence in its ability to win the larger unit and that it would be willing to settle for a small piece of the action in order to get its nose under the tent.

## **PERB Decision**

In a decision handed down by the Director of Representation of PERB on May 1, 1968, neither the view of the Board nor the UFCT prevailed and the position taken by the LC was upheld. A representation election was ordered to proceed based on two units; one unit to be comprised of those persons employed in the titles Lecturer and Teaching Assistant (then considered to be temporary staff members); and one unit comprised of members of the instructional staff in tenured titles, tenure bearing titles and titles considered to be career in nature. In effect, this latter unit contained all other members of the instructional staff except certain designated college and university officials, such as deans, directors, etc., who were specifically excluded. Department Chairmen were included in the bargaining unit. The University had made no attempt to exclude them.

## **PERB Appeal Decision**

This decision was appealed by the University to the three-member Public Employment Relations Board. In a two-to-one decision rendered on August 9, 1968, the decision of the PERB Director of Representation was upheld and an election ordered for each of the two units.

The original PERB decision and the appeal decision indicated clearly that the major factor behind the outcome was the large number of full-time and part-time Lecturers in the CUNY system. It was PERB's opinion that the maintenance of a single unit would place too much bargaining power in the hands of the so-called temporary staff by the sheer weight of numbers. This is clearly evident in the following statement in the PERB Appeal Decision.

The faculty-rank-status personnel are the heart of the University. It might be compromising to their independence and to the very stability of the University for non-tenured instructional personnel, in numbers almost equal to that of faculty-rank-status personnel, to be included in the unit of faculty-rank-status personnel.<sup>3</sup>

## **The Rationale Behind the PERB Decision**

The PERB hearings which took place at the end of February and March 1968 were extensive. The "petitioner" (the LC) was represented by counsel as was the "intervenor" (The UFCT) and the Board of Higher Education. Much of the time period between the filing of petitions and the beginning of the bargaining unit-determination hearings was devoted to the collection of university-wide hard data on personnel by various classifications. Immediately evident to the University was the inadequacy of its

<sup>3</sup> New York State Public Employment Relations Board, Appeal Decision, Case No. C-0008, August 9, 1968, p. 4.

centralized data collection. The kinds of data the University had were not adequate for PERB's needs. so much so that it became necessary to request data from the system's then seven senior colleges and six community colleges on an ad hoc basis.

The data submitted resulted in the following tabulation:

**DISTRIBUTION OF INSTRUCTIONAL STAFF BY CLASSIFICATION**

GROUP	CLASS OF POSITION	TENURE	EMPLOYEES
Permanent Staff	Faculty-rank-status *	Tenured or leading to tenure	4159
Permanent Staff	College Science Technician and assistant, and college engineering	Tenured or leading to tenure technician	374
Permanent Staff	Other members of the permanent staff **	Tenured or leading to tenure	111
Temporary Staff	Higher education officer, research, and miscellaneous specialized personnel ***	Non-tenured	249
Temporary Staff	Annual lecturer and teaching assistant	Non-tenured	1010
Temporary Staff	Non-annual lecturers who teach 6 hours or more	Non-tenured	1841
Temporary Staff	Non-annual lecturers who teach less than 6 hours	Non-tenured	1899
		TOTAL	<u>9643</u>

\* This term included members of the faculty and those who would automatically become members of the faculty upon achieving tenure. The faculty, generally speaking, consisted of members of the permanent staff in the academic titles of professor, associate professor, assistant professor and instructor.

\*\* This class included clinical assistant, chairman of department (Hunter High School or Elementary School), critic teacher, education and vocational counselor, teacher, teacher of library, and tutor.

\*\*\* This class included higher education officer, associate, and assistant, fellow (part-time), college physician, college dentist, research associate, and research assistant.

It should be noted that the University had sought to exclude from the unit all (1899) of the non-annual salaried Lecturers who taught less than six (6) hours. The University had argued that this category of faculty was mainly employed in our evening and extension divisions in what was for most such adjunct faculty a secondary job and should be considered by PERB to have assignments deemed "casual, sporadic or irregular." As indicated in the table, 1899 out of a total of 9643, almost 20 percent of the University's teaching staff, fell into this category. The personnel practice which resulted in this rather strange phenomenon was a natural concomitant of budget niggardliness that staffed our Schools of General Studies with a large number of moonlighting high school teachers, school supervisors and other professionals.

In the rejection of this contention of the University and in finding a community of interest between the combinations of annual and monthly salaried full-time lecturers and all part-time lecturers, the PERB decision virtually assured the election of the UFCT as collective bargaining agent for this segment of the faculty. New York City's public school teachers had been unionized for many years and they were represented by the United Federation of Teachers (UFT), the foster parent of the UFCT.

Another peculiarity of the PERB decision to divide the University's teaching staff into two units was to grant the full-time teacher of any rank who taught one or more overload courses in our Schools of General Studies, or evening sessions, the right to vote twice—once in each unit. Analysis of the voting results at individual colleges led one to conclude that in many instances professors who voted for the LC in the full-time staff unit (day sessions mainly), voted for the more militant UFCT when they voted in the part-time staff unit (evening sessions). Once again, this voting duality resulted from the New York City budgetary practice which required all teachers who taught part-time in evening sessions to carry the payroll title of Lecturer regardless of their day session or full-time professorial rank. There never was a one-man one-vote concept applied.

Why a full-time annual salaried professor would vote LC in one status and UFCT in another is a story unto itself. Telling it like it was reveals one of the major reasons for the early unionization of CUNY faculty — a faculty which from the governance aspect was probably foremost in the nation in terms of democratic self-governance.

CUNY Schools of General Studies (evening sessions) were not funded by tax levy support in the same manner as the day sessions of CUNY colleges. Although in each CUNY college the evening session was large and offered students the same degree curriculum as in its day session, only a very small portion of evening session support came from tax levy dollars per credit but the volume of students and credits taken resulted in substantial "big" dollars. Early School of General Studies staffing of teaching personnel was almost solely on the basis of day session professorial overload, paid for such overload not on a percentage of day session salary basis but on an hourly rate basis. There was some adjunct staffing by "outsiders" and this too was paid on an hourly rate basis. While there were some positive changes in the basic structure — some annual positions made available for the specific purpose of School of General Studies teaching, more tax levy dollar support, and some efforts by some of CUNY's

newer institutions to organize on a one session basis — the extensive use of adjunct lecturers persisted in the University through the years and they continued to be paid on an hourly basis.

This very questionable personnel policy which continued through years of University growth because the New York City Budget Director's Office believed that they had a low cost operation to protect from academic inroads, was indeed a policy which resulted in low teaching costs. The cost reduction is evident in the following illustration based on pre-contract salary schedules:

Adjunct Lecturer: 9 hour weekly workload (¾ of full-time schedule) paid at minimum hourly rate of \$9.33 per hour for 30 weeks of academic year (two semesters) would gross \$2500 for the year.

Lecturer, full-time: paid on an annual salary with a full schedule workload of 12 hours would gross \$8350 for the year which included paid annual leave of 2 ¼ months.

The Budget Office was able to buy three quarters of a full-time teaching schedule at 40 percent of full-time employee cost. Whereas the early application of this concept was a School of General Studies personnel policy, continued inadequate University budget support funds coupled with continued system-wide student enrollment increases led to the extension of the utilization of adjunct lectureships into the day sessions. So much so that the unions were able to rally much support for their contention that the University was fostering a cheap labor policy.

The senior professor at maximum salary who carried a one course overload of 3 hours was paid at the maximum hourly rate of \$18 per hour for this one course overload, despite his annual salary rate of \$26,000. His overload was being bought at \$1600, a far cry from the proportionate share of one quarter (¼) of his annual rate of \$6,500. What this fellow could conclude was that the gap had a better chance of being narrowed by the more militant of the two unions.

Another important factor in the PERB decision rationale was the University by-law definition of Lecturers as "temporary" employees. The initial PERB decision stated the following:

The non-annual lecturers, unlike the permanent staff, are appointed (and reappointed) for only one semester at a time, can never achieve tenure as a lecturer, and thus may be "dropped" for any reason.<sup>4</sup> Thus, they never achieve the basic right of continued employment which, as has been aptly stated, 'lies at the heart of the entire concept of academic freedom.' Most non-annual lecturers have full-time employment elsewhere although some, such as a

<sup>4</sup> Although they may eventually be appointed to the tenured positions of instructor, assistant professor, associate professor and professor, this occurs infrequently.

graduate student working to complete his doctoral thesis, may have a long-term career interest in the City University of New York. This highlights a significant difference in interest; the permanent staff has committed itself to the career service of the employer, whereas the non-annual lecturer may well find their chief livelihood elsewhere. In short, the role of the non-annual lecturer is generally that of a second job holder whose primary allegiance is to some other employer or career.<sup>5</sup>

On the other hand, the annual lecturers have no serious conflict, and much in common, with the non-annual lecturers. Basically, all lecturers are hired to fill openings in the permanent staff for which the employer is unable to otherwise recruit a satisfactory candidate, or to balance uneven teaching schedules, or to secure skilled personnel who are only available on a temporary basis. All lecturers lack tenure and have equal expectations of reappointment, share the same mission, are subject to common supervision, and freely substitute for one another. In terms of job security, salary determination,<sup>6</sup> and interdependence and interchange of employees, the annual lecturers stand in the same shoes as the non-annual lecturers. As the employer has stated in its brief (page 40):

the supreme unworkability of the ...proposed dividing line (between annual lecturers and non-annual lecturers) is made clearest by considering the example of a lecturer paid one year on an annual line basis, but hired the next year (because of insufficient annual lines or for other reasons beyond his control) on a non-annual basis. The example may apply in scores, hundreds, perhaps thousands of cases. To the extent that it occurs it will involve a constant and unnatural shifting of personnel from one unit to another, thereby contributing in a bizarre manner to instability of labor relations at City University.<sup>7</sup>

The failure of PERB to understand the significance of these official statements in relation to future UFCT negotiation demands in the area of job security is both appalling and amazing. In essence a public commission was pointing the way — a road sign which was followed by the UFCT with an important contractual victory.

#### TERMS AND CONDITIONS OF FACULTY EMPLOYMENT

One of the questions raised most frequently is "Were CUNY faculty employment conditions so bad as to engender this early move to collective bargaining?" Let's look.

<sup>5</sup> New York State Public Employment Relations Board, Decision, Case No. C-0008, May 1, 1968, p. 4-5.

<sup>6</sup> New York State Public Employment Relations Board, Decision, Case No. C-0008, May 1, 1968, p. 8.

<sup>7</sup> The schedule of maximum wage rates referred to above applied to all lecturers and the specific salary of all lecturers is individually negotiated.

CUNY as a "system" was established in 1961 by State Legislative action which changed the corporate name of the then loose federation of colleges called The College of the City of New York to the City University of New York. At that point in time the University was comprised of four senior colleges, City - Brooklyn - Hunter and Queens and two community colleges, Staten Island and Bronx. In the next 10 years, mainly under the leadership of its second Chancellor, Albert H. Bowker, it grew to a 20 unit system — 10 senior colleges, 8 community colleges, a graduate division and a medical school affiliate. The system was governed by a 21 member Board of Higher Education which was appointed by the Mayor of New York City.

### **SALARY SCHEDULES**

By 1968 CUNY faculty salary schedules were competitive with the best in the nation. Salary and fringe benefit increases had moved apace at two year intervals in what was a direct relationship to salary increases won through collective bargaining by the New York City school teachers - the UFT Local #2, an American Federation of Teachers group with AFL-CIO affiliation, led by Albert Shanker.

The unionization of teachers in New York City and bargained teacher salary increases had created a salary increase equity problem for the New York City Board of Education. How to translate these teacher salary increases into equitable salary increases for such categories of supervisory personnel as school principals, both high school and elementary school principals, department chairmen, etc. To solve this problem State Legislative action was taken to create what was known as The Index Law. This statute, since repealed by the legislature, provided a scaled basis of percentage increase for supervisory Board of Education personnel based on an index of 1 for the high school teacher. Thus a high school principal was indexed at 2; i.e., received double the teacher increase. Accordingly an elementary school principal was indexed at 1.7 and a high school chairman of department at 1.45.

The employee organizations in CUNY, particularly the LC, used their political clout to excellent advantage when with heavy support from the BHE a "gentlemen's agreement" was arrived at with the then Mayor which assured parallel treatment in salary increases for instructional staff in rank — parallel to increases afforded Board of Education personnel. It must be noted that this "gentlemen's agreement" was not achieved by collective bargaining but by political pressure through effective lobbying. However, the result was the same — salary increases became somewhat regularized through the following guideline applications:

Board of Education Title	Board of Higher Education Title	Increase Index
High School Teacher	Instructor	1.0
High School Dept. Chairman	Assistant Professor	1.45
Elementary School Principal	Associate Professor	1.7
High School Principal	Professor	2.0

It cannot be overemphasized, however, that these salary increases were never "negotiated" with employee collective bargaining agents. They were achieved only after hard bargaining by the University's Chancellor and staff with the City's Budget Office with the notable absence of any State participation.

The flavor and nature of this bargaining and the level of salary increases achieved is seen in the following report made to the BHE in November 1965:

## I WHAT HAS BEEN ACHIEVED

### A. New Salary Schedules

The salary schedules maintain basic parity with increases recently granted to teachers and supervisory employees of the New York City Board of Education, with effective dates of increases as of:

July 1, 1965 (retroactive)  
July 1, 1966  
October 1, 1966

All members of the instructional staff received increased salaries. For professional and instructional ranks increases range from \$300 to \$1,850 in the senior colleges and from \$500 to \$1,950 in the community colleges:

It was still necessary to create revised library rank schedules in order to provide a basis for retroactive increases for the period from July 1, 1965 to November 1, 1965, the proposed effective date of salary and title reclassification for this group.

The science assistant group's new salaries achieve a little more than the schedules recommended by the Allan Report (task force of the Administrative Council in that area last spring).



The need to advance salaries for business officers of the senior and community colleges finally has been recognized. The senior college business manager has been equated dollar-wise to the salary of full professor, the assistant business manager to associate professor and the community college fiscal officer to community college full professor (approximately).

Some of the specific highlights of increases follow:

#### SENIOR COLLEGES

	Existing Range	New Range (10/1/66)
Professor	\$14,000-\$20,150	\$15,350-\$22,000
Associate Professor	10,600- 15,600	12,050- 17,600*
Assistant Professor	8,700- 12,900	9,650- 14,250
Instructor	7,800- 11,025	8,100- 11,950
College Science Assts.		
"A"	5,300- 6,300	5,700- 7,000
"B"	5,700- 7,000	6,100- 7,900**
"C"	6,700- 7,900	7,600- 9,100***
Business Manager	12,200- 16,400	15,350- 22,000
Asst. Business Manager	9,350- 12,250	11,550- 17,600
College Physician	5,225- 6,725	6,150- 7,650

Other titles received comparable treatment as related to their tie-in-category: e.g., Associate Registrar to Assistant Professor, Assistant Registrar to Instructor, etc.

\* Reduction of one increment step to a 9 step schedule.

\*\* Reduction of one increment step to a 7 step schedule.

\*\*\* Reduction of one increment step to a 6 step schedule.

#### COMMUNITY COLLEGES

	Existing Range (10/1/66)	New Range
Professor	\$11,700-\$16,000	\$13,050-\$17,950
Associate Professor	9,800- 13,300	10,800- 15,000
Assistant Professor	8,400- 11,200	9,350- 12,350
Instructor	7,600- 9,400	8,100- 10,100*
Technical Asst. "A"	5,150- 6,350	5,700- 7,000
Technical Asst. "B"		**
Fiscal Officer	9,350- 12,250	11,550- 17,600

While there is no reduction in the number of steps in the professorial ranks, the dollar amounts of most incremental steps have been increased.

Schedule No. 2 for Registrar and Assistant Registrar has been created as of 10/1/66.

\* Reduction of one increment step to a 6 step schedule; also achieves parity with Senior Colleges' College Science Assistant "A" category.

\*\* Introduces a new promotional title and salary schedule paralleling Senior Colleges' Science Assistant "B".

#### B. Other Achievements

1. A promotional program for instructional ranks in the community colleges which by 1969-70 provides parity with senior colleges in rank distribution.
2. The unblocking of promotions for senior college science assistants. We are expecting to achieve 10 promotions from A to B and 5 from B to C this year.
3. The creation of a Technical Assistant "B" schedule in the community colleges to provide for a career service in this area. Salary schedules for Technical Assistant "A" and "B" which parallel senior college salaries at these levels.

## II. WHAT HAS NOT BEEN ACHIEVED

### A. Fringe Benefits-Health Insurance Program

The Board of Education granted its teachers and supervisory staff a choice of one of three health insurance programs with 100% pick-up of the cost as of October 1, 1965. The Budget Office is offering us the same choice of plans with 75% of pick-up of costs as of January 1, 1967. This offer to us is the same as that being offered all other City employees at the same time.

The timing of this offer is such as to require immediate action on our part to circularize applications among our employees. Employees will have between November 23, 1965 and December 6, 1965 to declare their intentions or face the possibility of no coverage until January 1967.

### B. Fringe Benefits-Welfare Program

The Board of Education granted its teachers only an additional \$100 per employee for supplementary welfare benefits effective October 1, 1965 to be administered through the UFT, the recognized collective bargaining agent for the Board of Education teachers. This \$100 is to be increased to \$140 as of October 1, 1966.

The Budget office has rejected our request for similar treatment with projected administration of the plan through the Board of Higher Education.

### C. School of General Studies and Summer Session Increases

Up to this time our request for a lump sum of \$356,000 for increases in our hourly rates of pay for lecturers in our Schools of General Studies and Summer Sessions have not been granted. Negotiations in these areas are continuing. Prospects for success must be judged poor. Senior colleges \$305,000; Community colleges \$51,000.

B. RESOLVED, That a choice of Health Plans be extended to the staffs, including the instructional staff, as provided for in Mayor Robert F. Wagner's letter of November 8, 1965, addressed to "Employees Not Previously Eligible for Choice of Health Insurance Plans."

C. RESOLVED, That the appropriate City authorities be requested to appropriate to the Board of Higher Education a sum sufficient to put into effect the salary adjustments, in accordance with the above salary schedules.<sup>8</sup>

This report indicates that these salary negotiations were more than a simple application of already agreed-upon guidelines. Firstly, it should be noted that while the "index" resulted in setting the ground rules for salary maxima it did not set up incremental step increases for each rank. Both Board of Education and Board of Higher Education salary schedules historically provided mandated incremental salary increases for pretty much every category of personnel with the notable exception of annual and hourly paid Lecturers. Secondly, one should also note that employee categories in both Board organizations differed by title, function, educational and experience requirements for employment, responsibilities, etc., and this occasioned much jockeying in negotiations. Subjective analysis of the parallelism concept must result in at least "puzzlement" as to the rationale which equated the task of full professor, a scholar, a researcher, a teacher with that of the high school principal, an administrator.

### FRINGE BENEFITS

Salary conditions were good but fringe benefits were excellent. CUNY faculty were covered by two fine pension systems — The New York City Teachers Retirement System (TRS) for senior college faculty and the New York City Employee Retirement System (ERS) for community college faculty. There never was a real rationale for this duality and it came about as a result of the tunnel vision of a New York City Budget Office examiner who, when community colleges were being introduced into the CUNY system decided that they should follow the pattern of the then existing New York City Community College which was located in Brooklyn and at that time not a unit within CUNY. No other rationale existed except perhaps for the fact that CUNY administrative - clerical staff personnel by virtue of their civil service status were also covered by the Employee Retirement System.

<sup>8</sup> Board of Higher Education Minutes, November 30, 1965, p. 523-525.

Benefits under both systems improved over the years in a somewhat leap-frog fashion. From time to time one would get ahead of the other in the race to the major objective of early retirement at half pay. Eventually, ERS benefits, spurred on by collective bargaining achievements of the large and strong municipal employees' union, District Council #37 AFSCME, and TRS benefits, constantly moved upwards by UFT bargaining (the teachers under the Board of Education represent approximately 90 percent of the TRS membership with the Board of Higher Education faculty constituting the 10 percent remainder), became a major cost item in the City's budget. So much so that the State Legislature established a special watch-dog committee to provide a rigid overview and control of employee pensions.

The major problem in the pension system area was that neither system provided for vesting — an omission which severely hampered University recruiting in a projected growth period. As early as 1964 this problem was recognized in the first CUNY Master Plan which stated the following:

Our present pension system, attractive as it is in many of its features, is not conducive to holding promising young people or attracting established scholars. There are two main areas in which improvement is needed. The first concerns potential staff members who have already established a substantial equity in an outside pension system, most frequently in the Teacher's Insurance and Annuity Association (TIAA). As things stand, senior members of other institutions are often unwilling to enter our pension system. Their reluctance is based on the fact that their opportunity to build up a substantial equity in the new system depends on their remaining with the City University for a period longer than they may wish to bind themselves. An arrangement should be established whereby they may continue their TIAA contract, with the City contributing to TIAA what it normally contributes to the New York City Teachers' Retirement System. Such a provision has been enacted into law for the staffs of the State University.

A lesser difficulty, but one which occasionally prevents the employment of very able people, is the non-vesting character of the New York City Teachers' Retirement System. We seek out scholars whom we would like to keep at our colleges, but we also recognize certain advantages to us and to American higher education generally which arise from a reasonable freedom of movement which will allow them to accept appointment in more than one place during their teaching career. Yet, under our system, the teacher who devotes more than a few years to one of our institutions finds his freedom of movement severely hampered by financial considerations of considerable magnitude. He can take with him when he moves elsewhere his own contributions to the pension system, but he receives no part of the City's contributions. This will benefit him only if he is in the City Service when he retires. Nor, if he leaves before retirement age, is he permitted to allow both his and the City's contribution to stand to his credit in the fund, ultimately to bring him a fractional retirement allowance when he reaches, say the age of 65.

In the near future, the provisions of the Teachers' Retirement System insofar

as they apply to the staff of the University, should be modified to meet the standards of the best institutions of higher education in the country.<sup>9</sup>

Not only were the existing plans modified to provide vesting but in January 1968 the University was successful in making all faculty employees eligible for TIAA-CREF on an optional retirement program basis — a boon to the University's recruiting program.

Along with other employees of the City of New York, CUNY faculty had a choice of three basic health insurance plans each of which had Blue Cross as a base. In 1967 this health insurance program which covered hospital-medical insurance had added to it, by virtue of a new Faculty Welfare program, sufficient supplementary benefits to make it one of the outstanding programs in the nation. Benefits provided included major medical insurance (TIAA), dental insurance (Equitable Life), total disability insurance (TIAA) and group life insurance (TIAA).

This supplementary Faculty Welfare Program was an excellent example of functional deviation from traditional labor-management relationships in that its origin was based in a management inspired concept. Fund management rested in an elected faculty Board of Trustees and an Executive Committee which included by charter two members of the New York City Board of Higher Education and a member of the University's Chancellor's Staff, and beginning in 1969 funding provided by negotiations with the Legislative Conference in its negotiations as a collective bargaining agent. This latter an oddity since members of the University's UFCT bargaining unit were also covered by the benefits of the program. From a modest initial lump sum program appropriation of \$700,000 per annum support had grown to the current level of \$2,880,000 for 1971-72 — a per capita contribution rate of \$300.

#### FACULTY GOVERNANCE

Historically, (since 1938), the provisions for the governance of the University have been enunciated in the by-laws of the BHE. In some instances, notably tenure and salary schedules, Board by-laws have been subsequently written into State statute. The Board's by-laws were contained in a multi-paged loose leaf volume available in every CUNY college library and available in pretty much every college administrator's office.

Besides those articles covering the organization and procedures of the Board itself, such matters of governance as instructional staff status (appointments, promotions, transfers, tenure, etc.), duties and qualifications of members of the instructional staff, (including deans and officers), academic due process, organization and duties of the faculty, and the organization and duties of faculty departments were delineated. The by-laws also carried salary schedules and leave regulations for faculty and a most recently revised and expanded section dealt with students' rights and responsibilities.

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<sup>9</sup> City University of New York, *Master Plan*, July 1974, p. 61-62.

In the preamble of this section one sentence contains the theme of the article, "Student participation, responsibility, academic freedom and due process are essential to the operation of the academic enterprise."<sup>10</sup>

In their totality, the by-laws of the BHE spell out the details of what has been deemed to be an outstanding model of democratic governance for faculty. Among the more unusual features of the model are the following:

1. Departmental election of the Chairman of Department for a three year term by the members of the department by secret ballot.
2. Control of the educational policies of the department.
3. The exercise of peer judgment (by appropriate elected committees) as a basis for departmental personnel recommendations in the areas of appointment, re-appointment, non-reappointment, tenure and promotion.
4. Due process and academic freedom guarantees.
5. Election of and participation in a college faculty council or senate with broad council powers guaranteed.
6. Election of representation to a University Faculty Senate with similarly broad powers.

No summary statement such as the above would be complete without relating the concept of a University Faculty Senate (UFS) to the broader issue of faculty collective bargaining. At CUNY the UFS was a relative newcomer to the scene. It was created in April 1972, "responsible, subject to the Board, for the formulation of policy relating to the academic status, role, rights, and freedoms of the faculty, University-level educational and instructional matters, and research and scholarly activities of University-wide import."<sup>11</sup> However, this charge carried with it a proscription which was intended to guarantee the so-called autonomy of the faculty of any constituent unit of the University — "The powers and duties of the UFS shall not extend to areas or interests which fall exclusively within the domain of the Faculty Councils of the constituent units of the University."<sup>12</sup>

It has been charged that Chancellor Bowker conceived and even rushed the rapid development of the UFS as an apparatus to compete with the two existing faculty organizations for collective agent status. If this were true it would have been another case of too little too late. The young organization devoted its full energies to making its own by-laws providing for the election of its own officers, the establishment of its own rules and procedures for the election of Senators and

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<sup>10</sup> Board of Higher Education, *By-laws*, Section 15.0 Preamble, April 1970.

<sup>11</sup> *Ibid.*, Sec. 8.14.

<sup>12</sup> *loc. cit.*

for its interim administration. In point of fact it early on declared its neutrality even though the first senators elected could hardly be identified in their senatorial hats which were constantly doffed to be replaced by their LC senior member caps. Time has now changed the UFS position in regard to collective bargaining from passivity to positive acceptance.

One should not be too critical of the role adopted by the UFS. Its charge was such that in an organizational structure like CUNY's with the zeal for autonomy historically advocated by the constituent colleges much time and energy had to be devoted to organizational survival.

# Chapter II

## OPENING MOVES - ORGANIZATION FOR NEGOTIATIONS

The bargaining unit determination appeal decision by the three member PERB represented a moral victory for the BHE in that it was a two-to-one verdict by which the LC position was upheld. This decision came down from the state capitol on August 9, 1968 and ordered a bargaining agent election for each of the two units.

As indicated in Chapter I technical requirements in the preparation of voting lists and physical arrangements for the election resulted in a rather wide time gap. Separate unit elections run concomitantly were scheduled for December 5 and 6, 1968. For each unit the ballot was to provide each voter with a choice of the LC, the UFCT, or neither organization to represent him. Of course a "neither" vote would constitute a rejection of the collective bargaining drive. The winner had to receive a majority of all votes cast.

### THE WHITE PAPER

Neither side was to remain idle during the pre-voting period. The rival employee organizations entered into a pamphlet war appealing to the constituencies in which each imagined it had greatest strength. There was some of the usual name calling but if a major line of demarcation could be perceived it had to be identified as the long standing "professional" organization with a history of accomplishment for CUNY faculty versus the more aggressively militant young upstart. And, of course, the University played its hand.

For better understanding of the University administration's position one must be aware of some specifics. At a very early point in his tenure in office the very new Chancellor Albert H. Bowker appreciated the peculiarity of his position. With the strong support of Mayor Robert F. Wagner, municipal employee's unions were on the march — the Board of Higher Education (BHE) had already paid lip service to the concept of recognition of employee representatives — the BHE numbered among its members several people prominent in the field of labor — the presidents of the constituent college units were concerned with the prospect of problems in relationships with faculty in a collective bargaining environment — the California State College system experience, although resulting in a rejection of collective bargaining, proved to be a very close contest — there sat on his desk the LC's demand for recognition as the bargaining agent for faculty — the hot breath of the UFCT was blowing in the same direction. Bowker sought, through the Administrative Council (the presidents of the constituent colleges meeting in council), some outside advice. A report prepared by Professor William Gomberg of the Wharton School of Business, University of Pennsylvania,<sup>1</sup>

<sup>1</sup> Gomberg, William, "Problems of Collective Bargaining Among Professionals." unpublished report to the CUNY Administrative Council, January 1964.



weighed the pros and cons of collective bargaining for faculty as viewed as professionals in the trend towards unionization. Professor Gomberg predicted that the problem would not vanish by itself but would become more intense as the University faculty grew in size. In essence the Administration's historical position, 1963-1967, was one of cautious recognition of the existence of the two rival faculty employee organizations and consultation with them if and almost when requested including acquiescing to their leaders appearing before the closed-to-the-public monthly meetings of the Board — but no bargaining agent status.

With the 1968 PERB decision came the need for the University administration to shoot or give up the gun — a faculty collective bargaining not only was in the offing, it was but a few months away. What to do? Does one take no position and sit passively by to await the mandate of the faculty? Does one take a position as an advocate for faculty collective bargaining and most assuredly become the first major university in the country to be unionized? Can one take an anti-union stance in laborwise New York City and survive? The Chancellor's staff was somewhat divided in terms of the best approach to take and even more divided in predicting the vote outcome. It was eventually decided that the best strategy would be one aimed at "getting out the vote" and one aimed at achieving a well informed electorate by putting a position paper before it. The rationale behind the paper was quite simple — stir-up the usually placid academic, jealous of his self-determination prerogatives, with the "bogey-man" of collective bargaining. That there be no doubt of the validity of this theory of the administration's rationale is evident from the title of the so-called "white paper" issued by the Chancellor's Office to all members of the faculty in November 1968 — "Collective Bargaining at the City University?"

Pertinent quotes from this document, prepared by the Chancellor's staff with the consultant aid of a labor relations expert and carefully reviewed by experienced labor relations counsel are reproduced below. Its tone was established at the very outset in which the issue was formulated —

#### **The Issue**

On December 4 and 5 the faculty of our University will vote in an election to determine if they wish to be represented by either of two exclusive collective bargaining agencies or to maintain professional self-representation through internal faculty organizations.<sup>2</sup>

It is replete with such phrases as:

The vote of our University faculty may have a greater effect upon the future of American higher education than any decision of any university faculty in the past 50 years. Every faculty member who is eligible to vote should participate in this election.<sup>3</sup>

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<sup>2</sup> "Collective Bargaining At City University?". Office of the Chancellor, City University of New York, p.1.

<sup>3</sup> *Ibid.*, p.2.

Collective bargaining in the context of industrial negotiations has acquired a specialized meaning, well-established in law and in the rules of the national and state labor relations boards. However, since these labor relations acts do not apply to academic institutions, and the concept of collective bargaining up to this time has gained very little acceptance in American higher education, there is no clear definition of what collective bargaining will mean in a college and university.<sup>4</sup>

and in regard to the issue of exclusivity in bargaining representation the following:

The concept of exclusivity, however, is generally considered in the industrial sector to be an important pre-condition for the development of bargaining relationships. Both contending organizations in the City University election have indicated that they wish to be considered exclusive bargaining agents. If a bargaining agent is chosen by the faculty, and that agent obtains an exclusive right of representation, the Board and administration of the University will be precluded by law from negotiating with any faculty groups, agencies, or individuals except the organization designated as exclusive bargaining agent.<sup>5</sup>

On the scope of bargainable issues it said:

Since those issues which are bargainable can only be determined through bargaining itself, it is difficult to indicate at this point exactly which issues a collective bargaining agent would consider to fall under its purview. It is clear, however, that in some cases the demands of collective bargaining agents may be inconsistent with the traditions of college teaching as a profession. For example, one organization which represents the faculty of a two-year college (not part of City University) included in its bargaining demands the establishment of a promotion system based on seniority under which all individuals would be automatically promoted from rank to rank until the top line of professorial salary schedule is reached. The system of promotion by seniority is of course incompatible with the traditional academic system of promotion based on the professional evaluation by one's peers.<sup>6</sup>

and in the area of employer-employee relations it said —

Collective bargaining as defined in industry brings together in an adversary proceeding two parties with well-defined objectives. Traditionally, in higher education there is a community of shared interest and shared grievance which overrides the industrially oriented management-labor schism. Particularly in publicly supported universities, the faculty, administrations and trustees have usually acted in concert to obtain more funds for higher education from the elected officials who have the ultimate authority in the allocation

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<sup>4</sup> *Ibid.*, p.6.

<sup>5</sup> *Ibid.*, p.7.

<sup>6</sup> *Ibid.*, p.8.

of these public resources. It is as unusual to find faculty members who consider themselves employees as to find administrators who consider themselves to be management. Indeed, in most institutions of higher education as in the City University, the faculty now makes many decisions which in industrial situations are considered prerogatives of management. They hire, fire, and promote their fellow professionals and have the major responsibility both for the activities of their students as well as the educational program which is the primary reason for the existence of the institution.<sup>7</sup>

The effectiveness of the document is difficult to judge even in retrospect. Many faculty members who claimed pre-white paper neutrality on the collective bargaining issue contended that the tone was sufficiently condescending so as to move them to the union side. This, in light of actual vote results, has got to be taken with a grain of salt.

The document was effective in drawing militant responses from both the LC and the UFCT. The LC accused the Chancellor of attempting "to confuse, influence and coerce the staff to reject the choice of any negotiating agent" and made much of trying to draw a distinction between "collective negotiating" as used in the Taylor Law and "collective bargaining" as used in the Chancellor's paper — a distinction which no one subsequently attempted to maintain. The LC also had this advice for the faculty, "to protect YOURSELF AGAINST BOWKERISM, TO ASSURE THE BENEFITS YOU CAN GET ONLY BY COLLECTIVE NEGOTIATION — VOTE RIGHT — VOTE LC."

Unlike the LC which had made its response in a two page mimeographed hand-out, the UFCT president went public in his response via letter to the editor of *The New York Times* in which he characterized the Chancellor's statements as "partisan anti-collective bargaining statements" and "scare tactics and veiled coercion." These moves drew the matter to the attention of the prestigious *New York Times* which on December 3, 1968 just prior to the CUNY faculty vote, editorialized as follows:

#### BARGAINING ON CAMPUS

The Collective bargaining election at the City University tomorrow and Thursday is far more than a test of strength between opposing forces, each intent on speaking for the teaching staff. The fundamental issue is the role of the faculty in protecting the independence of higher education.

This role is crucial to the maintenance of democratic campus rule and the safeguarding of academic standards at any institution of higher learning; it is of special significance at the City University, which has been moving rapidly toward the establishment of university-wide government. Following the recent creation of a Faculty Senate, it would be doubly unfortunate to see the introduction of an outside force in competition and potential conflict with representation and leadership, and foreign to the purposes of a university.

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<sup>7</sup> *Ibid.*, p.9.

Even with the best intentions, the orientation of a trade union in the academic setting threatens to interpose barriers between administration and teaching staff by creating a fictitious relationship of employer and employee. Still more damaging could be the substitution of seniority and automatic promotion for quality judgments by faculty peers. The elimination of such quality controls has long been a threat to scholastic vigor in the public schools, and it is difficult to see how unionization of higher education could avoid moving the colleges and universities in the same direction.

City University faculty members, being part of a young and growing institution, undoubtedly have some justified individual and collective grievances. But such complaints should not overshadow the fact that the faculty is part of one of the nation's most exciting and promising ventures in urban higher education.

Great strides have been made, both in campus governance and in the creation of a university national eminence and local service, built on the quality of the undergraduate city colleges with their tradition of independence and academic excellence. A vote for collective bargaining now would be a dangerous departure from that tradition.<sup>8</sup>

Still another reaction to the white paper was that of the Summer 1970 class of administrators in higher education who analyzed it as one document in the CUNY case prepared for the labor relations course in the program of the Institute for Educational Management.<sup>9</sup> In the main, the paper was criticized as one which too carefully attempted to walk the tight rope between neutrality and an anti-union posture. This perhaps was the most applicable of criticisms.

The paper, however, did succeed in one respect — it did get the vote out.

#### THE VOTE

On December 4 and 5, 1968 the faculty of CUNY went to the polls to choose its collective bargaining agent for each of two distinct bargaining units — Unit I, comprised of members of the instructional staff holding or seeking tenure in the ranks of instructor, assistant professor, associate professor and professor plus a fair number of professional non-teaching career-type employees in such generic title series as business managers (non-tenure), registrars (tenure bearing), laboratory technicians (tenure bearing), and higher education officers (non-tenure) — Unit II, comprised of lecturers, full time and part time, paid either on an annual, monthly or hourly basis and teaching assistants. Of a total eligible list of 9550 employees, approximately 4900 were in Unit I and 4650 in Unit II.

<sup>8</sup> Editorial, The New York Times, December 3, 1968

<sup>9</sup> "Institute for Educational Management Program." Harvard Graduate School of Business, Summer 1970.

The results of the balloting in the initial election were:

	UNIT I	UNIT II
LC	2,095	731
UFCT	1,680	1,634
Neither	656	350
Not Valid	<u>14</u>	<u>548</u>
Total	<u>4,445</u>	<u>3,263</u>

and since there was no majority choice in Unit I a run-off election was required. This was held on December 17 and 18, 1968 with the following result:

LC	2,067
UFCT	1,634
Challenged	<u>256</u>
Total	<u>3,957</u>

Thus, the LC was certified as bargaining representative for Unit I and the UFCT for Unit II.

An analysis of the voting proves very much worthwhile and leads to some interesting speculations —

1. A turn-out of 90 percent of eligibles in Unit I and 70 percent in Unit II was extraordinary.
2. The UFCT had totally underestimated its strength. In fact one could conjecture that a PERB decision which would have supported the University's unit determination position would have resulted in a total UFCT victory.
3. Another interesting conjecture would be that approximately 500 Unit I eligibles lost interest in voting when a "neither" vote was no longer an option.

#### THE UNUSUAL SITUATION

The University found itself in a very different position. It was mandated to conduct two separate collective bargaining negotiations simultaneously. The initial PERB

decision had treated with the University's concern regarding the nature of the administrative problem created in the event of a two unit decision. PERB had said the following:

In finding the two units described above to be appropriate, I have seriously considered the employer's concern that the establishment of more than one unit could cause difficult administrative problems. However, while the employer's preference is entitled to consideration, it may not predominate where the other criteria for unit determination set forth in Section 207.1 of the Taylor Law indicate the need for a different result by establishing that there are real conflicts of interest among the employees the employer seeks to join together.

The employer need not be unduly dismayed at the possibility of dealing with different employee organizations for the two units I have determined are appropriate. There is nothing in the Taylor Law or the Rules of this Board to prevent the employer from requesting the employee organization, or organizations, if any, representing the employees in the two units to make a joint presentation to it and to conduct joint negotiations with regard to matters of concern to all employees. Such a procedure would afford the employer the convenience of unified negotiations on University-wide issues, while assuring to the employees in each unit particularized representation on issues of special concern to them.<sup>10</sup>

Obviously, the examiner who stated the above had missed much of the innuendo if not also much of the substance of what went on before him. Throughout the PERB hearings and the pre-election campaign the LC had labored hard to maintain its image as an independent professional organization not in any way to be likened to a labor union. It made much of its independence in terms of not owing allegiance to any outside organization while condemning the UFCT for its policy and financial dependence on the AFL and CIO. On the other hand the UFCT promoted its image of professional unionism while labeling the LC a company union. The UFCT accused the LC of perpetrating a fraud by constant references to the close ties of LC to the University's administration. The UFCT actually stated the following:

#### **PROFESSIONAL UNIONISM VS. BUSINESS COMPANY UNIONISM**

Professional unionism takes into account the total aspect of a professional's life - for indeed in academe man does not live by bread alone. Among the issues animating the college professional, one should include academic freedom, faculty governance, and a concern for the professional as a whole. Salary, workload, and physical work conditions, while important, are obviously not the only issues that should engage our energies as professionals.

Business unionism knits its concern to matters of "bread and butter." The

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<sup>10</sup> New York State Public Employment Relations Board, Case No. C-008, May 1, 1968, p.10.

danger of such an attitude is that it glosses over problems of a more subtle nature, such as those created by overweening and ubiquitous bureaucracies, which influence the state of the profession just as dramatically as salaries and fringe benefits.

Company unionism expresses a disturbing relationship of identity of perception between the administration and the professional staff. The company union relishes obsequious hobnobbing with top administrators. It attempts to pass off "meeting and conferring" as negotiating (as if hard give-and-take bargaining can be equated with merely meeting and presenting a set of demands).<sup>11</sup>

One phrase used in a throw-away by the UFCT was that "the LC evidently feels that by osmosis it is party to the decisions of the Chancellor and the Board of Higher Education."

The problems were many and for the most part could be foreseen clearly. However, they did raise questions —

1. How would the University organize to handle the collective bargaining negotiations?
  - a. What was to be the role of the Chancellor?
  - b. Was the BHE to be involved directly?
  - c. How would presidential input be obtained?
  - d. How to comprise the "table" bargaining team?
2. Who was to set parameters for the "table" bargaining team?
3. Would the University bargaining team include labor counsel? If yes, at the table or available for consultation?
4. How does one conduct separate yet tandem negotiations with two arch political opponents and avoid the charge of favoring one?
5. Where did one find personnel who knew the University, the rival organizations, the academic world and at the same time have expertise in collective bargaining?
6. What role would the City wish to assume? Who would represent the Mayor's office.

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<sup>11</sup> Trustees of the Institute for Educational Management, "City University of New York (A)", 1970, p.19.

The answers were more difficult and offered many alternatives.

## UNIVERSITY ORGANIZATION FOR COLLECTIVE BARGAINING

Push had come to shove. What had been, some years back, considered a hanging sword of Damocles was now an ax which had fallen. The task of answering the important questions had to be faced up to. The first of these was that of structuring an organization for collective bargaining.

The BHE was the body which would ultimately have to vote yea or nay on the faculty contracts as negotiated. Procedurally, pre-contract, the BHE had served as a court of last resort on reappointment, tenure or promotion grievances of faculty members - a last in-university step beyond the college president. This was a role and a function which the Board considered onerous and much too time consuming. Furthermore it was a role which had been subject to much criticism by both faculty organizations since, until the summer of 1968, every presidential decision had been upheld by the Board. (In the summer of 1968 a Board hearing committee had reversed the decision of a college president for the first time.) The policy line was made clear — no member of the board would be directly involved in negotiations. A new functional committee of the Board, the Committee on Collective Bargaining, was created to maintain Board liaison with the negotiations. This committee of four was chaired by a well-known labor lawyer member of the Board who in his own practice served as counsel to several labor unions.

The Chancellor, as the Chief Administrator of the University and Academic Officer of the Board, was charged with determining the organization of the bargaining teams and with carrying the negotiations forward. An early decision was to have both negotiations carried on by the same "table team." The determination of the composition of this team was no easy task for many different reasons. Firstly, no member of the Chancellor's staff of vice-chancellors or university deans had any extensive experience in collective bargaining. Certainly no one really knew anything about this new area of faculty collective bargaining — but who in the nation did? Secondly, the one person who had been responsible for managing the University's case in the unit determination issue and who had in the past negotiated several University contract agreements with the Civil Service unions, could not be freed from other important duties to take on what was admittedly a full time job. Thirdly, no one wanted the job. Ultimately it was the Vice-Chancellor for Staff Relations who, previously to the onset of the faculty collective bargaining issues had been Vice-Chancellor of Business Affairs for several years, (and who also had had 28 years of service in the University in many different capacities including teaching management and who had functioned in college business operations) was assigned the major responsibility of chairing the University's table team. The "conning" trade-off was the reassignment of one set of his other functions. Thus, it was the Vice-Chancellor for Staff Relations who had a large role in the choice of the remainder of the table team and the back-up organizational structure.



The first skirmish list by the team chairman concerned the need for the services of expert labor counsel at the bargaining table. He was convinced of the potential contribution of such specialized services by virtue of his experience with the level of expert assistance afforded the University in the unit determination hearings in which the University had had the services of two outstanding attorneys. The battle lost in this issue was to have repercussions in the University's relations with faculty for years to come. It must be said that it was not the Chancellor who opposed the utilization of labor counsel but it was two members of the Board who succeeded in turning the Chancellor around from the earlier commitment made to the Chairman of the table team. The preferred alternate to special counsel was to add to the Vice-Chancellor's staff a "name" specialist in labor relations to provide expertise and perhaps authenticity. This was done. To round out the in-house skills and expertise the third member of the team was a Vice-Chancellor who also was a career academic and had, before coming to the central office of the University, been an Associate Graduate Dean at one of the older senior colleges. Completing the team was a newly hired young executive assistant to the Chancellor, a lawyer who had taught a little but had never practiced law. The fifth member of the team was a young member of the Vice-Chancellor's staff who served mainly as unofficial recorder and as a resource person. It should be noted that the Vice-Chancellor for Staff Relations had a total faculty labor relations staff of one newly hired labor relations professor, one senior specialist who served as University Coordinator of Faculty Personnel and whose ongoing duties precluded his participation in the new effort, a young executive assistant who also served as unofficial recorder at the bargaining table and two secretaries. An interesting comment on University staffing for collective bargaining at that time.

To provide University specialized area expertise to the table team a back-up "strategy committee" was created. This "strategy committee" included the table team plus the following people: (1) the Chancellor (2) the Vice-Chancellor for Budget and Planning (3) the General Counsel to the Board (4) one four year college president and (5) one two year college president — the latter two representing the Council of Presidents.

The procedural plan established called for union proposals to be discussed fully at the table with table team recommendations to then come to the strategy committee which in turn would provide the table team with fairly broad policy guidelines. Within these broad parameters the table team had full authorization to conclude "tentative" agreements with the Unions. One caveat set was that critical policy issues, as determined by the Chancellor, would be brought before the Board's Collective Bargaining Committee with recommendations. This plan did serve the purpose of providing several levels of review of proposals and counter proposals and it did provide an apparatus for input and involvement of several levels of University administration. However, the plan did slow the pace of negotiations considerably and utterly failed to secure real involvement on the part of sufficient numbers of college presidents. Most of the college presidents were, to be charitable, passively interested and considered the entire operation to be "a central office affair." They were due for a rude and shocking awakening.

## TANDEM NEGOTIATIONS

It was decided that the negotiations had to be conducted separately but in tandem. More rapid forward movement in one negotiation would result in setting up more specific targets for the other. This is pretty much what occurred. However, a decided disadvantage became apparent. The more down-to-earth demands of the LC and their better organization for bargaining resulted in tentative LC agreements in specific areas becoming the basis for University thrusts with the UFCT. When one has to push and when one has the need to sell, one tends to "give" more in those areas peculiar to the individual unit being pushed. The LC table team was generated by seasoned labor counsel who served his client well and taught the University team much of what it learned about union collective bargaining. The UFCT bargaining organization was indeed slowed by the amateurism in technique displayed by both sides, by pie-in-the-sky demands and by an ever-changing cast of characters at the bargaining table. In fact, for six critical bargaining weeks in the summer of 1969, the President of the UFCT local and chairman of the bargaining team was away on vacation and had to play "catch-up-ball" on his return.

## THE ROLE OF THE CITY

The Chancellor, via the Budget Director of the City of New York, was made aware of the City's interest in our negotiations. There appeared to be no desire on the part of the City to sit a representative at the table. However, there were two major caveats — the salary agreement must break away from the Board of Education parallelism achieved by the precedential "gentlemen's agreement" and in terms of total costs the "kitty" could not exceed a given percentage of the cost of the then ongoing Board of Education - UFT negotiation.

University strategy was to accept the caveats and keep the City people as far away from the academic bargaining table as possible. Basically the University was afraid of the union power base which had been developed within the City government and more importantly it preferred to keep non-academics out of the academic bargaining process. It was believed that the City might be prepared to go easy on governance demands if by such "gives" it could save dollars.

Prior to the beginning of negotiations the City could not reach a conclusion as to whom their liaison would be. In the end picture it turned out to be the City's Director of Labor Relations - more about that later.

## ANTICIPATING DEMANDS

There was a conviction on the part of the Vice-Chancellor for Staff Relations that both unions had pretty well tipped their hands in terms of demands. Their monthly newspapers, the LC "Reporter" and UFCT "Action", plus their snow storm of mimeographed flyers were replete with proposed courses of action. The files were complete,

the research sound, and when written demands were presented they brought no surprises.

Considered by some to be one of the major errors on the part of the University was its failure to prepare a management demands package. This is not to state that such an approach was not weighed. It was considered and then discarded because of the prevailing belief that in this first negotiation the better strategy would be one in which management's approach to its demands would be based on counter proposals; an approach which was usable only in a first negotiation and could not be used again. As Chapter III will indicate, there were management demands presented to the unions in the first negotiations.

# Chapter III

## NEGOTIATING THE CONTRACTS

Collective bargaining with each of the collective bargaining agents got under way in February 1969. These began as weekly meetings and in the usual manner were stepped up to a time in the negotiations when sessions were held three and four times a week with each union. The sessions were typical labor-management bargaining meetings which in the early stages of negotiations might be likened to two prize fighters "feeling each other out" in the first few rounds. So that the differences in tone and nature of the basic philosophies of each union may be more clearly seen the negotiations are discussed separately.

### THE LC CONTRACT

The original submission of LC demands constituted a "shopping list" of some 130 different items under twenty six (26) generic headings (Appendix I) and ran the gamut from 'more parking space' to 'binding arbitration of grievances.' These, of course, were added to as negotiations progressed.

The very first session was a very interesting one. The tone was one of friendly informality — no introductions were necessary except for the introduction of the LC's counsel — these were colleagues dealing with colleagues and perhaps only the vagaries of fate in careers kept the roles from being reversed. The Chairman of the LC Negotiation Committee was Professor Joseph Copeland, a senior professor of Botany at the City College and a long time member of the LC. Joe Copeland's role was to change sharply and almost immediately. Unhappy over the state of student disruptions on the City College campus Dr. Buell Gallagher, the long time President of the college, made a rather sudden decision to retire. To fill the interregnum void the BHE asked Joe Copeland to accept the acting presidency and Copeland, who had built a reputation as a fair-minded yet firm disciplinarian, felt duty bound to accept. Professor Copeland never returned to the bargaining table but he did sit as a member of the Council of Presidents, hear reports on negotiations progress, discuss policy guidelines for the table team and in essence serve on the management side of the negotiations. A strange twist but one which illustrates the collegial aspect of the opening of negotiations. Partisans, yes — adversaries, no.

The very first item discussed across the table was one which was again indicative of the strange nature of collective bargaining at CUNY. It appeared as Article IIA in the demands under the title of "Authority of Negotiating Committee" and said, "It is expected that the Committees will be empowered to negotiate in good faith, and with the authority to enter into a firm contract."<sup>1</sup> Although committees was pluralized the

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<sup>1</sup> Legislative Conference/CUNY, Demands Presented to the Board of Higher Education of the City of New York, February 7, 1969, p. 1.

intent of the item was clearly one of establishing firmly that the University team was not functioning in an errand boy role and that it was empowered to commit the BHE to agreements. As a part of this discussion, counsel for the LC raised the rather interesting point of his never having been involved in contract bargaining in which the management side was bargaining on the issue of its own salaries. This was true. The salaries of all of the members of the University bargaining team were based on the University's professorial salary schedule. To illustrate, the two vice-chancellors in the group were salaried as full professors at the maximum incremental step and received additional compensation for the administrative assignment. Thus, for professors at maximum salary they could have negotiated an increase of \$5,000 in their own salaries. The point openly raised warranted discussion. What were the options? Obviously any inside-the-University negotiating group would have found itself in the same peculiar position—even the presidents' salaries carried the same professorial base. In response to the management side query as to whether the LC would prefer to negotiate with outside-the-University professional labor relations people, the LC agreed that there was no more viable alternative.

#### **Frame of Reference - Policy Statement**

The initial thrust of the University was based on its honest belief that negotiations with academics would be largely professionally oriented. Thus, in full good faith the University attempted to set a basic philosophical reference for the consideration of the negotiability of any demand and proposed the following:

There are certain practices and policies which define the academic character of the University as an institution of higher education. Collective negotiations may not include those items which would encroach upon the academic character of the University. Examples of items excluded by this policy are:

1. those items that affect the appointment of individuals to tenured positions in the University
2. those items that affect the University's ability to promote or otherwise reward meritorious individuals
3. those items that are the province of the faculties of the University

As for example the Bylaws provide in part that:

The faculty shall be responsible, subject to the Board, for the formulation of policy relating to the curriculum, the granting of degrees, the student activities and student discipline...It shall make its own Bylaws and conduct the educational affairs customarily cared for by a college faculty.

In granting powers and duties of the University Faculty Senate, the Board of Higher Education preserved for faculties their existing rights. This policy reads as follows:

The powers and duties of the University Faculty Senate shall not extend to areas or interests which fall exclusively within the domain of the Faculty Councils of the constituent units of the University.

It is the policy of the Board of Higher Education not to diminish the rights and responsibilities of the faculties. To do so would substantively alter the character of the University.<sup>2</sup>

It is safe to state that the first three sessions were directed to discussions of this submission and how it related to the "policy statement" which served as a preamble to the LC's demands which said:

As in the past, the Legislative Conference approaches the current negotiations in a spirit of cooperation with the Board, and the University authorities. Although the Conference viewed with dismay some of the University statements on collective negotiations during the recent election period, we are prepared and anxious to begin anew, without recrimination or ill feeling.

An overwhelming majority of the faculties have spoken out in support of collective negotiations and the Legislative Conference has been designated to represent the career instructional staff of the C.U.N.Y. Nor are we unmindful of the burden, and responsibility to all of those whom we represent, be they full professors, or science technicians, at the Senior or Community Colleges.

We are prepared to discharge these duties equitably, fairly, and as always in a professional and gentlemanly manner.

We hope that those in positions of authority to negotiate for the University will do the same, and convey to their representatives and subordinates their agreement to this attitude and position.

In this posture we will mutually arrive at agreements that will further the development of a University that can best serve the interest of all the people of the City of New York.<sup>3</sup>

Out of these discussions came the first full realization of how much of a union and how little a professional organization the LC had become.

If the University Administration had been successful in establishing its proposed frame of reference the whole ball game might have been different — and it well might have been a successful effort if counsel for the LC had not been so steeped in the industrial collective bargaining model which precluded acceptance of the concept of

<sup>2</sup> Mintz, Bernard "The CUNY Experience," *Wisconsin Law Review*, Volume 1971, Number 1, p. 116.

<sup>3</sup> Legislative Conference/CUNY, "Collective Negotiating Committee Report - Policy Statement," March 10, 1969, p. 1.

collegiality in a collective bargaining agreement. The contract clauses which resulted were but a shadow of the proposal and read as follows:

1.1 The Board and the Conference agree to maintain the academic character of the University as an institution of higher education.

1.2 Nothing contained in this agreement shall be construed to diminish the rights granted under the Bylaws of the Board to the entities and bodies within the internal structure of CUNY so long as such rights are not in conflict with this Agreement. If provisions of this Agreement require changes in the Bylaws of the Board, such changes will be effected.<sup>4</sup>

### **Analysis of Demands**

Analysis of the demands presented by the LC and how they were dealt with in negotiations by both the LC and the University gave evidence to the conclusion that in the first contract negotiation the LC either could not or would not take the traditional labor union stance. The LC was no longer a professional association but it was not yet a trade union. Likewise, the contracts were evidence of the fact that the University either could not or would not effect the traditional "Management" posture.

### **The Identification Crisis**

Perhaps the most unusual aspect of the negotiations was the difficulty in establishing a clear-cut parallel with the traditional bargaining concepts of the identification of "labor" and "management." Who qualifies as "management" within a University? Some identifications are obvious, e.g., the Chancellor, vice-chancellors, college presidents, vice presidents and deans. But how does one classify such people as department chairmen, directors, business managers, registrars, etc. As a faculty member with professorial status, the department chairman was deemed eligible to vote in the collective bargaining election. However, his chairmanship required him to perform traditional managerial functions.

Of even greater conceptual difficulty was the hybrid role of the faculty member, the "rank and file" of the bargaining unit. Consider this - while under law, authority to appoint, promote and grant tenure rested with the Board of Higher Education, these managerial prerogatives were delegated in Board Bylaws to the faculty. The faculty, through processes of peer judgment, made recommendations as to whom they wished to remain at the college in perpetuity, whom they wished to recognize through promotion, and whom they wished to no longer retain, certifying in each case that a given decision was for the good of the institution. In addition, the faculty traditionally assisted in establishing policy in areas of curriculum, student admissions, and other

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<sup>4</sup> Agreement between the Legislative Conference/CUNY and the Board of Higher Education of the City of New York, September 15, 1969, Article I, p. 2.

areas which might also be considered management prerogatives.

Tangible evidence of the problem of identification manifested itself in the constant vacillation of the LC bargaining team between two philosophical positions: on the one hand, the team contended that "we are professionals, we are members of the faculty, we have legitimate concerns outside of traditional collective bargaining;" on the other hand, in relation to other specific demands, the team contended that "these are standard in all union contracts."

Demands such as union security, grievance procedure, dues check-off and agency shop, released time for union functions, and workload were some of the "union standards" from which the faculty representatives wished to draw. Demands relating to participation in faculty appointments, selection of college administrative officers, and tenure and promotion decision making, constituted "professional standards" demands for which the team wished to bargain.

The University helped to blur the distinction between management and labor by way of omissions and commissions in the negotiations. In the way of omissions, it failed to include a written *positive* statement of management prerogatives and satisfied itself with the oft orally repeated and seemingly accepted concept that which is not changed by the contract remained the same. The "same" in this instance was past policies, practices and procedures. In many instances this point of view was not upheld in arbitrations arising out of contract grievances. By way of commission the University insisted on protecting the right of the individual faculty member to go to grievance and even arbitration on his own, independent of union assistance on his behalf. The assumption here was one of protecting the individual who did not believe in the need for the protection of the union umbrella. A position perhaps well conceived by academic administrators thinking as academics but one which would never have been accepted by academic administrators thinking as management.

### **Critical Issues**

The question raised most frequently in regard to the contract negotiation was, "what constituted the critical issues?" The answer cannot be discerned solely from an analysis of the final agreement. One must compare what was won with that which came 'off the table' and that which management put 'on the table'. In terms of generic headings these issues can be identified as governance, workload, grievance procedures, promotional opportunities and salaries including fringes. These are discussed in no order of priority.

### **Governance**

The extent and nature of the LC negotiations drive to achieve contract agreement in specific areas of governance has received little or no publicity. Not one contract article deals with this area which the University considered non-negotiable.



Obviously, the LC had no desire to advertise its failures and just as obviously the University had no desire to rub salt in raw wounds. Demand "U" was headed "Faculty Control of Educational and Policy Matters" and contained five (5) juicy sub-sections which called for the following:

1. University Senate approval of major system officer appointments - Chancellor, Vice-Chancellor, University Dean.
2. At the existing colleges, Faculty Council approval of appointments to the title of President and Dean.
3. For new colleges the appointment of such officers as listed above to require University Senate approval.
4. The Charter of the University Senate and other Senate governance documents to be incorporated into the contract.
5. Only the University Senate was to be empowered to initiate changes in admissions and/or grading policies and college implementation could take place only after approval of the college's Faculty Council. The same approvals would be required for curricula and program changes.

In the main this represented an effort by the LC governing group, who also wore Senatorial caps, to build additional power for the rather new University Senate not because it really believed in the Senate as a governance apparatus but simply because it did not have the gumption to demand such power for the LC — a professional organization which believed in faculty power centered in college Faculty Councils.

Item #5 was of particular significance since it referred to, without honest and forthright labelling, the newly announced and controversial "Open Admissions" policy of the University. Without attempting any part of an analysis in depth, an analysis beyond the scope and purpose of this book, it must be stated that the moving up in time sequence of the "Open Admissions" plan from its projected master plan achievement by 1975 met with bitter opposition from CUNY senior faculty. To appreciate this it must be remembered that the program rose out of the flames of campus burnings, campus shut-downs and minority student unrest of previously unheard of intensity. The University's faculties were just plumb scared of this ogre of student power and they were seeking ways to retain their traditional faculty prerogatives in academe. It also must be stated that like many CUNY college administrators and the BHE, the CUNY faculty over-reacted. Time has proved this clearly.

Demand "V" was headed "LC Consultation on Budgets" and contained but one paragraph which stated the following:

1. No proposal for a future budget for any unit of the City University shall be submitted to the Chancellor by any administrative office of such unit unless such proposal shall have been submitted to the Legislative Conference Chapter of the unit at least 2 weeks prior to submission to the Chancellor. No

proposal for a future budget for the City University shall be submitted to the Board of Higher Education by any officer of the University unless such proposal shall have been submitted to the Legislative Conference Governing Body at least 2 weeks before submission to the BHE.<sup>5</sup>

This budget consultation demand was more important in terms of intent rather than in terms of substance since University budget proposals by law were required to be subject to public hearings before BHE action, hearings at which the LC always presented its views. It should be noted that the proposal does not call for anything more than earlier preparation of the budget document.

In addition to demands "U" and "V" there were several other little governance gems tucked away under various generic headings.

1. Automatic promotion to Assistant Professor upon the award of tenure in the Instructor rank.
2. Immediate promotion of all tenured Instructors.
3. No future appointment as Instructors of individuals eligible for the Assistant Professorship.
4. Raise the "up or out" time limit for Instructor rank from five years to ten.

It should be noted here that in 1968 the State statute on tenure for CUNY had been changed to eliminate tenure in the rank of Instructor (also eliminating the Ph.D as an appointment requirement). The statute change also raised the pre-tenure decision service from three to five years in all other ranks. Thus, the demands noted above constituted a thrust on behalf of very junior faculty.

Also in the area of tenure the LC sought to achieve tenure status for people in the administrative corp who served in graded levels of titles in the Higher Education Officer series and Business Manager series. Although the University had always recognized these positions in terms of their career nature it successfully fought to retain for college presidents the option to shape their own administrative support staffs — a management right.

#### **Workload**

Demand "S" called for the following:

- S. Teaching load and student-teacher ratio

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<sup>5</sup> *ibid.*, Item V, p. 6.

1. Teaching load of 9 contact hours.
2. Improvement of student-teacher ratio.
3. Special and more liberal staffing ratios for colleges and schools with departments in the science, technology and industrial arts areas, so that such departments will have sufficient staff without unfavorable impact on class size.
4. Equitable teaching loads for departments and areas of physical education, counseling, etc.
5. Substantial increase in SGS and *evening session lines* to levels based on full-time equivalent students. To approach this goal during the two years of this contract, we must ask the following improvements:
  - a. A 20 percent increase in the number of line faculty assigned to each unit during the first year.
  - b. A 20 percent increase in the number of line faculty assigned to each unit (the percentage to be calculated on the base established in the first year) during the second year of the contract.
  - c. Distribution of titles to conform to the percentages established under negotiating item G.<sup>6</sup>

For background to the understanding of this pitch one must be aware that it was intended to correct a situation within the University in which contact hour workload varied from college to college, discipline to discipline and even rank to rank. The University argued the position that contact hours constituted but one component of faculty workload and that any agreement quantifying a single component would have to be extended to all components of the college teacher's job. A University position paper which attempted such quantification for but one type of teaching - a social science type course - was developed jointly by three members of the Chancellor's staff and presented at the bargaining table. The LC team reacted to it as a horror and an unprofessional put-on. Needless to say it was not circulated beyond the table teams. However, as an example of a counter-proposal, in essence a management demand, it is reproduced below:

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<sup>6</sup> *Ibid.*, Item S, p. 5.

# FACULTY WORKLOAD - POSITION PAPER

## Background

The quantitative description of faculty workloads in liberal arts colleges, professional schools, and universities may well be an impossible task. In qualitative terms, faculty members are involved with the following kinds of activities:

- Lecture-Large groups
- Classroom teaching
- Seminar teaching
- Laboratory teaching
- Consultation with students
- Supervision of individual study
- Guidance and counselling
- Administrative functions
- Committee services
- Course and curriculum development
- Research
- Writing
- Community service
- Learned and Professional Societies

Frequently, there is a tendency to focus on the teaching assignments as a means of identifying the faculty workload. This leads to no glib solutions because one immediately encounters the questions that arise from the relative evaluations of the assignment of several identical courses to the same teacher, or courses that require unusual individual attention (at the level of freshman English or at the level of senior seminar paper writing.) Responsibility for a new course, or a course that is still in process of development, or the necessity to prepare for a large lecture session, introduce assignments that are not simply equated to more usual levels of work. How does one evaluate a teaching assignment when it is connected with the use of assistants either in the classroom or in the laboratory, or in other ways, or perhaps is involved with the development of a system of team teaching where several people of different responsibilities are involved? Another complication is the evaluation of a teaching assignment when it involves the application of various forms of modern educational technology, whether it is television or language laboratories, or other devices.

The evaluation of workload in the University is inextricably intertwined with the questions of educational effectiveness. Educational effectiveness is in the province of faculty responsibility and goes beyond any limited definition of a working condition. A discussion of class size would certainly be in the area of working conditions but equally certainly would relate to the responsibility of the faculty for the effectiveness of the educational program.

Whatever the basic pattern evolved for workload, it must be influenced by considerations of educational effectiveness and by budgetary limits.

Another important question within the City University structure is the proper staffing of the evening session, the summer session, and the extension divisions. The faculty as well as the administration of the University, and the collective negotiation agents, should face the problem of proper staffing of these divisions. One proposal could be that they be staffed as part of the regular day session with no distinction among the teachers according to the time of day in which they teach. This could mean teaching assignments that would be part of the regular workload at any time of day for any time of year.

Another immediate consideration is the question of some reasonable limitation or control of overload teaching or other outside or additional responsibilities over and above the teacher's basic workload. The time has come when reasonable day session workloads and adequate salaries make it impossible to defend overload teaching.

### **Proposal**

There is no single standard for faculty workloads that is universally applicable. A formula which works well in a large college is frequently inappropriate in a community college. The methods of teaching in a liberal arts college produce a staffing pattern which may be unsuccessful when applied to the professional or technical institute.

Within this frame of reference, the following is proposed:

1. Each member of the faculty will be required to teach no more than fifteen (15) contact hours per week or handle more than three (3) preparations a semester.
  - a. If the teaching methods within a department are such that there could be assignments of less than fifteen (15) contact hours per week, these assignments should be reflected in a correspondingly larger load of student credit hours per week, per full-time faculty member, provided that each member generates a load of at least four hundred and fifty student credit hours per semester.
  - b. Upon agreement within a department, this workload could be presented as an average of all the members of the department, or a portion of the department rather than as applicable to each individual.
2. Each member of the faculty must schedule no less than eight (8) scheduled office hours per week during which he is available to students.

3. Each member of the faculty must be on the campus for a minimum total of thirty (30) hours per week to discharge his full-time commitment.

4. Each faculty member must comply with the rules and regulations pertaining to any limitation of overload teaching or additional obligations either within the University or outside of the University whether or not the faculty member receives any compensation for the performance of these outside obligations.

N.B. The proposed workload pattern would basically include the sciences, the social sciences and the humanities. However, it is recognized that it is not possible to equitably relate all departmental and course offerings now existing in the University. Separate workload configurations will have to be established in the following course areas:

- Laboratory courses
- Physical Education courses
- Courses which develop manual skills
  - such as shop, typewriting, stenography, etc.
- Courses concerned with remedial teaching
- Courses concerned with developing clinical skills, such as nursing
- Work with individual students, such as thesis advising or honors work

Many hours of negotiations were spent on this item. Eventually the LC was convinced of the seriousness of the University's position and the University's willingness to apply itself to the tremendous task of formalizing configurations in the remaining indicated areas. What was finally agreed to appeared as Article XII in the contract which stated:

Employees on the teaching staff of the City University of New York shall not be required to teach an excessive number of contact hours, assume an excessive student load, or be assigned an unreasonable schedule, it being recognized by the parties that the teaching staff has the obligation among others to be available to students, to assume normal committee assignments and to engage in research and community service.<sup>7</sup>

Deemed by some labor relations experts to be a grievance-laden article its application has been relatively grievance free. Improving on it would be a most difficult task.

The area of workload as it has emerged in pretty much every higher education contract has proved to be one which has aroused greatest public and legislative interest. In fact, as a working condition in academe now brought into sharp focus it

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<sup>7</sup> *Ibid.*, Article XII, p. 11

has resulted in negative public reaction. So much so that several state legislatures have mandated student contact faculty workload standards and made their application a contingent of allocation of public funds.

### Promotional Opportunity

High on the LC priority scale was a need for a "win" in the area of opening opportunities for more promotions in rank. Recommendations for faculty promotions began with department committees and in multi-school colleges moved through the school personnel and budget committee. If at that point the recommendation remained positive it came before the college-wide personnel and budget committee for final recommendation to the president. It was the president's responsibility to make final recommendations to the BHE for action. Rarely did a president negate a promotion recommendation of his College P and B Committee. The procedure represented an ultimate in the collegial application of peer judgment in the decision making process.

Again, mainly because of City budget office niggardliness, promotions were limited by availability of funds. In order to relate the number of promotions to the total number of faculty the University had agreed to accept as a guideline a concept of percentages in rank. At the time of contract negotiations these percentages had been adjusted upwards to where they stood at professor - 19 percent, associate professor - 22 percent, assistant professor - 35 percent, and instructor - 24 percent. Within these circumstances promotional pressures had arisen in the older senior colleges (Brooklyn, City, Hunter) of the University. It was not unusual to have peer committees rank their recommendations in priority order and it was not unusual to have a deserving candidate fail to receive promotion because of "budget line unavailability." The University administration had a track record which indicated its accomplishments in furthering promotional opportunities (upward movement of allowable percentages). Thus, when the LC submitted the demand reproduced below it had an almost certain win. The catch was the additives to the demand which did complicate the issue.

#### G. Promotional Opportunity.

1. Increase in authorized percentage of Professors and Associate Professors.
2. Long range objective to provide distribution:

Professor	35%
Associate Professor	35%
Assistant Professor	20%
Instructor	10%

3. For Period of Contract:

	Year One	Year Two
Professor	24% (5% Increase)	29% (5% Increase)
Assoc. Professor	27% (5% Increase)	32% (5% Increase)

4. Purpose of percentage increase in higher ranks, to improve opportunity for promotion of qualified personnel, not to be subverted by use of higher titles for excessive initial appointments of new staff members.

5. Promotions to be based on (1) teaching effectiveness, and (2) the total of scholarly development, research and publication, and service on departmental, college and University Committees and faculty bodies, with effective teaching and effective participation in departmental, College and University operation regarded as paramount.<sup>8</sup>

The University objected to Section 4 as restrictive to University development and growth. Also in principle, in that initial appointments in higher ranks constituted a management right. Section 5 was objected to because the University believed that existing by-laws which provided guidelines for rank eligibility were academically sounder than the LC proposal criteria.

The percentage guidelines were negotiated. The LC demand was not that much pie-in-the-sky. What was proposed was based on the 30-30-30-10-percentages which existed in SUNY plus the typical technique of adding a few points for bargaining room. It should be noted that much of the percentage negotiation centered about two major points; (1) that percentages adopted would be University-wide and not rigidly applicable to each college unit; and (2) that the percentages referred to budget lines in rank and not bodies. That this latter point was the intent was clearly evident in the LC use of the word "authorized" in its demand. The contract article read as follows:

Percentages in Academic Ranks

30.1 It is agreed that the Board will increase the percentages in academic rank in accordance with the following table:<sup>9</sup>

<sup>8</sup> Legislative Conference/CUNY, "Collective Negotiating Committee Report - Policy Statement," March 10, 1969, Item G, p. 3.

<sup>9</sup> Agreement between the Legislative Conference/CUNY and the Board of Higher Education of the City of New York, September 15, 1969, Article XXX, p. 38.



Rank	Current %	Jan. 70	Jan. 71	Jan. 72
Professor	19	22	25	30
Assoc. Professor	22	24	26	30
Asst. Professor	35	35	33	30
Instructor	24	19	16	10

and constitutes a typical example of sparse wording where too much reliance was placed on supposedly clear understandings as opposed to the use of additional intent clarifying language. This important caveat will be discussed at greater length in Chapter IV.

### Grievance - Arbitration Procedures

The grievance arbitration demand of the LC was stated mainly in terms of principles as indicated below:

#### Grievance Machinery

1. Establishment of grievance procedures, ending in binding arbitration before an appropriate impartial arbitrator, for adjudication of all grievances arising from
  - (a) Interpretation of or violation of the terms of the contract.
  - (b) Interpretation of or violation of the Bylaws of the Board of Higher Education.
  - (c) Inconsistent or inequitable practices in the implementation of the contract or of the Bylaws of the Board of Higher Education.

as they apply to personnel represented by the legislative Conference.
2. Complaints and proceedings shall be conducted in a confidential manner.
3. Paid released time for grievance hearings.<sup>10</sup>

A tightly written demand which when hammered out as an agreement article took up three pages of a forty (40) page document. The agreement in this area represents two landmark changes in CUNY administrative principles — (1) that the Chancellor would be an appeal's officer for grieved presidential decisions and (2) that the typical labor-management tool of third party binding arbitration would have a place, albeit a severely limited one, in higher education.

<sup>10</sup> Legislative Conference/CUNY, "Collective Negotiating Committee Report - Policy Statement." March 10, 1969, Item X, p. 7.

Both of the principles enunciated above merit fuller discussion. By setting up the Chancellor or his designee as the second step in a grievance procedure which had as its first step the college president or his designee, the oft-stated and campus nourished concept of unit autonomy in a university system was being threatened. Actually it constituted a further build-up of the power of the Chancellor's Office which was bought reluctantly by the college presidents and Chancellor. How this power was used is discussed further in the next chapter.

The matter of third party "outsider" binding arbitration of grievances was fought vigorously at the table for many sessions. The university took a hard-nosed position that it would not accept the substitution of an arbitrator's judgment for academic judgments made by peer groups and thus would not include binding arbitration as a final step in the grievance. The University offered the alternate of advisory arbitration which the LC rejected as being ineffective. The LC pressed for the principle of binding arbitration being included in the contract if only to apply to arbitrary or discriminatory use of procedures followed in the personnel decision making process. In the discussion of such procedural deficiencies examples used included failure to present the full record of a candidate, lack of a committee quorum, evidence of ethnic or sex bias, etc. Unfortunately, these examples were not included in the written statement of the grievance procedure covering this point - the now rather famous "Nota Bene" provision of the contracts. With this one exception the language of the "Nota Bene" was crystal clear (see below) and gave the arbitrator no authority other than to first rule as to whether a grievance related to procedure rather than academic judgment. If the arbitrator found discrimination in the use of procedures he was limited to remanding the matter for compliance with established procedures. In no event could the arbitrator substitute his judgment for the academic judgment.

Nota Bene:

Grievances relating to appointment, reappointment, tenure or promotion which are concerned with matters of academic judgment may not be processed by the Conference beyond Step 2 of the grievance procedure. Grievances within the scope of these areas in which there is an allegation of arbitrary or discriminatory use of procedure may be processed by the Conference through Step 3 of the grievance procedure. In such case the power of the arbitrator shall be limited to remanding the matter for compliance with established procedures. It shall be the arbitrator's first responsibility to rule as to whether or not the grievance relates to procedure rather than academic judgment. In no event, however, shall the arbitrator substitute his judgment for the academic judgment. In the event that the grievant finally prevails, he shall be made whole.<sup>11</sup>

The post contract attempts by the LC to walk away from this agreement are discussed in Chapter IV.

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<sup>11</sup> Agreement between the Legislative Conference/CUNY and the Board of Higher Education of the City of New York, September 15, 1969, Article VI, p. 7-8.

An interesting situation which developed in the discussion of this provision was one in which the University, somewhat irked by the LC team's showing of distrust of the peer judgment concept and the process outcomes, challenged the LC to come up with a substitute process proposal. This challenge was accepted by the LC at the close of one bargaining session. At the beginning of the next session there came from the LC side an honest admission of failure and an admission that they did not want to change the basic process.

### Salaries and Fringe Benefits

Among the critical issues negotiated, considered by many experts to be the most complicated from a technical point of view, salaries and fringe benefits were perhaps the easiest to negotiate. These negotiations did not take place until the summer of 1969 after the UFT New York City teacher's settlement had been reached. The New York City Budget Office caveat on parallelism discussed in the previous chapter was a major guideline but both sides were aware of the fact the City authorities did not expect the negotiated new salaries to reflect a radical departure from the past and that the City would buy salary schedules which stood on their own without any references to parallel treatment or the "gentleman's agreement."

At no time in the salary negotiation was the LC aware of the amount of the agreed upon "kitty" the University had negotiated with the City. Their guess put them at the \$30 million level — an astute guess but one \$4.5 million short of the real figure. The last is stated here not to embarrass the LC leadership but because it is important in relation to understanding the total package *sold* the LC by the University — a package which made the LC look like heroes.

The first proposal made by the LC was a rather contrived detailed back-up of their original demand and covered but a projected two year contract period. In maxima and minima it looked like this:

RANK	Existing		Proposed		Proposed	
	6-30-69		7-1-69		7-1-70	
	Min.	Max.	Min.	Max.	Min.	Max.
Professor	18,000	26,000	20,750	30,000	23,500	34,000
Assoc.Prof.	14,000	21,000	16,250	24,250	18,500	27,500
Asst.Prof.	11,000	17,000	12,750	19,625	14,500	22,250
Instructor	10,050	13,900	11,625	16,000	13,200	18,100

It also presented specifics on how to bring the heretofore lower community college ranks up to senior college levels by July 1, 1970. This latter item was not a new concept and it was not one which the University team had any leverage in negotiations. Parity for community college ranks with those of the senior colleges had been "given away" by the BHE commitment to this principle in its first master plan in 1964 - a promise oft-times repeated by the BHE in the period from 1964 through 1968.

What then followed was the usual negotiations backing and filling - a University counter offer based on a two year contract — a further LC counter, the same procedure once again and finally a University "package offer" which extended the contract over a three year period with a salary schedule which looked like this:

RANK	Existing		Proposed		Proposed		Proposed	
	6-30-69		10-1-69		10-1-70		10-1-71	
	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.
Professor	18,000	26,000	19,620	27,900	21,240	29,800	22,500	31,275
Assoc.Prof.	14,000	21,000	15,380	22,620	16,760	24,240	17,830	25,500
Asst.Prof.	11,000	17,000	12,380	18,380	13,760	19,760	14,830	20,830
Instructor	10,050	13,900	11,005	14,855	11,960	16,410	12,700	17,150

It should be noted that this final offer was the first of the University proposals to carry with it provisions for community college salary parity and reached such parity by October 1971 in three separate steps.

In addition to the salary increase the University "package" included additional funds of \$500,000 to generate more sabbatical leaves for faculty. This brought total University funding in this area to \$1,000,000 which would provide some relief from the miniscule number of leaves available in the past. The "package" also included \$500,000 University annual funding to be used by faculty for attendance at professional meetings and conferences. This was a sorely needed academic "must" never before really supported by the tax levy budget and never included in the LC's demands.

A real big ticket item in the package was again one of which there was no whisper in the demands but one which was of great importance to the academic welfare of the University in shoring up a woefully weak side which got not one cent of tax levy support. This was the establishment of a University fund of \$1,500,000 each year to permit faculty to engage in meaningful research as part of the professional growth and development of the University. Although this support was made available to all members of the faculty, it especially was intended to support research efforts of junior faculty and it was to be administered by a peer group from among the University's faculty.

Last of the non-demand economic items was the establishment of a special University fund of \$250,000 each year to create and provide support for fifty (50) distinguished professorships in the University. The funds were utilized to add to the professorial base salary an additional \$5,000 per distinguished professor.

In the area of welfare benefits the University found itself in a situation in which Teacher's Retirement System (TRS) benefits had been greatly enhanced as a result of the newly negotiated UFT contract. There was no other way to go than to follow the leader. Interestingly enough the University's collective bargaining "kitty" had not included funds to cover retirement system improvement costs. These costs were to be

borne by the City out of other funds. No small sum was involved here since the City estimated total system improvement costs to be about \$60 million with approximately 10 percent attributed to the CUNY membership factor — an additional \$6 million in the CUNY economic package. The City offered no objection to the University's move and the University had no desire to oppose the LC's request to follow the UFT's hard won gains.

The enhanced TRS benefits made the system one of the best in either the public or private sectors of education or for that matter in business. Among the new features were the reduction of the minimum active service period from 25 years to 20, the pension calculation to be based on the last year of salary (almost always the highest) rather than a five year average, the change in employee's contribution from a ratio of 50 percent employer - 25 percent employee to 75 percent employer - 25 percent employee with a block-buster retroactive provision for this change to apply to the employees initial date of membership in the system, the introduction of a tax deferred annuity program, a death benefit option after 10 years of membership of twice one's annual salary, rather than just the annual salary, and even pension system eligibility for hourly paid adjunct lecturers. This last a win for the UFCT negotiated by the LC.

It was not possible for the LC to win similar benefits for either its constituents who were members of the New York City Employee's Retirement System (ERS) or Teacher's Insurance Annuity Association (TIAA) — but for different reasons. No other union could usurp the province of District Council 37, AFSCME, in bargaining on the ERS issue. As for TIAA, the problem of what might be improvements comparable to those granted TRS members was far beyond the technical competence of the union's pension advisers. Since they were unable to come forward with specific demands, the LC developed, and the University accepted, the rationalization that this would be a TRS year with TIAA improvement emphasis left to the next contract negotiation.

As to welfare benefits other than pension these were contained in the increased per capita funding of the City University Faculty Welfare Fund. The increased funding again followed the UFT pattern and moved to \$300 per capita from a base of 225 — increased \$20 one year and \$55 the next. This was necessary to meet increasing carrier costs and bought no new programs. The LC made no effort to wrest the management of the welfare fund from its faculty-administration base. In this it showed good sense in that the trustees of the fund who managed its destiny had a remarkable record of accomplishment at what was probably the lowest overhead cost of any comparable program. A well known expert in the field of faculty welfare programs deemed the CUNY program the best in the nation.

### **Management Demands**

It has been stated that one of the critical omissions in the University negotiations strategy was its failure to present its own set of demands. As previously stated this might have been more disadvantageous than advantageous to the University's cause. Was it not true that by pressing specific LC demands as non-negotiable and by

successfully "taking off the table" many union demands, the University in essence did articulate its position more appropriately.

Let us look at some of the LC demands which were negotiated "off the table". Among these were the following:

1. The agency shop. (Note that the "stipulations" attached to the contract only indicates the University's willingness to "reopen" *negotiations* on this topic if State law made the agency shop legally possible.)
2. Tenure for certain groups - business managers, higher education officers, etc.
3. Changes in the status of the instructor rank including immediate automatic promotion to Assistant Professor for all instructors having tenure.
4. Changes in criteria for faculty promotions.
5. Departmental governance rights for laboratory assistants - a position which required high school graduation only for appointment.
6. Vacation increases for business managers, higher education officers, laboratory assistants, library staff and registrar's staff from 30 days to 12 weeks.
7. Departmental status for the registrar's unit at each college.
8. Teaching load of 9 contact hours applied university-wide.
9. Faculty control of educational and policy matters.
10. Consultation on college and university budgets.

Does one consider items presented by the University and bought by the LC, such as the faculty research programs, funds for distinguished professorships, travel funds, etc., not management demands because they were not articulated? Should they not be considered management demands because they cost the University \$2.75 million? The answer must be clearly seen when one understands that all of that \$2.75 million could have been allocated to salary increases rather than these important university-wide benefits directed towards the further achievement of excellence.

### **Management Rights**

The concept of management rights should not be confused with the previously discussed management demands. The failure of the University to include a provision on management rights was a critical omission — an omission behind which there was much rationale but one which resulted in many grievances and arbitrations in the University's effort to apply the contract.

At the bargaining table there was repeated emphasis on the part of the University and repeated acknowledgements of acceptance of the part of the LC that that which existed in regulations, policies and procedures in the University and was not changed specifically by the contract, continued to exist. In fact, at one period in the negotiations, there was long and serious discussion as to whether or not the voluminous BHE bylaws were to be incorporated and printed with the agreement. It was only because of acceptance by the LC of the understood "management rights" stated above that this incorporation was not made. However, the omission of what would have been a one sentence provision was to have serious bearing on post contract LC - University relationships.

### **The Addendum**

Most readers of the contract regard the letter of addendum attached to the contract to consist of contract afterthoughts. This was not so. During the negotiations it was planned and mutually agreed to include all except one of these one-time items in such a series of stipulations in order not to clutter the contract with them. The only real added item was the change in the October 1, 1969 salary schedule for Community College Assistant Professors because the originally agreed upon salary schedule contained a computational error. Equity demanded its correction.

## **THE UFCT CONTRACT**

The UFCT contract negotiation was characterized by a different tone - more sound and fury and less substance. The UFCT bargaining team was an ever-changing one. No member of that group was present throughout the negotiations and although the UFCT did not have counsel at the table ever, it did at times have representation from the AFT's Washington Office, the New York State organization of the AFT and at one session the AFT's national president. Apparently, never having thought out its position, the UFCT submitted its demands in batches - small batches which never included more than two or three specifics at a time. Thus before the negotiations had progressed very far the UFCT understood that they were being fed LC accepted provisions after tentative acceptance of these provisions by the LC.

That the University was successful in its tandem negotiation approach is evident when one compares the tables of contents of the agreements.

LC & UFCT AGREEMENTS

Comparison of Tables of Contents:

	LC Agreement		UFCT Agreement
Article		Article	
I	Board-Conference Relationships	I	Board-Union Relationships
II	Recognition		Recognition
III	Unit Stability	III	Unit Stability
IV	Check-Off	IV	Check-Off
V	Consultation	V	Consultation
VI	Grievance Procedure and Arbitration	VI	Grievance Procedure and Arbitration
VII	Nondiscrimination	VII	Nondiscrimination
VIII	Information and Data	VIII	Information and Data
IX	Released Time	IX	Released Time
X	Use of College Facilities	X	Use of College Facilities
XI	Leaves of Absence for Officers of the Union	XI	Leaves of Absence for Officers of the Union
XII	Workload	XII	Workload
XIII	Sick Leave	XIII	Classification of Titles
XIV	Sabbatical Leave	XIV	Service Credit Toward Sabbatical Leave Eligibility
XV	Annual Leave	XV	Annual Leave
XVI	Notice of Appointment	XVI	Notice of Appointment
XVII	Professional Evaluations	XVII	Professional Evaluations
XVIII	Personnel Files	XVIII	Personnel Files
XIX	Disciplinary Actions	XIX	Notice of Vacancies
XX	Jury Duty	XX	Jury Duty
XXI	Facilities for Faculty	XXI	Facilities for Faculty
XXII	Staff Housing	XXII	Staff Housing and Parking
XXIII	Salary Schedules	XXIII	Salary Schedules
XXIV	Faculty Welfare Fund	XXIV	Welfare Benefits
XXV	Retirement Provisions	XXV	Job Security
XXVI	Financing Sabbatical Leave	XXVI	Preferential Rehiring
XXVII	Travel Allowances	XXVII	Lecturers Employed in the Libraries
XXVIII	Faculty Research	XXVIII	Waiver of Tuition Fees
XXIX	Distinguished Professorships Professorships	XXIX	No Strike Pledge
XXX	Percentages in Academic Ranks	XXX	Legislative Action
XXXI	No Strike Pledge	XXXI	Duration
XXXII	Legislative Action		
XXXIII	Special Funding		
XXXIV	Duration		



Better than 80 percent of the contract provisions are exactly the same as to title, content and even as to the numbering of articles. The differences occur subtly in those issues peculiar to the bargaining unit composition. For the UFCT contract the differences relate mainly to the rather strange University practices and procedures which had developed over the years in terms and conditions of employment of University personnel in the title of Lecturer.

Although the budgetary aspects of this practice have been discussed in Chapter I, more needs to be stated. In terms of numbers the generic title of Lecturer was applied to a great many faculty. There were 1010 Lecturers paid on an annual salaried basis, 1841 paid on monthly or hourly basis and teaching more than 6 hours a week and 1899 paid on an hourly basis and teaching less than 6 hours a week.

Lecturers comprised approximately 95% of the total UFCT bargaining unit with the remainder of the unit in the title of Teaching Assistant. The utilization of the teaching assistant was just coming into practice at CUNY as a result of CUNY's newly instituted graduate (Ph.D.) programs. Historically, prior to the achievement of collective bargaining, salary increases negotiated by the University with the City Budget Office never included any stipulated increase for lecturers paid on an annual basis. Sometimes, but rarely, there was a sum negotiated for application of hourly rate increases for those paid on such basis which resulted in \$ .50 to \$1.00 per hour increases. Of course, as in all CUNY salary schedules, a differential existed in hourly rate wages between the community and senior colleges. All "Lecturers" were considered temporary employees appointed on a semester-to-semester or year-to-year basis and in reality it was this classification rather than that of Instructor which constituted the academic "fluid bottom" of the CUNY teaching staff. It should be remembered that CUNY, prior to 1968, was the only major university in the country which required a doctoral degree for appointment as Instructor.

Since there was no attempt to relate the duties of the Lecturer position to that of Instructor within the formal ranks of the University the Lecturer position almost naturally found its level strictly on a pay basis. The Lecturer was the low man on the totem pole in every respect. Another relevant fact was that despite a supposed unwritten policy, not uniformly applied, of a three year up-and-out concept, many annual salaried Lecturers were retained and had been employed for more than 5 and even 10 years. They were in fact eligible for pension system membership. In many instances such long time service as Lecturer was a too sympathetic "going along" with a person's Ph.D hang-ups; in others it was lethargy in departmental recruiting efforts; and in still others it was the case of an excellent classroom teacher who had decided to forego his doctoral studies and devoted his full energies to furthering his excellence as a teacher. This set of conditions provided real grist for the UFCT mill with major negotiation issues of job security, salaries, grievance procedure and workload.

## Job Security

It would be hard to determine whether job security or salaries had the higher UFCT priority. The UFCT fought and won the battle for real job security for Lecturers with more than five years of service. However, they did not achieve their first objective — statutory tenure. Instead they won the right to an "administrative certificate of continuous employment" with rights as stated in the contract Article 25.4 as follows:

The certificate of continuous employment shall be valid only in that college which makes the certification or sixth appointment and shall carry with it the guarantee of full-time reappointment subject to continued satisfactory performance, stability in academic program, sufficiency of registration and financial ability.<sup>12</sup>

The "administrative certificate of continuous employment" was different from "tenure" in that it had no substance in state law and more importantly would only apply in that college which granted such certificate. In order not to present this to the colleges as a fait accompli, the agreement provided a year's grace for the evaluation of those people who in September, 1969 would be starting the 6th or later year of service in the Lecturer title.

Related to this provision was the one entitled "Professional Evaluations" (Article 17) which articulated a procedure for faculty evaluation and was to be the apparatus by which a candidate for either tenure or a certificate would be judged by his peers. This article was first negotiated with the LC and subsequently, with very slight modification, negotiated with the UFCT. A search of union demands would make clear that the unions never sought this provision. It was the University which wrote it into the contracts under assumption that as existing CUNY-BHE approved procedure it was being religiously applied at the colleges. This assumption proved false and as a result this became a grievance laden article in the implementation of the contract.

Once into the problems of the status of Lecturers the University decided to use the contract as a device to clear up the many variations in Lecturers functions and method of compensation. Why should a full professor who taught one overload course in the SGS (evening session) carry the title of Lecturer for his overload course. Why should people doing administrative work be appointed as Lecturers? And many other such idiosyncratic situations. Whereas the City Budget Office had been deaf to pre-contract importuning for corrections in this area, it would be required to conform to contract provisions. Thus, another University (management) provision entitled "Clarification of Titles" (Article 33) was conceived. It is in this article that the Teaching Assistant title is eliminated and the substitute title Lecturer (part-time) is conceived. The rationale which eliminated the use of the Teaching Assistant title was simple — Teaching Assistants were in disfavor with students. One feature of the definition of the Lecturer (full-time) was to exclude the requirement of a "research commitment" from

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<sup>12</sup> Agreement between the Board of Higher Education of the City of New York and the UFCT, October 3, 1969, Article XXV, p. 23.

the job. Thus the failure to achieve a Ph.D. during the course of one's service in the title would not preclude the candidate's achievement of a certificated status and job security.

### **Salaries**

The salary situation for Lecturers (full-time) was solved in a logical manner. The positions of Lecturer and Instructor were not very different once the Ph.D. requirement was no longer necessary for appointment as Instructor. In effect the new non-tenure bearing Instructor's title should have eliminated the need for the Lecturer's title and this would have occurred were it not for the existence of collective bargaining with two rival employee unions. One might raise the question of why not the other way around — eliminate the Instructor title. The answer — until July 1, 1968 when the State Education Law concerning tenure was changed, the Instructor title was a tenure bearing title and as a result there were a goodly number of tenured Instructors in the CUNY faculty. With this set of conditions the UFCT was willing to accept for Lecturers (full-time) the same salary schedule that the LC had accepted for Instructors.

Salaries for the "adjunct" status personnel were more difficult to negotiate. To begin with the UFCT demand was for a rate of pay commensurate with that proportion of an annual salary represented by the number of contact hours taught. Furthermore, based on reasons previously stated, there was need to equalize rates paid at senior colleges and community colleges. The negotiations revolved around financial ability and in the end picture the less costly hourly rate of pay basis was retained with substantial increases in such hourly rates. The extent of the increases can be seen when compared with the pre-contract minima and maxima which for senior colleges were \$9.33 per hour to \$20.00 per hour and for community colleges \$8.50 per hour to \$15.00 per hour. The new rates provided were ranged from \$14.00 per hour to \$24.00 per hour as of October 1, 1969, from \$16.00 to \$24.00 as of September 1, 1970 and from \$19.00 to \$29.00 as of September 1, 1971, a marked rate increase but one which continued to make adjunct faculty a good buy from the City Budget Office point of view.

A contract omission in this area was the failure of both parties to spell out conversion rates more specifically, an omission which gave rise to a number of grievances.

### **Grievance Procedure**

Needless to state the UFCT's original proposal for a grievance arbitration procedure resembled that which was finally adopted in principle only. The demand called for progressive steps in the processing of grievances and binding arbitration. The contract provision duplicates the LC contract provision — an achievement of no small dimensions and one which was not settled until June 1969. The only real hang-up in this area and this one peculiar to the UFCT negotiation, was the agreement to choose

a rotating panel of three arbitrators as a post-contract activity. Hindsight has now indicated that the panel choices should have been negotiated. Despite contract language which agreed to panel "members who are familiar with the customs, practices, nature and spirit of the academic community", the choice of the panel came about after much strategic maneuvering in which the University came out second best. Each side eventually had its first choice, with the third man a compromise selection. Experience was to indicate the costliness of this procedure.

## Workload

The initial workload demand of the UFCT was the following:

1. The basic workload for all full-time members of this unit shall be 9 semester contact hours.
2. Within the 9 semester contact hours no member of this unit shall be responsible for more than 100 students.
3. Part-time members of this unit shall have a workload proportional to the full-time load.
4. Notwithstanding any other provision of this section, classes in the following special areas shall have the maximum size designated:

English Composition	20 students
Speech	20 students
Remedial Classes	15 students
SEEK	15 students
Urban Centers	15 students
Language	25 students
Science & Technology	25 students
Math	25 students
Laboratory	The number of students shall not exceed the number of laboratory places. An assistant shall be present at each session.

In the final analysis that UFCT agreed to the exact same provision as agreed to by the LC. The route taken in negotiations, including the presentation of the University's position paper in this area was very much the same with no appreciably different arguments advanced.

## The Addendum

This contract addendum or set of stipulations was the result of the same kind of negotiation agreement as was the addendum to the LC contract. The only real added item resulted from the UFCT's late realization that contract language on salary increases for adjuncts effective October 1, 1969 could result in no October 1, 1969 salary increase for some people and only \$1.00 per hour for still others. Since the University's intent was to provide at least a \$2.00 per hour increase there was no conflict in the acceptance of the UFCT late proposal.

### COSTS AND OTHER INCIDENTALS

In 1971 Dr. Joseph W. Garbarino, commenting on the LC contract, said the following: "The Conference won bargaining rights and negotiated the country's most famous collective bargaining contract in higher education (or at least the most famous salary scale)." <sup>13</sup>

An earlier draft version of Prof. Garbarino's statement had more facetiously referred to the negotiated CUNY salary schedules as "most famous (or infamous)." Gently "ribbed" about this and urged to make a more intensive study of these salary schedules, Prof. Garbarino then wrote the following:

There is something of a general misunderstanding about the salary gains won by the CUNY faculty in their 1969 contract. As a remarkably large number of faculty knows, that contract called for annual increases that will produce a top salary of \$31,275 for a full professor in the 1971-72 academic year. But New York City has long had a high-paying system, with a pay formula that tied college salaries to salaries in the lower schools. According to Vice Chancellor Bernard Mintz, the "index" would have produced a salary to \$31,895 in 1971-72, and senior college staff would have received this increase with or without bargaining. On that basis, the real gains won by the CUNY union were substantial, but they took the form of "parity" for community college faculty and professional staff, and increases in the proportion of the faculty in the higher ranks. In the regular faculty unit of CUNY, all faculty in the community colleges will be paid the same salaries as faculty of the same rank in the senior colleges by 1971-72, a policy that yields a 42.5 percent increase for the top of the professors' range in the community colleges versus a 20.5 percent increase for the same level in the senior colleges. <sup>14</sup>

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<sup>13</sup> Garbarino, Joseph W. "Precarious Professors: New Patterns of Representation." Carnegie Commission on Higher Education, 1971.

<sup>14</sup> Garbarino, Joseph W. "Creeping Unionism and the Faculty Labor Market," Carnegie Commission on Higher Education, 1970.

## Costs

In estimating the costs of the "package plan" offered the LC versus the costs of what would have been a "parity plan" of indexed salary increases based on the UFT-Board of Education agreement the University came up with these initial figures based on incremented costs:

	"Parity Plan"	"Package Plan"
1969-70	\$12.3	m
1970-71	7.9	12.3
1971-72	8.6	8.1
1972-73	2.5*	1.8*
	<hr/>	<hr/>
	\$31.3 m	\$31.3 m

\* Carry-over costs; contract terminated 8/31/72.

It should be remembered that none of the "goodies" proffered by the University because they enhanced the quality of the total educational effort were included in the "parity plan" and it was this cost comparison which convinced the City to accept the University's proposed "package plan."

A later refinement of these figures again based on incremental costs came up with the following:

Estimated Funding Requirements\* Under Draft Agreement Between The Board of Higher Education And the Legislative Conference

	1969-70	1970-71	1971-72	Total
Increased Salaries including movement To Parity of Community College with Senior College Salary Scales	\$ 7,800	\$ 9,600	\$ 7,900	\$25,300
Additional Contribution to Faculty Welfare Fund	360	320	709	1,389
Sabbatical Leave Increases from \$500,000 to \$1 m. annually	500		500	
Travel Allowances	500		500	
Distinguished Professor's Chair (50 such chairs)	250		250	
Improved promotional Opportunities for Faculty by Increasing Proportion of Faculty in Upper Ranks	100		100	
Faculty Research Support		1,500		1,500
TOTAL Increases	<u>\$9,510</u>	<u>\$11,420</u>	<u>\$8,609</u>	<u>\$29,539</u>

\*Based on Budget Position at 7/1/69

Costs of the UFCT contract were estimated for the first year only and ran from \$4.0 to 4.5 million. More accurate figures were difficult to come up with because of the large number of variables in adjunct position increases.

In March 1970 all constituent college budgets had been modified to reflect the new salary conditions and other new costs and a truer first year cost picture emerged.

	<u>Actual</u>	<u>Estimated</u>	
Salary Costs			
LC Unit	\$8.7 m.		
UFCT Unit	<u>4.1</u>	\$12.8 m.	\$13.5 m.
Other Costs			
		1.6	1.6
TOTAL		<u>\$14.4 m.</u>	<u>\$15.1 m.</u>

A remarkable degree of accuracy considering the rather primitive state of the art of costing at the University.

#### Other Incidentals

The salary increase story needs to be told "like it was." An uninitiated reader probably cannot discern the full effect of these increases when applied to an individual who had the benefits of a salary plan which carried mandated salary step increments. This was the effect in two ranks at equal starting point steps:

	Full Prof. (Senior College)	Asst. Prof.	Full Prof. (Comm. Coll.)	Asst. Prof.
Pre-contract	20,000	15,000	20,000	15,100
Oct. 1, 1969	21,620	16,380	22,620	16,480
Jan. 1, 1970	22,620*	17,380*(9/70)	23,100*	17,380*
Oct. 1, 1970	24,240		18,760	25,750
Jan. 1, 1971	26,050*	19,760*(9/71)	27,300*	19,760*
Oct. 1, 1971	27,525	20,830**	28,775	20,830**
Jan. 1, 1972	28,775	20,830*(9/72)	***	***

\* increment

\*\* rank maximum

\*\*\* Sept. 1, 1972 and later increments would be a new contract negotiated item

In the case of the full professor the dollar increase in salary was approximately \$8,700 or 43.5 percent and for the assistant professor \$5,800 or 38.7 percent. Utilizing the pre-contract increment scale and assuming no other salary increases, the result from the same starting points then would have been a dollar increase for the full professor (community college) \$1,950 or 9.7 percent, for the assistant professor (senior college) \$2,000 or 13.3 percent, and for the assistant professor (community college) no increase at all since the \$15,000 starting point was the then maximum salary step. Using solely the senior college full professor illustration it could be concluded that in terms of salary the contract won for him a 26% salary increase over a three year period or approximately 9 percent a year.



Perhaps before concluding this segment one other indirect contract cost item should be discussed. Several members of the University strategy group believed that management should insist on including a provision which would memorialize in written form a long time University practice - the faculty vacation period. University practice had been to consider a faculty member technically on annual leave or summer vacation from the day following commencement until the start of September classes.

In some institutions an issue had arisen concerning the need for faculty to serve as advisors at registration which took place in early September and in the intersession between Fall and Spring semesters. Lacking policy guidelines some CUNY colleges were paying for these services and some were not — this gave rise to the issue. The contract clause wrung from the LC defined annual leave "from the day subsequent to the June commencement"(Ed. note - now May in most CUNY colleges). And so for the first time faculty annual leave was a matter of record. Postscript - it is still difficult to staff registration advisory desks.

# Chapter IV

## ADMINISTERING THE CONTRACTS

The problem of contract administration may be divided into two major segments — the first the establishment of a University-College communications and organizational network; the second the impact of industrial model grievance arbitration procedures on the world of the academy.

### UNIVERSITY-COLLEGE COMMUNICATIONS AND ORGANIZATIONAL NETWORK

The dual bargaining unit structure and the existence of competing bargaining agents had necessitated a rigid adherence to an agreement to keep the specifics of negotiations under tight security. Thus, like the unions' membership, the University's constituent college administrators found themselves committed to perform certain functions in accordance with contractual stipulations specified in the language of labor law; language quite foreign to the academic world.

In September 1969, the University consisted of 17 functioning units and 3 in organizational stage. The provisions of the agreements required that the day-to-day operations of the contracts be administered at the college level. Thus, it became necessary to establish quickly an administrative apparatus at the college level which would coordinate with University Central Office operations. Toward this end each college president was asked to designate a high level campus officer to be charged with the responsibility for campus facility labor relations who would deal with the complexities of contract administration.

University-wide workshops were held in October covering detailed aspects of each contract. These workshops were attended by the Presidential designees for faculty labor relations and their staff people. A communications network was established which allowed for the flow of questions relating to contract interpretation from the campus to the University Central Office for response. These questions were answered via weekly informational notices sent to each college. This systemized the informational flow and made for uniform university-wide contract interpretation in accordance with the University's (management's) interpretation of the contract. These were not initially instituted with the intent of utilization as unilateral dicta. Before the very first UFCT contract informational notice was issued an attempt was made to reach agreement with the union on the substance of responses. The reluctance, the hard nosed rejection of any flexibility of approach to problem solving resulted in utter failure to reach bi-lateral agreements. This very first session was the one in which the tip of the iceberg began to surface. The UFCT had no real intention to make the grievance procedure viable and it was looking to third party arbitration awards to achieve for it that which it could not achieve in the bargaining process.

Campus meetings were conducted at each college in October so that the President's designee could review the contracts with key college administration personnel. In December, a five-session course was begun by the University for college representatives dealing with the administration of the contract grievance procedures.

However, by January 1970, it became apparent that further communication with college level administrators was necessary. The feedback came via the grievance procedure which had set up Step 1 at the level of the college president (or designee) and Step 2 at the level of the University Chancellor (or designee). During the first three-month period of contract administration approximately 40 grievances had come to Step 2. To fill the need for further clarification, a series of satellite workshops were conducted at each college for department chairmen and college administrators. These sessions provided the opportunity for "first-line management" representatives (department chairmen) to discuss and review problems in contract administration. The meetings were conducted by the Chancellor's designee for Step 2 grievances who had served as chairman of the University's "table team" and who had been charged with the responsibility for the university-wide contract administration.

Out of these meetings came the first full realization of the extent of the resentment building up in the department chairmen of the University. As members of the bargaining unit who were required to lead double lives by having to perform management functions, they regarded the University administration as their arch foe and adversary. In one such meeting at Brooklyn College the venerable chairman of the Department of Education participating in a particularly heated discussion prefaced his question to the Vice-Chancellor with this opening: "If you are beginning to feel that we consider you to be our adversary you are receiving the message clearly...." Pared to bare essentials what it all came down to was the realization that a labor contract did not permit a department chairman to say a man failed of tenure or reappointment — he had to say the man was fired. A candidate could not be told that he failed to perform at that level of excellence which the department sought — the candidate had to be deemed unsatisfactory. A chairman was no longer able to write the warm letter of recommendation he had been accustomed to write for candidates who failed of reappointment or tenure. Why couldn't these practices be continued? Because there now existed a third party intervention procedure. The union could and would grieve on behalf of the unsuccessful candidate and press for reasons, due process, claim discrimination or arbitrary judgment, etc.

## GRIEVANCE ARBITRATION

The back drop for this discussion is the grievance arbitration procedure agreed to in both contracts which set up four steps and provided an important caveat to the last step of binding arbitration.

Informal discussion	Department Chairman level
Step 1	President or his designee
Step 2	Chancellor or his designee
Nota Bene	Caveat
Step 3	Binding Arbitration

The almost immediate flow of grievances at both Step 1 and Step 2 made it abundantly clear that the UFCT had considered job security its number one priority and would grieve pretty much every failure to reappoint a Lecturer. Not only would it grieve at Steps 1 and 2 but it was prepared to take almost all such job security cases to arbitration. On the other hand rather surprisingly the LC grieved mainly in the area of application of the "academic judgment" concept. Both unions brought large numbers of grievances on procedural violations of the contracts in terms of actions taken by department chairmen and department committee-peer groups always comprised of union "sisters" and "brothers."

What were the specifics of the grievances? It has been estimated that in the three year term of the contract 800 Step 2 grievances were processed. Only those which came to Step 2 became the concern of the Chancellor's Office. The Step 2 grievance "scoreboard" for the first two years of contract administration looked like this:

#### STEP 2 GRIEVANCE ACTIVITY RECORD

September 1,1969 to October 15,1972

Status	LC	UFCT	PSC*
Filed	231	245	2
Decisions/Settlements**	215	234	-
Pending	16	11	2

\* The Professional Staff Congress; the successor organization to the UFCT-LC merger which took place in March, 1972. The emergence of this new organization is discussed in Chapter V.

\*\* Includes approximately 12 non-confirmed withdrawals.

As to category and subject of grievances analysis showed the following:

## Legislative Conference Grievance Analysis

### 1. Non-reappointment (tenure at stake)

- Presidential veto
- Evaluation procedure violations  
(contract/bylaws)
- Other procedural violations
- No reasons given
- Discrimination (personnel or LC)
- By-law violations
- Academic judgment

### 2. Non-reappointment (tenure not at stake)

Subjects about the same as those above

### 3. Promotions

- Discrimination - sex
- Discrimination - other (you name it; we were allegedly guilty of it)
- Violation of presidential directive
- By-law violation
- Contract interpretation - Article 20

### 4. Teaching load

### 5. Election of department chairmen

### 6. Proper titles - counselors

### 7. Sabbatical leaves

As to numbers the largest, approximately 25 percent were grievances concerning failure to achieve reappointment with tenure - job security.

## UFCT GRIEVENCE ANALYSIS

### 1. Non-reappointment

Discrimination - sex, age, religion, race, union activity,  
political activity, against Lecturers as a rank  
Terminal appointment  
Claim for certificate of continuous employment  
Notification date not proper  
Procedural violations - contract evaluation procedures,  
college committee procedures  
Curriculum change  
Up-and-out rule  
Doctoral degree requirement

### 2. Non-reappointment

Four cases of discrimination - race, political

### 3. Reappointment date

### 4. Salary rates paid

### 5. Fringe benefits

### 6. Vacation

### 7. Teaching load

### 8. Change in status from full-time to part-time

### 9. Summer session hiring policy

### 10. Maternity leave

### 11. Sabbatical leave

### 12. Faculty governance

### 13. Voting rights

### 14. Conversion of Lecturers to Instructors

### 15. Assignment of proper title

### 16. Staff facilities

For the UFCT approximately 60 percent were grievances in the area of non-reappointment - job security.

A grievance record which any labor relations expert would consider excessive. What were the underlying reasons that could be discerned? Unfortunately, the Office of the Vice Chancellor for Staff Relations was not staffed at a level adequate to do the kind of research called for in this area. The conclusions which follow are based on approximately 475 Step 2 grievances which probably are an accurate reflection of the approximately 800 Step 1 grievances.<sup>1</sup>

### **Underlying Causes of Grievances**

An analysis of the causes underlying these grievances becomes intricately intertwined with such diverse factors as personalities — the Chancellor's, union leaders, presidents, the Chancellor's staff, the changing nature of the university, a new evaluation of university tenure policy and the life-death struggle of two competing faculty unions. Obviously job security was the major issue — tenure reappointments for the LC and non-tenure reappointments for the UFCT. Less obvious was the attempt by both unions to achieve through the grievance arbitration procedure that which they had failed to achieve at the bargaining table in many areas. The UFCT was particularly guilty of this charge.

Fully 20 percent of the LC grievances, those concerned with tenure reappointments, might have been avoided had the University not made a major issue of its "last class" of three year pre-tenure appointees. The bitterness of this struggle which involved the Chancellor, the BHE and the college presidents gave the LC the opportunity to become a veritable tiger — a role it willingly took on to defend itself from the "pussy cat" label applied to the LC by the UFCT. The critical areas in this battle concerned such inflammable issues as tenure quota issues, wholesale presidential vetos of peer judgment tenure recommendations, and presidential letters of notification to candidates which countermanded previous presidential letters of congratulations on award of reappointment with tenure. The substance of the change in tenure policy was academically sound and one to be applauded. However, it was brought at the wrong time, served no real purpose except to give the LC a new "cause celebre" and resulted in almost total defeat for the University via the arbitration route.

Fodder for the UFCT grievance hopper came from the two basic situations — (1) the practices and procedures of the college concerning reappointments (and tenure and promotion which were in the LC province) which were found to be anything from simply failing to adhere to BHE prescribed regulations and by-laws to a "union contract be damned" attitude almost always supported by a president proud of the autonomous state of his institution. An attitudinal set which wasn't turned around until well

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<sup>1</sup> The National Center for the Study of Collective Bargaining in Higher Education located at the Baruch College of CUNY did undertake a research study of these Step 1 grievances. The study was funded by a \$54,000 Carnegie Foundation grant.

into the beginning of the third year of the contract, and (2) so little was settled at Step 1 of the grievance procedure in most of the colleges (there were one or two exceptions) that the small staff of the Vice Chancellor for Staff Relations was rapidly overrun with Step 2 hearings. Analysis of the decisions made at Step 2 would probably lead an objective examiner to the conclusion that the grievant was usually not successful at this level and Step 2 decisions tended mainly to support the presidents. This treatment at Step 2 led to an inordinately large number of arbitrations.

Out of the above analysis — an interesting question. Perhaps it was too much to have expected the administrators in the colleges of the University to adapt to the degree of rigidity of application of regulations required by a union contract. Would a year of grace in procedural matters, could it have been achieved, have served the University's cause in better fashion? The response must be negative because the 1969-70 first year of experience in living with the grievance procedure appeared to have taught little or nothing to the college administrators. In 1970-71 grievance cases which came to Step 2 were still laden with "procedural compliance." Such central office action which in the end picture was still highly supportive of the college presidents, mixed with an occasional Step 2 reversal of a Step 1 finding did manage to shake up some of the colleges and it began to appear that 1971-72, the last year in the contract term, would be one of smoother operation. Maybe it was time to get tough with the colleges. The approach used to accomplish this is discussed later in this chapter.

There were other more prosaic causes for the large numbers of grievances that must be noted. Among these the following:

1. In the beginning the Chancellor had received expert advice to aim for a brief contract with broadly worded provisions. This was a goal which was achieved, but the price paid for the exclusion of paragraph after paragraph of specifics which were considered understood by both sides turned out to be much too high.
2. Loop-holes in the wording of provisions which were not foreseen by the University administration and which might have been closed by having expert counsel at the bargaining table in this first contract negotiation.

One could not conclude this section without at least a brief word about over-all University-Union relationships. Except at the very beginning of negotiations with the LC there never was a time thereafter that any side, the University, the LC or the UFCT made any effort to establish any kind of "relationship." What did develop was a thoroughly adversary relationship - one which featured suspicion, mistrust and lack of good faith—a contest between each union to outdo the other in the grievance arbitration race in order to prove it was the better representative for its constituents with the University standing on the sidelines shouting "go it preacher, go it bear."



## POST CONTRACT DEMANDS

The failure of the University to specify a management rights clause proved to be the super-highway to the arbitration process — a process which in essence did make it possible for the unions to win (1) that which was negotiated out of the contract (i.e., the demand taken off the table), (2) that which was never brought to the negotiations table, or (3) that which was crystal clear in its contract wording but was used by the union to probe for post contract gains.

An outstanding example of the above was the critical matter of "no reasons" which was never brought to the table by the LC as a demand but was discussed peripherally when the "Nota Bene" clause in the grievance procedure was negotiated. It had been the traditional policy of CUNY (as in most other universities in the country) that in matters of non-reappointment, failure to promote or failure to grant tenure "no reasons" for such action needed to be given the candidate. The University's position had been spelled out clearly in the by-laws of the BHE and in supplementary BHE regulations. There sat the policy, a critical issue in academe, a basic tenet in the collegial process of peer judgment, and an obvious target for faculty union negotiations. This latest challenge was never accepted by either union in negotiations yet in the second year of contract implementation it became a major issue in LC grievance and arbitration cases. So much so that the LC which had become a NEA affiliate in April 1970 had been successful in receiving support from the special NEA Dushane Fund to bring the issue into the federal courts. There was no doubt that the LC thrust was motivated by the then on-going Roth and Sindermann cases which were before the U.S. Supreme Court.<sup>2</sup> In the end picture the LC never brought the suit because of the outcomes in the Roth and Sindermann cases.

Still another example of post contract demands was the constant assault by both unions on the traditional university policy of confidentiality afforded the deliberations of faculty peer committees, such as departmental or college-wide personnel and budget committees — committees which in the CUNY structure concerned themselves with recommendations for appointment, reappointment, promotion and tenure. True, the UFCT had negotiated at one point on the matter of the confidentiality of personnel files which contained original letters of reference. This demand, which was subsequently dropped by the UFCT, called for the destruction of such letters of reference once the candidate had been re-hired for a second year. For the LC this matter of confidentiality became so critical an issue that the University's position of reaffirmation of the principle of confidentiality was one condition of a negotiated "deal" (affirmation of the "no reasons" principle was the other condition) resulted in the LC rejection of the deal which would have resulted in tenure reappointments to 40 grievants.

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<sup>2</sup> *Board of Regents v. Roth*, 408, U.S. 564 (1972) and *Perry v. Sindermann*, 408, U.S. 593 (1972). Both cases centered on the issue of whether a faculty member who is not reappointed following the expiration of his employment contract is entitled to a statement of reasons and hearing thereon. Up to this time the U.S. Courts of Appeals in various parts of the county had been divided on this issue.

What had begun to surface in the attempt to utilize the grievance arbitration procedures to provide post contract victories was a real cleavage between senior and junior faculty based on what in essence was an emerging concept of peer evaluation as the evaluation of the young by the old by hoary and arcane processes.

## THE ARBITRAL PROCESS

The activity in arbitrations kept pace with the grievance activity and by October 1972 looked like this:

### ARBITRATION ACTIVITY RECORD

September 1969 to October 1972

Status	LC	UFCT
Award Rendered	29	32
Pending Award	3	5
To Be Heard	15	33
Withdrawn	7	20
	<hr/>	<hr/>
	54	90

The University had proceeded to arbitration with the first two UFCT cases early in the Spring of 1970. The first case was a "class action" involving approximately 25 Lecturers (full-time) who, in accordance with past practice of semester appointments in the University, had been appointed for the Fall semester only and thus not reappointed for the following Spring. The union grieved the terminations as violative of the agreement and contended that the contract provided that all Lecturer (full-time) appointments were for a full year. Nowhere in the record, either in the University's notes taken at the bargaining sessions or in the records of proposals exchanged or in the recollection of any member of the University bargaining team was there one shred of evidence to support the fact that the *continuance* or *discontinuance* of the University's semester appointment practice was ever an issue in the negotiation. However, excellent "lawyering" (counsel for the Union was one of the foremost arbitration attorneys in the area), readings of "intent" into articles never so intended, lack of expertise in arbitration case preparation and presentation by the University and an industrial model trained arbitrator all combined to result in the arbitrator's sustaining the union's grievance. Since the award was made in May 1970 and the Spring semester had been concluded it became necessary to have grievants come forward to file claims for loss of earnings in that Spring semester. The claims procedure which proved endless was not satisfied until 1974.

The second case concerned the failure to reappoint for the Spring semester 6 adjunct Lecturers in Physics at Brooklyn College. The department's case was built

around its desire to upgrade the department by replacing these incumbent adjuncts with holders of doctoral degrees or teachers about to receive doctoral degrees in physics. Again expert counsel for the union combined with an arbitrator's tunnel vision including his misapplication of a non-relevant contract clause to the issue resulted in the union's grievance being sustained. Of particular note in this award was the following statement made by the arbitrator:

The philosophy of hiring the best personnel available is of course commendable, and it is presumed that whenever anyone is hired, at the time of such hiring, he is the best available. The upgrading of a faculty is also desirable but may not be done at the expense of violating a contract. The term "upgrading" is of course a subjective term. The mere holding of a doctorate, or taking courses toward a doctorate, does not itself mean that such an individual would make a good lecturer or professor, nor that a faculty would necessarily be upgraded by having such an individual become a member of the faculty.<sup>3</sup>

It should be noted that after the second arbitration had been argued and long before a third case was to go to arbitration the University obtained the services of expert management labor relations counsel. The fact that one could not fight a howitzer with a pea shooter became apparent to even the most ardent supporters of labor relations amateurism at CUNY.

The last case mentioned was, upon advice of counsel, taken to the New York State Supreme Court by the University and resulted in the arbitrator's award being sustained. The case was appealed and once again the arbitrator's award was sustained, this time with a 5 to 0 decision of the Appellate Division. Counsel sought and obtained permission to appeal the case before the New York State Court of Appeals where the appeal was rejected by a unanimous vote with no opinion offered.

#### **The Perlin Case**

In the Fall of 1970 the LC brought its first case to arbitration — the now famous Perlin case. The grievant, having been judged by peers, had failed of reappointment in what would have been a tenure appointment. Counsel for the LC used the "*nota bene*" as the pivotal issue and contended that if the arbitrator found for the grievant he could do nothing other than to reappoint the grievant even though such reappointment could confer tenure. Hard as it is to believe and despite the clear-cut language of the "*nota-bene*" that was the arbitrator's decision — reappointment with tenure. In defense of the arbitrator it must be said that the case was weak, the grievant had not been treated fairly and in his decision the arbitrator conveyed his regrets as to his having to make that decision. But, he had proceeded to substitute his judgment for that of the academy.

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<sup>3</sup> City University of New York v. UFCT, AAA, Case No. 1330-0207-70, May 25, 1970, p.4.

The LC hailed this decision with a special one page bulletin headlined "LC Wins Landmark Decision" from which the following is quoted:

The substance of this decision will have far-reaching effect on many tenure and non-reappointment grievances being processed by the Conference which involve violations of Article XVII (Professional Evaluations). Our contract has been upheld in no uncertain terms. The Conference expects that, at long last, the University Administration will realize what a collective bargaining agreement means and that they'll start honoring it.<sup>4</sup>

All of this despite the fact that the Conference had agreed to the clear language of the contract and had won its victory in the "*nota bene*" provision by having inserted into it the right of the arbitrator to remand if *procedures* used in the decision making process were found to be arbitrary or discriminatory.<sup>5</sup>

It should be noted that at Step 2 of this grievance the Chancellor's designee had recognized the college's utter failure to follow required procedures and had ordered the grievant appointed for an additional year as a terminal appointment. This decision had, of course, not been accepted by the grievant or the union.

The University Administration was deeply disturbed by this decision by an experienced and learned arbitrator — his dilemma was understandable, his solution was unacceptable. What was the University's recourse? First counsel requested and was granted the opportunity to present the case for reconsideration by the arbitrator. He remained firm in his decision. The university then offered the grievant a position for one year with notice to the effect that it would be attempting through legal avenues to set aside the direction in the award to reappoint with tenure. This, too, was rejected. When the University took no further action in the matter and continued not to accept the award, the Conference went to the Supreme Court of the State of New York, to seek redress via a judgment confirming the award. The court ordered the University to follow the direction of the arbitrator.

It was at this point that the University had to face up to a basic policy decision. The LC was gaining support for its contention that the University was being dishonest in its contract administration in that it was refusing to accept binding arbitration decisions and was using its greater financial resources to attempt to "break the union" by going to the courts. This was a pick-up of a charge already advanced by the UFCT (as indicated, one UFCT arbitration had been taken to court) which was finding its non-selective race to arbitrations an awesome financial burden — so much so that the UFCT had to borrow funds from its one-time parent, the UFT. The pressure against taking arbitrator's decisions to court was being built up in the BHE and even in the Mayor's Office, which began to give the University a hard time concerning the

<sup>4</sup> Legislative Conference, "LC Wins Landmark Arbitration," December 1970.

<sup>5</sup> Mintz, Bernard and Golden, Allan, "In Defense of Academic Judgment: Settling Faculty Collective Bargaining Agreement Grievances Through Arbitration," *Buffalo Law Review*, Vol. 22, No. 1, Winter 1973, p.531.

extension of a prior agreement to permit the University's special counsel to handle the Perlman case in the courts. All of the foregoing led to long and serious debate at the Chancellor's staff level. Only the unshaken conviction in the clarity of the contract language evinced by the Vice Chancellor for Staff Relations supported by counsel led to the decision to proceed with an appeal. This appeal was handled in the courts by the Corporation Counsel's office which now had jurisdiction over our court proceedings.

On April 10, 1972 the Appellate Division of the Supreme Court, in a 3 to 2 opinion, reversed the lower court in favor of the University's position. In an opinion which strongly upheld the "*nota bene*" the majority opinion said the following:

In the course of the grievance procedure, both the President of Brooklyn College and Vice Chancellor Bernard Mintz, ruled against the petitioner. The Board did offer her a second opportunity to demonstrate fitness, a *sin qua non* quality for tenure, it being recognized that the touchstone to tenure is "academic excellence." But she chose to go forward to arbitration, and there she was successful, the arbitrator directing that she be reappointed as an Instructor for the next academic year, the effect of which is to award her tenure.

However, in our view, the determination of the Arbitrator exceeded the purview of his power, as the power to grant tenure is vested exclusively within the province of the Board of Higher Education; and, thus, when the Arbitrator abrogated this power unto himself, he violated the *nota bene* of Section 6.4 of Article VI of the Collective Bargaining Agreement, which specifically excluded such power; this proviso stipulates that grievances relating to appointment, reappointment, tenure or promotion, which are concerned with matters of academic judgment, may not proceed to the arbitral stage. This *nota bene* further provides: "4) It shall be the arbitrator's first responsibility to rule as to whether or not the grievance relates to procedure rather than academic judgment. 5) In no event, however, shall the arbitrator substitute his judgment for the academic judgment." Thus, we find here neither statutory nor contractual sanction for the action of the Arbitrator, the consequences of whose action was to confer tenure upon respondent.

The Arbitrator herein endeavored to transmute procedural irregularities into power gratuitously assumed to himself to confer tenure, although the exercise of "academic judgment" alone governs the conferring of tenure. The statutes give the various boards of education, such as the respondent, the exclusive power to make the initial appointments and to determine whether an appointee is qualified academically so as to permit an appointee to continue long enough to obtain tenure. The public policy behind the statutes, far outstripping the ad hoc fate of Zalmar Perlman, is one which recognized the over-riding importance of such appointments in the maintenance of excellence in the public school system.

As the Court said in *McMaster v. Owens*, 275 App. Div. 506, at p. 509:

"The making of a permanent contract with tenure constitutes a long commitment that should not be incurred without the most careful consideration. \*\*\* The legislature has not seen fit to abrogate the power of the board in making permanent contracts."

That tenure should not be conferred by a "back-door" maneuver is obvious because of the intrinsic value the courts attach to tenure. "The purpose of the tenure law is 'to give security to competent members of the educational system in the positions to which they have been appointed.' (*Matter of Monan v. Board of Educ.*, 280 App. Div. 14, 18; *Donahoo v. Board of Educ.*, 413 Ill. 422, 427). The statutory tenure terms can be changed by the Legislature but never by a board of education (*Lapolla v. Board of Educ.*, 172 Misc. 364, affd. 258 App. Div. 781, affd. 282 N.Y. 674; *Matter of O'Connor v. Emerson*, 296 App. Div. 897)." *Matter of Boyd v. Collins*, 11 N.Y. 2d 228, 223.<sup>6</sup>

The UFCT proceeded to bring the case to the New York State Court of Appeals which in a unanimous decision dated January 3, 1973 stated the following:

319. IN RE THE LEGISLATIVE CONFERENCE OF THE CITY UNIVERSITY OF NEW YORK, ap (Board of Higher Education of the City of N.Y., res)— Order affirmed, without costs. The offer of the board as incorporated in the Appellate Division appears to be a viable solution. Grievant would have one terminal year in the post of lecturer and the board would be required to follow "established procedures" in re-evaluating the grievant. Thereupon, if grievant is found worthy of appointment to the faculty, benefits can be awarded to the grievant retroactively. All concur.<sup>7</sup>

Although arbitrators do not follow the concept of "stare decisis" court actions which arise from the processes of arbitration do result in judicial precedent. In the summer of 1972 in a case tried before Judge Nathan M. Cohen, in the Circuit Court of Cook County, Illinois, in which the Board of Trustees of Junior college District #508 sought declaratory relief from an arbitrator's award in circumstances much like the Perlin case at CUNY, Judge Cohen utilized the majority appeal decision of the Appellate Division of the New York State Supreme Court as support for his decision. Judge Cohen's decision set aside the arbitrator's award.<sup>8</sup>

The "Perlin" case began in March 1970. The last judicial opinion was dated January 1973. In that three year period several other arbitrators had expressed their views of the "*nota bene*" restriction on arbitral powers to the same extent. Many writhed, some even whined.<sup>9</sup>

<sup>6</sup> Legislative Conference v. Board of Higher Education, 38 App. Div. 2d 478, 479, 330 N.Y.S. 2d 6881, 690 (1st Dep't 1972).

<sup>7</sup> *New York Law Journal*, January 3, 1973.

<sup>8</sup> Cook County College Teachers Union, Local 1600, AFT, AFL-CIO, Board of Trustees of Jr. College District #508, County of Cook, Ill.

<sup>9</sup> Mintz and Golden, op. cit., p.

It should also be called to attention that "Perlin" and the union had grieved against the judgment of peers — the department appointments committee, the college-wide personnel and budget committee and finally the college president who entered the case as the recipient of the "Perlin" appeal while it was still on campus. The collective bargaining agent sought to set aside the academic decision of such peers and substitute the decision of a non-member of the collegium in an adversary proceeding.

### **Higher Education and the Arbitral Process**

Experience has indicated that the application of the arbitral process in the industrial mode to higher education is fraught with difficulty. Confidence in this third party process has been badly shaken by awards which have indicated little or no understanding of the somewhat different world of academe in which there is no pure management and labor side. How could one expect the experienced arbitrator of industry contracts to understand such concepts as peer evaluation, academic judgment, the effects of tenure, etc? Do arbitrators try too hard to satisfy both sides in furthering the cause of equity? Is the profession too much of an exclusive closed club? If the arbitral process is to be used in university grievance resolution must the choice of an arbitrator be limited to those professional arbitrators who are actively engaged in university life? That these and other similar questions have become important has now been evidenced by the American Arbitration Association in their efforts to provide their membership with special seminars on arbitrating grievances in higher education.

One of the major problems has been that of arbitrators differing in their interpretations of the same contract provision. An award by one of the CUNY arbitrators (an academic) stated the problem as follows as he proceeded to reject another arbitrator's opinion of a contract clause, "I make the foregoing finding with considerable reluctance. Conflicting interpretations by arbitrators as to the identical provisions of a collective bargaining agreement make arbitration a kind of judicial roulette..."<sup>10</sup>

### **SOME LESSONS LEARNED**

In the summer of 1971, as is its wont, Fate and changes in the careers of men began to take a hand in the overall affairs of CUNY. Chancellor Bowker's appointment to the University of California at Berkeley had been announced, an Acting Chancellor had been designated inter-regnum while a national search for Bowker's successor went forward and the Vice Chancellor for Staff Relations had announced his desire to withdraw from active participation in collective bargaining. In fact one of the last functions of the team which had constituted Dr. Bowker's staff was to re-organize the University Central Office to accommodate what would be a new Vice Chancellorship for Faculty and Staff Relations which would specialize in the area of faculty and staff

<sup>10</sup> UFCT v. Board of Higher Education, AAA, Case No. 1229-0775-71, March 29, 1972, p.13-14.

relations and not be charged with any other administrative responsibilities. A move dictated not only by the tremendous growth in faculty labor relations activity but also in contemplation of the huge task ahead — negotiating new contracts. With this re-organization there came another and even more important change, a change in policy which in effect demanded the effectuating of sound contract compliance at the constituent college levels.

### The New Approach

One of the last functions of the outgoing Vice Chancellor for Staff Relations was to prepare a position paper entitled "Grievance and Arbitration Review" to be used as a basis for an early September meeting of all constituent college personnel, including presidents, involved in faculty labor relations. The objectives of the paper were to categorize and review the experience gained from the grievance arbitration procedures and to provide from this experience, specific guidelines for the future.

The tone of the document can readily be perceived from the following quote concerning faculty evaluation procedures:

If it were possible to argue that failure to follow these required procedures was forgivable in 1969-1970 because of the newness of the contract; and if it were possible to argue that failure to allow procedures in 1970-1971 was corrected by remand; *during 1971-1972, the failure now to follow Board Policy and contract requirements is unacceptable.*<sup>11</sup>

The guidelines with which the paper concluded stated the following:

#### SUMMARY STATEMENT

The best test of the effectiveness of a grievance procedure is the number of satisfactory settlements concluded at the first step of grievance. This must be a major objective for 1971-72, the third year of our contract administration.

The guidelines which emerge from this review are not numerous but in the main fairly clear-cut, these are as follows:

1. When there has been substantive failure to comply with observation and evaluation procedures the grievant shall be upheld.

*Comment:* (See Article XVII of the Agreements)

- (a) "Substantive failure" shall include failure to

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<sup>11</sup> Agenda for meeting of Faculty Labor Relations Designees, CUNY, September 16, 1971.



- (1) observe each semester
  - (2) hold observation conference each semester
  - (3) convey written memorandum of observation conference to the grievant
  - (4) hold annual evaluation conference
  - (5) convey written memo of annual evaluation conference to the grievant
- (b) The grievant must have had the opportunity to respond to the findings in observation or annual evaluation memoranda.
- (c) The department involved will have to accept the onus for its omissions.
2. Instructional staff titles must be assigned with strict adherence to Board Bylaws and paid in accordance with rates specified in the contractual agreements.
  3. The Board's policy that "...no reason shall be assigned for a negative recommendation" remains in effect.
  4. Board Bylaws which require presidential consultation with faculty committees and/or faculty shall be adhered to.
  5. Lecturer (full-time) must be an annual appointment.
  6. Lecturer (part-time) may be a semester appointment but the letter of appointment must clearly so specify.
  7. Insofar as possible adjunct appointments shall be made on an annual appointment basis.

#### **Policy vs. Terms and Conditions of Employment**

Soon after the 1972 negotiation of the New York City teacher's contract had been concluded Al Shanker, in his Sunday column in *The New York Times*, made the point that one of the major hang-ups in that negotiation was the Board of Education's insistence in re-establishing its management prerogatives in policy matters. Shanker quite soundly pointed up the difficulty in agreeing to leave "policy" to the Board while trying to bargain "terms and conditions of employment."

In this regard probably the most contentious issue has been and will continue to be the extent and nature of student participation in college governance. The BHE in its reaction to student demands in what might be referred to as the "period of student turbulence" committed itself strongly to a governance approach which would require student participation in college and university governance decision making. This

commitment took the form of a new and greatly expanded separate section of the BHE's bylaws delineating specifics as to procedures and organization.

Unhappy with the pace at which college governance plans were being revised to provide for greater student participation in decision making the Board, in the Fall of 1971, passed a resolution the substance of which was that February 1, 1972 be held as the date beyond which no recommendations for reappointment, tenure or promotion would be granted without evidence given to the Board of systematic student evaluation input in these decision making processes. The impact of this rather impulsive resolution shook-up faculty and administration and both of the University's unions. Firstly, administrative impossibility resulted in having the effective date moved to September, 1971. Secondly, the unions proceeded to file an improper management practices charge with PERB alleging improper management practice because the student evaluation input regulation constituted a change in working conditions effected on a unilateral basis. This charge did not stand up.

### **Collegiality vs. Collective Bargaining — The Real Dilemma**

It was here, in the administration of the grievance arbitration procedures, that the real dilemma had been raised — was it possible to reconcile faculty collective bargaining with the traditional concepts of collegiality? The issue is sharpened by a definition of terms — Webster on "collegial" - "marked by power or authority vested equally in each of a number of colleagues" — Mintz on collective bargaining — "the process of negotiations between employers and employees (or their representatives) over terms and conditions of employment which when successfully completed result in a written collective bargaining agreement or contract."

The dilemma - is faculty collective bargaining inimical to the traditional collegial faculty relationship?

When one examines the definition of collective bargaining and parses the sentence the following chart can be developed:

negotiations	- the "do" activity in collective bargaining
employer and employee	- the "who" in collective bargaining
terms and conditions of employment	- the "what" of collective bargaining

For the purpose of this analysis let us first examine the "do" activity. Negotiating implies at least two positions in this context - one sought and one offered. In some instances the offering position becomes one which states that the demand, that which is sought, constitutes a non-negotiable item. Sometimes the non-negotiability view results from clear cut limitations as to the scope of bargaining in state enabling

legislation such as was present then in Massachusetts in relation to salaries and sometimes it results from a position based on principle. Negotiations would appear to be viable within the concept of collegiality when dealing with such economic items as salaries and fringe benefits but how does one "negotiate" peer judgment, academic judgment, department organization structure, college governance, senate or faculty council functions, etc., within the concept of shared power and authority.

As to the "who" in collective bargaining one sees the requirement of a sharp delineation of employer - employee. That this requirement has presented an identification crisis has been amply demonstrated. Thus another element in the definition of collective bargaining, although not absent in totality, is at least fuzzy. Certainly the need would exist to "negotiate" a statement of faculty duties and responsibilities and a statement of management rights. Would negotiations be deemed to be a "sharing of power and authority?" Do we not have here a relationship inimical to the concept of collegiality.

In the industrial model of collective bargaining terms and conditions of employment have been clearly identified to include rates of pay, wages, hours of employment, or other conditions of employment. Furthermore, it has almost always been held in arbitrations that a collective bargaining contract serves as a limitation upon the rights of the employer to establish working conditions, but only to the extent the contract establishes conditions of employment and that conditions not covered by the agreement remain the right of the employer. If a contract fails to cover such areas as the exercise of peer judgment in faculty decision making concerning such matters as retention, promotion, and tenure does the administration then have an open road to unilateral management rights in these matters? Is this what university administrators desire? Is the alternate the inclusion in a contract of every set of faculty council or senate bylaws and charter? The academic world has been governed by a relationship in which almost every term and condition of employment has its roots in an academic policy. Are we thus required, in order to honor the industrial model of collective bargaining, to accept a no differentiation concept or do we have only the hard choice of a labor-management adversarial approach?

Are there alternatives to the industrial model of collective bargaining available to the university faculties? Chapter VIII examines a possible answer to this question.

# Chapter V

## TRANSITION - MARCH 1972 to MARCH 1975

This chapter is concerned with the period of transition between the re-negotiation of the first two contracts as a single contract which commenced in March 1972 and the beginning of negotiations for the second unitary contract in March 1975. A three year period which was marked by heightened adversarial relations between management and the union with no signs of the development of an ameliorating trend.

### HISTORICAL UPDATE

Both original contracts carried the same expiration date of August 31, 1972 and provided for the commencement of contract re-negotiations as of March 1, 1972. However, in the Fall of 1971, the UFCT petitioned PERB for a new bargaining unit determination and a new election. The positions now taken by the unions and by management were rather interesting. The UFCT called for one unit of all employees, the LC wanted two units structured along existing lines. The surprise was the University's call for three units — one unit for full-time teaching staff, one unit for part-time teaching staff, and one unit for professional support personnel. Hearings before PERB, somewhat adversary in tone, began in January 1972. On March 29, 1972, while hearings were still in process, the LC and the UFCT announced the completion of a merger of their organizations. The new union was named the Professional Staff Congress (PSC) CUNY. Of the more than 16,000 faculty and staff employees at CUNY, PSC claimed a combined membership of 5,500 and duly announced that, of these, 2,800 members voted to ratify the merger. On Monday, April 17, PSC requested the University to recognize it as the de facto collective bargaining agent representing the entire CUNY faculty and staff in a single unit. The University took the position that it could not agree to that request since it could not lawfully recognize a new union without a determination that the majority of the faculty and staff, arranged in appropriate units, desired to be represented by that union. Moreover, the University maintained that the members of the academic community should have an opportunity for a self-determination election by secret ballot.

Failing to secure recognition without election, PSC asked the University to agree to an election in the single unit which the UFCT had requested PERB to establish. The University took the position that it could not agree to present as a "fait accompli" to the University faculty the restricted choice of a new bargaining agent in a predetermined, single unit, in view of the fact that over 12,000 staff members had not as yet expressed themselves on the issue. The University sought separate elections in three units. After several weeks of vituperative correspondence, it was agreed by both PSC and the University to conduct a secret mail ballot election for the purpose of determining, first, what unit or units the employees of the "instructional staff" of the City University of New York desired for the purpose of collective negotiations, and second, whether they desired to be represented for such purpose by the Professional Staff Congress - CUNY.

That balloting resulted in 8,258 in favor of a single bargaining unit and 942 against. By such a vote the 16,000 instructional staff members were then deemed to be represented by the PSC. Technically negotiations of the first unitary contract began on June 19, when PSC submitted 77 demands in 7 broad categories — 60 some odd pages. Table negotiations commenced in mid-July and ended in a declaration of impasse by the PSC on September 8, 1972.

Mediation began September 25th and ended, without an agreement having been reached, on October 28, 1972. Fact finding began November 24, 1972 and ended with the delivery of the Fact Finders Report and Recommendations, dated May 17, 1973. The Fact Finder Board's report was not acceptable to the University for three major reasons:

1. The Fact-Finders' recommendation that we include in the union contract a provision against further extension by the Colleges of voting rights to student members of academic committees dealing with faculty appointments, promotion and tenure. The Fact-Finders themselves conditioned this contract recommendation on resolution of a legal issue they themselves declined to consider, to wit, whether the subject was a required subject of bargaining under State law. Moreover, the Fact-Finders had no expertise whatever on this matter of governance, which, as the State Board of Regents has said, should be left to academic authorities.

2. The Fact-Finders' recommendation that the agreement not include a provision that the union contract consists only of the terms stated in the contract. The inclusion of such a provision in a CUNY contract is considered necessary to prevent labor arbitrators from attempting to treat some current practices not mentioned in the contract as nevertheless binding on the University and the colleges as implied or unstated terms of the contract. The power to govern the University consists of the power to change existing practices, and this right of governance cannot appropriately be surrendered to unauthorized implications to be drawn by labor arbitrators.

3. The Fact-Finders' recommendations that the CUNY Negotiating Committee withdraw its proposal for inclusion in the contract of a specific provision confirming current Board policy that appointment for a single year carries no presumption of reappointment in subsequent years. The Fact-Finders found that this policy was already expressed in a Board resolution, and that a specific contract provision to the same effect should not be included unless proved to be necessary. It was agreed at our committee meeting that if the PSC gave us a letter accepting the University's "no presumption" resolution as having continued validity, we would withdraw our request for a contract clause to the same effect. The PSC has, since receipt of the Fact-Finders' Report, refused to agree that present Board policy on this question is valid, confirming the necessity of the contract clause we requested.<sup>1</sup>

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<sup>1</sup> Statement, pursuant to Civil Service Law 209.3(e)(iii), by the Negotiating Committee of the City University of New York in Explanation of the Position of the Public Employer with Respect to the Report of the Fact Finding Board, dated May 17, 1973, Exhibit 1, p.2-3.

Negotiations resumed on May 24th and eventually concluded with agreement being reached July 20, 1973. In the period between receipt of the Fact-Finders' Report and the final agreement, there was a point at which the Board of Higher Education (BHE) in its role as "Legislative Body" (as defined in the Taylor Law) was on the verge of promulgating a contract unilaterally.

The BHE on July 24th, approved the contract subject to union ratification which was then forthcoming.

### UNITARY CONTRACT REVIEWED

The end product of this involved series of events which transpired over a period of a year and a half was a unitary contract not too different from the two predecessor agreements. However, what it lacked in numbers of areas of difference it made up in the significance of the differences. Among the differences of major significance were the following:

1. The merger of two unions into one brought with it the merger of two contracts into a single contract document covering all instructional staff personnel.
2. Although the contract duration (September 1972 retroactively to August 31, 1975) covered a three year period the length of its gestation resulted in its being signed October 1, 1973. In effect then it provided for re-negotiation at a point when it would have been administered over but a 17 month period.
3. The contract contained a "zipper" clause which said:

The entire Agreement between the parties consists of the terms herein stated, and this Agreement terminates all prior Agreements and understandings. All Bylaws, policies and resolutions of the Board, and all Governance plans and practices of the Colleges and of the departments, as currently in effect, or as the same may be hereafter adopted, supplemented or amended, shall be subject to the said stated terms of this Agreement.<sup>2</sup>

4. In the area of job security it provided for multiple year appointments for two categories of non-teaching instructional staff personnel in titles not eligible for tenure.
5. In the highly controversial and critical area of stating reasons for non-reappointment or promotion the contract provided that in the case where a President fails to recommend to the Board of Higher Education the

<sup>2</sup> Agreement between the Board of Higher Education of the City of New York and Professional Staff Congress/CUNY, October 1, 1973, Article 2.2, p.3.

reappointment or promotion of a candidate recommended to him through the college's peer judgment process, the President would be required to furnish a written statement of his reasons for his action *if so requested*.

6. The re-negotiated workload provision for classroom teachers provided as one criterion to use in defining "excessive" or "unreasonable" workload practices in the University during the 1971-72 academic year.

7. In the area of faculty post observation conference the onus of failure to be subject to such a conference was placed on the employee rather than management (department chairperson). For purposes of annual evaluation the contract required a clear labelling of "unsatisfactory" if an evaluation was deemed less than satisfactory.

8. In the grievance and arbitration section there was an attempt to modify the "nota bene" clause made famous by its numerous interpretations by arbitrators. This change consisted of an approach to a more refined definition of the grievance situation where an arbitrator found that there was a likelihood that a fair "academic judgment" might not be made on a procedural remand situation. The provision itself is quite revealing. It should be noted that the provision called for the creation of a "Select Committee" for purposes of adjudication but in no way specifies what authority the "Select Committee's" decision will carry. The wording does provide fertile soil for further contention.

In cases involving the failure to appoint, promote or reappoint an employee in which the Arbitrator sustains the grievance, the Arbitrator shall not, in any case, direct that a promotion, appointment or reappointment with or without tenure be made, but upon his finding that there is a likelihood that a fair academic judgment may not be made on remand if normal academic procedures are followed, the Arbitrator shall remand the matter, including a copy of the Arbitrator's Award, to a select faculty committee of three tenured full or associate professors of The City University of New York, one to be designated by the President of the grievant's college, one to be designated by the PSC, and the third to be chosen by the first two from a panel of no fewer than 20 tenured or certificated professors, instructors or lecturers, or in an appropriate case, from an ancillary panel of no fewer than 5 members of the non-classroom instructional staff, the members of the said panel to be jointly designated by the Chancellor or his designee and President of the PSC. The composition of the said panel shall be subject to review and/or replacement annually. The persons or committee to whom such remand is made for the making of the academic judgment shall (1) as far as practicable, have access to the same materials to which the College President normally has access in making such judgments, (2) be subject to the regular rules of confidentiality of faculty proceedings, and (3) the select committee shall be constituted within a reasonable time after the Arbitrator's Award is rendered and shall render its decision within

twenty (20) days thereafter.<sup>3</sup>

9. Some changes in terminology were introduced such as "sick leave" became "temporary disability leave" and "sabbatical leave" became "fellowship awards."

10. The economic package agreed upon represented a dollar disaster for the union and reflected the opposite arc of the pendulum swing. Since CUNY faculty already enjoyed a total compensation level at the pinnacle of university salaries in the nation this could be evaluated as a rational approach to salary increases. Across the board increases of \$600 (1972), \$750 (1973), and \$850 (1974) did not sit well with the faculty. Particularly senior faculty at the highest salary scale levels where such dollar increases averaged 2-3 percent per year.

It is important to note that all through the negotiation which brought forth this contract the University bargaining team included as a key member a highly skilled and seasoned attorney. One, who in the course of negotiations, was often referred to by the Union as a "hired gun." It is contended here that the end product reflected this very able counsel.

### ADVERSARIES UNLIMITED

Despite the grievance and arbitration guidelines issued by the Chancellor's Office in September 1971 (see Chapter IV) the pace of grievance and arbitration activity never let up. Even the merged single union did not serve as a vehicle for grievance abatement. In fact, the existence of factions within the newly created PSC contributed to increased militancy in the union leadership. At this point a brief review of the power structure of the PSC is relevant.

When the PSC emerged in the Spring of 1972 Professor Belle Zeller who had been president of the Legislative Conference and Professor Israel Kugler who had been president of the UFCT local were both designated co-Presidents of the PSC. The merger agreement provided for an election of officers in the Spring of 1973. Obviously the year would be spent in political infighting to determine who came up with the brass ring. Neither bloc was in a position to permit itself to be out-manuevered by the other either in terms of the on-going contract negotiations or in the pressing of grievances and arbitrations. It should be noted that the length of the negotiations period was definitely related to this power struggle and although the former LC slate emerged victorious in the elections this very same power struggle would have effects on the 1975 contract re-negotiations.

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<sup>3</sup> Agreement between the Board of Higher Education of the City of New York and Professional Staff Congress/CUNY, October 1, 1973, Article 20.5(c), p. 23-4.



In the final summation of grievance activity in the first contracts, the period from September 1969 - August 1972, over 800 Step 1 grievances were filed at the Colleges, more than 500 Step 2 grievances were filed with the Chancellor and over 200 cases went to arbitration. Approximately 80 percent of the grievances concerned personnel actions over matters of reappointment, promotion and tenure, and 20 percent were concerned with contract interpretations. Of the grievances in regard to personnel actions, 90 percent were grievances leveled not at the University but at academic judgments which had emerged as a result of the faculty's peer judgment processes. Thus, the facts would seem to indicate that the deepening adversarial relationship came about as a result of the Administration's efforts to defend and protect the faculty's role in personnel decision-making.

Grievance and arbitration activity under the unitary contract continued at this same extraordinary pace. As of March 1975 the record was as follows:

CONTRACT #1

UFCT Arbitrator	UNIVERSITY UPHELD	GRIEVANT UPHELD
Rubin	8	8
Wildebush	14	9
Christensen	10	11
Friedman	1	1
Kahn	2	0
Oberer	3	1
Nicolau	3	1
Roberts	2	2
Stark	1	1
Ben Scheiber	2	0
	46	34
LC		
Roberts	6	3
Schmertz	3	0
Feinberg	1	0
Friedman	9	2
Seitz	6	2
Ben Scheiber	6	2
Stark	5	1
Kahn	1	0
Nicolau	3	1
Stein	1	0
Stutz	2	0
	43	11

CONTRACT #2

PSC

Stein	0	1
Kahn	1	0
Oberer	1	1
Roberts	1	1
Nicolau	1	0
Stein	2	0
	<u>6</u>	<u>2</u>

STEP 2 HEARINGS

Contract #1

September 1, 1969 - October 1, 1973      925

Contract #2

October 2, 1973 - March 1, 1975      510

CLIMATE — MARCH 1975

The successor to Chancellor Bowker was Dr. Robert J. Kibbee who came on board in the Fall of 1971. The successor to the author who also came on board in the Fall of 1971 as Vice Chancellor for Faculty and Staff Relations, the newly created post referred to in the previous chapter, was Dr. David Newton. Dr. Kibbee was new to the University; Dr. Newton was an old University hand. To both, faculty collective bargaining was a new arena.

As new brooms the new Chancellor and Vice Chancellor attempted to reverse or at least halt the exacerbation of the adversarial relationship and for a brief period of time it appeared that a change would be forthcoming. So much so that in September 1971 the Executive Director of the Legislative Conference stated that, "The first steps taken by the new administration auger well for the future of the University's instructional staff relationships." This was a short-lived honeymoon.

Probably the single most destructive influence which contributed to the aborting of this Administration effort was the bitterness and hostility between the two collective bargaining agents. All of the venom and vituperative feeling surfaced when their preliminary merger negotiations broke off. This break in their negotiations then resulted in the UFCT petition referred to earlier in this chapter and the series of events which then followed. However, it was this interim discord which proved destructive to the efforts

to develop a more rational relationship in CUNY's faculty labor relations.

The climate for the first re-negotiation of the unitary contract was indeed different from that of 1968 when the first contracts were negotiated. The University administrators most concerned, the Chancellor and the Vice Chancellor for Faculty and Staff Relations, were now old hands at faculty collective bargaining. The presidents of the 19 constituent colleges in CUNY had been exposed to six years of contract administration and were convinced that faculty labor relations was here to stay. They wanted in — at least on a consultative basis. The Board of Higher Education, newly constituted in January 1974 as a result of State legislative action had not a single member carry-over from the Boards which had agreed to prior contracts. The nature and composition of this Board introduced an entirely new variable.

### **The Board of Higher Education**

In the fall of 1973 legislative pressure developed to provide the Governor with representation on the Board of Higher Education. Since the State supported CUNY almost as an equal partner with the City, strong resistance to this move was difficult to mount. The incumbent 21 member board tried but failed to prevent the change. The legislation which was enacted reduced the Boards' membership from 21 to 10 and provided for three members to be appointed by the Governor and six plus the Chairman to be appointed by the Mayor. The newly designated Board took office in January 1974.

The ensuing year was one which brought with it to the University administration, Central Office and Colleges, the unique problem of learning to live with an entirely new board of trustees. In relation to the area of collective bargaining a rather interesting facet was the background of the newly appointed Chairman of the Board, Alfred A. Giardino. Mr. Giardino was a practicing lawyer, an expert in labor relations, an arbitrator for State and Federal mediation panels and a member of the New York City Board of Education from 1964 - 1968 serving as President for the year 1967 - 1968. Thus, Mr. Giardino had not only been involved in labor relations in the private sector but also had been involved in the public sector with the United Federation of Teachers. No other member of the new Board had any expertise in the field of labor relations. Prior Boards had always had one or more representatives from the labor movement — this Board had none.

### **The Fiscal Situation**

The fiscal plight of the City of New York was a well publicized disaster area. In fiscal 1974-75 the City had forced the University to cut back its already appropriated budget some 87 million dollars — a "first" in City fiscal administration. Fiscal experts predicted a 1 - 1.5 billion dollar deficit in City funding required for 1975-76. The money picture could be no blacker.

The City's fiscal situation, however, was colored by an interesting set of labor relations facts. Prior to the Mayor's going public with a program for cutting expenses in fiscal 1974-75 the City had agreed to some labor contracts with Civil Service unions which appeared to set a dollar package settlement pattern. This pattern provided a first year increase of 8 percent and a second year increase of 6 percent *plus* an additional cost of living increase factor.

Thus the emergence of a potentially catastrophic dilemma for the City of New York - the need to cut spending drastically which basically had to lead to large scale personnel retrenchment juxtaposed against existing labor relations contracts which called for increased personnel expenditures.

This, then, was the climate in which the PSC's contract re-negotiations would be undertaken.

# Chapter VI

## PREPARATIONS FOR RE-NEGOTIATIONS

One of the criticisms leveled by University administrators in terms of the first contract negotiations was the failure to provide administrators sufficient opportunity for input. In response to this criticism Vice Chancellor Newton in preparing to negotiate the first unitary contract introduced a new participative apparatus. The substance of the contract was divided into related areas and for each area a collateral committee was established. Each such committee had as its chairperson a college president and included among its members vice presidents, deans, and associate deans. Using the existing contract as a base each committee was charged with the responsibility for coming up with suggested changes. Put mildly, the sum of the end products was totally disappointing.

However, the goal of greater participation by college administrators still remained a desirable one. Thus, in preparation for the re-negotiation of the unitary contract another technique was attempted. This time the president of each of the constituent colleges was asked to meet with his senior administrative officers and come forward with proposals for changes or additions in the contract. These papers were then synthesized by topic and proved useful in preparations for negotiations.

## UNIVERSITY ORGANIZATION FOR NEGOTIATIONS

Despite the fact that the new Board had been in office for a little over a year a truly viable relationship between the Chancellor's Office and the Chairman of the Board had not been established. When a highly qualified chairman of a board has had a great deal of experience in the educational enterprise, albeit not in the area of post secondary school education, it would be somewhat in character for such a person to attempt to move from his statutory policy making role to one of chief educational and administrative officer. The probing and testing of limits of responsibility and authority on both sides was the order of the day.

Perhaps the best example of how the above noted condition evidenced itself is seen when one examines the procedure used to arrive at a decision as to the composition of the University table team. In negotiating the first unitary contract the table team had consisted of the Vice Chancellor for Faculty and Staff Relations, Special Labor Relations Counsel to CUNY, the University Associate Dean for Faculty and Staff Relations and the University Director for Contract Administration. The latter two members were on the staff of the Vice Chancellor. For the re-negotiation the University had at the urging of PSC agreed not to have counsel at the negotiating table. (An immediate "win" for the Union.) It now became necessary to decide just who would represent the University. The Board chairman had great input in this matter. It was first proposed that the Vice Chancellor for Faculty and Staff Relations be augmented by two college presidents; a concept which could only come forward from a source

totally unfamiliar with the functions of a college president in CUNY. How does a college president continue to perform the functions of his office and sacrifice such a large proportion of his time on a continuing basis to table negotiations? Eventually, discussions turned to alternates to this proposal out of which there developed a decision to augment the Vice Chancellor for Faculty and Staff Relations (Chairman) with the Executive Vice President of one of the senior colleges (the author) and the Vice Chancellor for Academic Affairs. To this triumverate there was added the University Associate Dean for Faculty and Staff Relations, the University Director of Contract Administration (both veterans of the prior negotiation) and finally a member of the staff of the Vice Chancellor for Legal Affairs. The last named was a non-practicing lawyer who had been representing the University in arbitration administration and a person who had had years of labor relations experience in the private sector.

### **Structuring the Organization**

With the advent of the new smaller Board and its committee organization, the Chancellor's Council of Presidents had been reorganized in committees on a parallel basis. However, one Council of Presidents committee which had no Board committee counterpart was the Collective Bargaining Committee. This standing committee had come into existence in 1972 to serve in an advisory capacity to the Vice Chancellor for Faculty and Staff Relations in faculty collective bargaining matters and had continued to function in an on-going basis. For the re-negotiation its role was strengthened in that it met more frequently not only with the Vice Chancellor for Faculty and Staff Relations but also with the University bargaining team and was used as a sounding board on the impact of alternative positions. Four of its six members were designated as participants in the Chancellor's Collective Bargaining Policy Committee.

The Chancellor's Collective Bargaining Policy Committee was originally conceived by the Chancellor as a consultative committee charged with the responsibility of discussing from the University point of view major proposals emanating from the union and the implications of these proposals. It would also function as a more broadly based sounding board to evaluate the merits of positions on major proposals put forward by the University. Its composition was as follows:

- The Chancellor (Chairman)
- The Deputy Chancellor
- Two Senior College Presidents
- Two Community College Presidents
- The Vice Chancellor for Budget and Planning
- The Vice Chancellor for Legal Affairs
- The Vice Chancellor for Faculty and Staff Relations and the bargaining team
- The Deputy to the Chancellor for University Relations

It was the University's hope that an ad hoc Board committee would be appointed by the Chairman and that committee would meet with the Policy Committee

so that there would occur personal interface among members of the board, college presidents, the Chancellor and key members of his staff and the bargaining team. However, what came to pass was the designation of such a board committee by the Board Chairman, who designated himself and two additional members of the board, and a rejection of the concept of regular meetings with the Policy Committee. It should be noted that in all probability the major reason for this rejection was not so much a rejection of concept as it was an inability on the part of board members to commit so much of their time on a continuing basis to this function. It could be assumed that although the board committee would not meet with the policy committee on a regular basis it would hold periodic meetings with the Chancellor and the bargaining team so that the committee could be kept informed of the progress of the negotiations, and the committee would have the opportunity to provide board input on significant policy issues which might arise in the bargaining process.

In addition to the above, several other supporting moves were made. A very necessary and vital data support task force for collective bargaining was established in the Central Office. Experience had demonstrated that accurate data would be required in the support of negotiations both from the point of view of university responses to union demands and to strengthen university proposals. Each president was required to designate a campus liaison person charged with the responsibility to provide quick informational responses to the chief negotiator in terms of data not normally collected centrally. Furthermore, the Chancellor issued a directive to all of his vice chancellors which ordered first priority to requests coming from the chief negotiator.

An examination of functional responsibilities of the membership of the policy committee is clear indication of the potential of inputs from the different areas of administration expertise — legal, fiscal, public relations, etc. Obviously too, the dollar costs involved in developing necessary participation on so broad a base is mind boggling.

## THE ISSUES

This section is divided into two segments. The first concerns itself with the University's pre-negotiation assessment of PSC proposals; the second with the position of the University which would constitute its major thrust. We are concerned here not with the nitty gritty demands but rather with broad canvas issues.

### The PSC Proposal

There was no mystery in relation to the PSC demands. The PSC, early in the year, had distributed copies of its demands to its campus chapters with a request for discussion and debate, the results of which then could be included in a final statement of the PSC proposals. These did not change substantively in terms of the PSC's official

presentation at the first negotiations session on February 26, 1975.

The PSC proposal contained some 160 demands. In essence they constituted changes from the current agreement and in fact, were presented in the existing contract sequence format.

### **Enhancement of Job Security**

One of the "wins" for the PSC in the unitary contract was the achievement of multiple, two and three year, reappointments for the administrative support series of titles of "Higher Education Officer" (HEO's) and the Business Manager's series of titles. The escalated improvement step was a foregone conclusion — the demand for tenure in these titles.

Another natural was the attempt to broaden the categories of multiple year appointment titles to classroom teachers. This demand sought to establish two year initial appointments and first reappointments for all full time personnel and to establish two semester minimum initial appointments for adjunct personnel. This was coupled with another series of demands which limited reasons for non-reappointment and required that "written reasons be given on request for all denials of reappointment, tenure, promotion, and changes in title with the right to appeal under due process procedures."<sup>1</sup>

### **The 'No Reasons' Issue**

The unitary contract, as previously noted, had provided a break in the long standing "no reasons" policy of the University. However, the issue had been drawn in arbitration and the Union had lost its first attempt to extend its victory in this area. In the case of *Fleshler v. Lehman College*<sup>2</sup> the arbitrator upheld the position of the University that a college president who upon request gives reasons shall not be required thereafter to justify his decision or his reasons. Section 9.9 of the agreement was the provision at issue and it provided that once the written statement of reasons had been furnished by the president, "he shall not be required thereafter to justify his decision or his reasons."<sup>3</sup> The arbitrator held that the word "thereafter" proscribed subjecting the president to any examination that would make it necessary for him to justify his reasons. However, it should be noted that the arbitrator also concluded that if a reason given by a president violated provisions in the agreement providing employee protection from arbitrary or discriminatory actions such an appeal would have standing on such issue.

<sup>1</sup> Professional Staff Congress/CUNY, Demands presented to Board of Higher Education of the City of New York, February 6, 1975, Article 9G, p.2.

<sup>2</sup> Board of Higher Education (Lehman College) v. Professional Staff Congress/CUNY, AAA, Case no. 1339-03570-74, November 21, 1974.

<sup>3</sup> Agreement between the Board of Higher Education of the City of New York and Professional Staff Congress/CUNY, October 1, 1973, Article 9.9, p.9.



The University's position in this matter of "no reasons" is discussed later in this chapter.

### **Workload**

The thrust of the Union proposal on workload was typical of that of an evolving and growth oriented collective bargaining agent. For classroom teachers the proposal basically was to alter the key clause in the provision covering full time teachers which stated "In determining what is 'excessive' or during the 1971-72 academic year shall be one of the important elements to be considered."<sup>4</sup> The clause above which referred to "shall be one of the important elements to be considered" was to be modified to make past practices for 1971-72 an absolute and only factor for determining maximum workload. For non-teaching support personnel there were a series of demands which sought to do the following:

1. Place non-teaching personnel previously employed on an 11 month basis on a 9 month academic year work calendar.
2. Shorten the work week for counseling and library personnel to a maximum 25 hour work week with the option of a 4 or 5 day work week.
3. Limit class size in such areas as Compensatory Education, English Composition, etc., and
4. Set maximum ratios of counselors to students in both the regular education program and in special education programs with the ratio in the special programs at 20% of that of the regular programs.

It is important to note that for classroom teachers the restraint of an absolute past practices (1971-1972) provision would have resulted, with minor variations, in 9 contact hours schedules in the four year colleges and 12 contact hour schedules in the two year colleges.

All of the above and the economic package demands must be evaluated in terms of the Mayor of New York's drive for greater productivity on behalf of all public employees and a city facing a fiscal crisis.

### **The Economic Package**

The salary demands were so out-of-line with reality that they are best stated in a direct quote:

- A. Formulate the basic salary demand as an across-the-board percentage in-

<sup>4</sup> Agreement between the Board of Higher Education of the City of New York and Professional Staff Congress/CUNY, October 1, 1973, Article 15.4(c), p. 15.

crease with a guaranteed minimum dollar increase, to incorporate the inflation catch-up, salary improvement and anticipated cost-of-living increase and escalator protection. In the first year the increase shall be 18% with a minimum increase of \$3,000 guaranteed to each full time member of the instructional staff.

B. Reduce the number of steps on each schedule to eight by dropping the lower step(s).

C. Establish pro-rata pay at semester rates and automatic increment schedules for adjunct personnel.

D. Establish schedules in lieu of ranges for Research Assistants and Research Associates, and slot in incumbents at the next higher dollar figure on the schedules.

E. Replace the 3 College Laboratory Technician (CLT) schedules with a single schedule equivalent to the Lecturer (full time) schedule.

F. Replace the 3 Registrars' and 3 Business Managers' schedules with 4 schedules equivalent to the Lecturer and the three professorial rank schedules, with incumbents in the present highest schedule slotted into the next higher dollar figure in the new higher schedule.

G. Consolidate all equivalent salary schedules into single schedules.

H. Provide 100% of adjunct salary rates for assigned overtime and summer session employment, and retitle adjunct schedule to include summer employment at pro rata rates.

I. Negotiate direct payment into an annuity fund for those at the top of their schedule.

J. Express fractional-line salaries as a full percentage of annual salaries.

K. Establish parity with Board of Health Physicians for College Physicians.<sup>5</sup>

To understand truly the order and magnitude of these demands one must keep in mind the salary schedules in the University which provided for salary movement from minimum to maximum in established scheduled steps for each academic and administrative rank. These incremental salary steps roughly approximated \$1,000 a year and constituted automatic increases in salary regardless of any increases resulting from negotiations. The basic issue as to whether such salary increments constituted salary increases and as such were to be considered a part of any total increase package had been fought in the unitary contract nego-

<sup>5</sup> Professional Staff Congress/CUNY, Demands presented to Board of Higher Education of the City of New York, February 6, 1975, Article 24, p.5.

tiation. Although the Union's view had prevailed in the last contract, in the ultimate outcome it was the University which controlled the final increase package which was a continuation of the incremental salary schedule plus the small dollar increases referred to in the previous chapter.

In the section of the salary demands quoted, one must take special note of the phrase tucked into "A", "...and anticipated cost of living increases and escalator protection." The inclusion of this open ended demand was an attempt to follow the pattern established by the City with other public employee bargaining agents.

### **Fringes**

The dollar demands in the somewhat unorthodox array of contract fringe benefits was a continuation of the same pie-in-the-sky quest — increased funding in research awards from 1.725 million dollars to 2.4 million dollars. Increased funding for fellowships awards (sabbaticals) from 1.725 million dollars to 3.0 million dollars and the establishment of a new award concept for experimental projects in the improvement of instruction funded at the rate of \$1 million annually. All of this totalled an additional 2.95 million dollars.

Thus, the evolution of what originally were University demands in the first contracts and in essence were rammed down the throats of the Legislative Conference had now become a major PSC platform.

These demands were but a part of the whole economic package which also included many pension system improvements — each of which was a high cost benefit — an increase in faculty travel funds to \$1.2 million from a base of \$625,000 and a University employee tuition waiver plan for all undergraduate and graduate courses.

The University's fiscal people put the cost of the economic package at approximately \$100 million annually.

### **The Grievance - Arbitration Process**

The PSC thrust in the area of the grievance - arbitration process was to increase the powers of third party decision makers, mediators and arbitrators; to limit administrative participation in the process and to attempt to further define and "fence-in" academic judgment.

### **Third Party Powers**

Among the several changes sought here was the substitution for the Step 2 hearing at the Chancellor's level the imposition of impartial mediation by a professional mediator who would be responsible for recommending a settlement to both parties. Failure to agree on such recommended settlement would move the

grievance to impartial binding arbitration. The powers of arbitrators were to be extended to authorization to appoint, reappoint or promote as a remedy. This power had been zealously preserved by the University, had been tested in the courts and remained the bane of PSC grievance issues.

Article 20.(c) of the unitary contract referred to in the previous chapter, the concept of the Select Committee, had not been tested as an effective provision by March 1975, one and one half years after its inclusion in the agreement. Yet the PSC's re-negotiation demands sought to alter it in two respects. One was to create a standing panel from which a committee of three University people would be chosen to evaluate the quality of an academic judgment remand and the other was to grant such committee authorization to appoint, reappoint and promote.

#### Academic Judgment

Academic judgment had remained the crucible in which University personnel decisions were forged. Such judgments resulted from a time-tested peer evaluation process which served as a base in the ever continuing search for excellence in faculty. No precedent contract had attempted a definition of the term and in fact there was a "contractual curtain shielding academic judgment as the objective application of contractual criteria in the rendering of a personnel decision".<sup>6</sup>

In sum and substance PSC demands concerning the grievance arbitration process constituted an attempt to shake loose the shackles of academic judgment based on a peer evaluation process.

#### The Evaluation Process

A final major thrust on the part of the union was a series of demands which sought to dilute the faculty evaluation process. The nature of this dilution which would result in minimizing non-teaching criteria for professional evaluation is seen clearly in the first five of a series of twenty demands in this area:

##### 14. Professional Evaluation

A. Establish the following criteria, to the extent applicable, for Instructor, Assistant Professor, Associate Professor and Professor, with special attention to teaching effectiveness and with extra weight assigned to outstanding teaching as a bona fide alternative to scholarly writing and research:

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<sup>6</sup> Professional Staff Congress/CUNY, Demands presented to Board of Higher Education of the City of New York, February 6, 1975, Article 16D, p.4.

1. Instruction and related activities.
2. Research.
3. Scholarly writing.
4. Departmental, college and university assignments.
5. Student guidance.
6. Course and curricula development.
7. Creative works in an individual's discipline.
8. Public and professional activities.

B. Establish the following criteria for Lecturer (full-time) and Hunter Campus Schools Staff:

1. Instruction and related activities.
2. Student guidance.

C. Establish criterion for adjunct personnel as *classroom instruction*.

D. Authorize the department chairperson to delineate the established credentials and criteria required at the time of appointment commensurate with department needs.

E. Prohibit changes during the probationary period in criteria and credentials delineated at the time of appointment.<sup>7</sup>

It is interesting to compare the evaluation criteria for Lecturer (full time) with those for all other classroom teaching ranks. Obviously, PSC was viewing the Lecturer (full time) position through a tunnel since the only existing contract criterion exclusion referred to a research commitment and said the following:

The title Lecturer (full-time) shall be a tenure-bearing (certificate of continuous employment) title used for full-time members of the faculty who are hired to teach and perform related faculty functions, but do not have a research commitment.<sup>8</sup>

### The University's Position

The University's position could be categorized under four major headings — governance, appointment, reappointment, promotion and tenure, workload, and an approach to a salary increase package.

<sup>7</sup> Professional Staff Congress/CUNY, Demands presented to Board of Higher Education of the City of New York, February 6, 1975, Article 14, A,B,C,D,E, p.3.  
<sup>8</sup> Agreement between the Board of Higher Education of the City of New York and Professional Staff Congress/CUNY, October 1, 1973, Article 11.1, p.10.

On Governance

The University's position on governance had remained constant in prior negotiations and contracts. In fact the key contract provision in this area appeared in the 1969 contracts which stated:

Nothing contained in this Agreement shall be construed to diminish the rights granted under the Bylaws of the Board to the entities and bodies within the internal structure of CUNY so long as such rights are not in conflict with this Agreement. If provisions of this Agreement require changes in the Bylaws of the Board, such changes will be effected.<sup>9</sup>

This was expanded in the unitary contract to a provision entitled "Board - PSC Relationships" containing seven sections with one section<sup>10</sup> containing 8 sub-sections, all of which cemented the University's position in governance and management rights into contract language more firmly than ever before.

For this re-negotiation the University made clear its intention not to give up its management rights with regard to determining the organization, structure and staffing of the University; to determining resources required by the colleges and to allocate such resources to meet the basic objectives of the Board; to preserve the existing governance rights of the faculty qua faculty; and to continue to limit whatever agreements reached contractually to the stated terms of the contract.

Built around its continued quest for academic excellence the University insisted on the continuation of what it deemed to be its tried and true system of peer judgment in academic personnel decision making and it continued to resist strongly any effort on the part of the union to expand the powers of third parties (arbitrators) in making academic judgments.

A new position which the University took was based on an analysis of five years of its experience with grievance and arbitration cases. Better than 90 percent of the grievances brought were grievances based on alleged actions of commission or omission by departmental chairpersons or departmental personnel and budget committees comprised of elected faculty members all of whom, including the chairperson, were members of the collective bargaining unit. Thus, the developed the position that grievances and arbitrations under the contract should be limited to those decisions which were in effect "management" decisions.

<sup>9</sup> Agreement between the Board of Higher Education of the City of New York and the legislative Conference, October 3, 1969, Article 1.1, p.2.

<sup>10</sup> Agreement between the Board of Higher Education of the City of New York and Professional Staff Congress/CUNY, October 1, 1973, Article 2.10.5.

## Appointment, Reappointment, Promotion & Tenure

The University's position in these most vital areas was influenced by the fact that the BHE in April 1974 had created a Commission on Academic Personnel Practices charged with responsibility to recommend revised procedures to assure objectivity, impartiality and fairness in the recruitment, appointment, promotion and tenure of faculty of ability and quality, and to clarify criteria that should be applied for the establishment and maintenance of high standards in all areas of faculty personnel decision-making.<sup>11</sup> The new Board had felt a need for such a study because of the furor which had arisen as a result of Chancellor Kibbee's move to effectuate an existing, October 1973, resolution of the previous Board on the matter of tenure. In fact, the new Board coupled its decision to create the Commission with a rescindment of the October 1973 Board resolution — a move seen by many as inimicable to the convictions, goals, and objectives of the Chancellor and the college presidents, the academic administrators of the University.

For breadth of representation the eight (8) member commission included two out of University distinguished academics as co-chairpersons, the Deputy Chancellor of the University, one college president, 3 professors from within the University, including one who was the First Vice President of the PSC, and a member of the City University Student Senate. The Commission's report, which came after more than 20 meetings of the commission and the hearing of comments and suggestions on current practices and procedures from a cross section of faculty members and administrators from both the senior and community colleges of the University, including presidents, provosts, deans, current and former chairpersons, etc., did not meet with ready acceptance. After further hearings before the Board itself it was finally adopted. In the end the report appeared to be much ado about nothing and was in essence a reaffirmation of existing governance procedures and of the powers of the college president.

### "No Reasons"

A critical issue which had to be faced in the areas of reappointment, promotion and tenure was the University's position on the question of being required to give reasons for negative personnel actions. Perhaps the clearest expression of the issues involved and of the position of the academic officers of the University was that contained in remarks made at a special meeting of the Board's Committee on Collective Bargaining in March 1975 by Dr. Leon M. Goldstein, President of Kingsborough Community College. President Goldstein had this to say:

It seems to me that we have fallen into somewhat of a trap in thinking; we have been presented with a PSC demand on "reasons" vs. "no rea-

<sup>11</sup> Report and Recommendation of the Commission on Academic Personnel Practices submitted to the Board of Higher Education/CUNY, October 1974. n.b. Representatives of the PSC were party to the development of this document.

sons." As individuals, we consider ourselves "reasonable" administrators and scholars. Indeed, the reasoned approach to humanistic decisions has been ingrained in us, and further, we all pride ourselves in our reasonable behavior. The whole concept of "reason" has positive valences for us as an attribute worth striving for.

Yet I submit to you that regardless of the obvious play on semantics, we are not dealing with the issue of reasons; we are dealing with something that has far deeper implications. This something is the other part of the 1958 Max-Kahn Memorandum - the underlying foundation for the "no reasons" statement - the statement on "*non-presumption*." The whole concept of "no reasons" is based upon the position that there is "no presumption of reappointment, no presumption of tenure, and no presumption of promotion." When one accepts the "no presumption" doctrine, then "no reasons" is a reasonable conclusion. Hence, we have, in our own thinking, been put into a position of defending "no reasons" vs "reasons", when we should be defending the more defensible position of "no presumption."

The Carnegie Commission report, in its section on Collective Bargaining and Faculty Power, said:

Given the special nature of institutions of higher education - they are neither factories nor government departments - we favor special laws to cover bargaining by faculty members, or, if this is not possible then special sections of laws or, at least, special administrative interpretations to reflect the special circumstances. The Federal National Labor Relations Act is based on industrial experience. State laws on bargaining are based on the special nature of the civil service. The sharp industrial delineation between management and labor does not fit the more collegial approach taken on a campus. Faculty members are neither industrial workers nor civil service. Their special profession and the special nature of the institution in which they are employed both call for *separate treatment*.

Clearly, the thrust of the University and each member college has been, and rightly so, for academic excellence: neither the PSC nor any academic constituent, in good conscience, should waiver from this stated goal. When one examines the procedures used for determining reappointment, tenure, and promotion, one finds that the peer evaluation process is the prime mechanism for this quest of excellence. At the departmental Personnel and Budget Committee (P&B) level, and at the college-wide P&B level, the concern for excellence, is consistently reinforced. Indeed, not only do the Bylaws speak of excellence, but the *Report of the Commission on Academic Personnel Practice in the City University of New York* makes the "standard of excellence a prime recommendation," N.B.



Yet, we are all painfully aware that there is great difficulty in arriving at reappointment, tenure, and promotional decisions against the criterion of excellence. It is no secret that, in some quarters, and in individual cases, the peer evaluation process falls down. Some individual faculty evaluations, in the past, have lacked a degree of honesty and integrity. This has been balanced by a firm commitment to excellence on the part of the BHE. Indeed, the objective peer evaluation process has been strengthened, somewhat, by the consistent demand by the Board for academic excellence. We have been exhorting the faculty to do a better job and to meet their professional obligations in the evaluative process in examining candidates by the yardstick of excellence. At this point in time, it has been an uphill battle with subtle increments of improvement achieved.

The concept of "no presumption" has been a significant tool for advancing the position of excellence as part of the process of doing a professional job in evaluation. Reduced to its simplest terms, any diminution of the "no presumption" or the "no reasons" tool will, in my opinion, place the integrity of the peer evaluation in jeopardy, if not destroy it altogether. In effect, departmental P&B's will revert to such a defensive position of their academic judgments that the integrity of judgments may be jeopardized. Any previous advancements made in the area of academic excellence will be substantially vitiated.

Further, changes in the "reasons" section would put faculty in the role of having to justify their academic judgments. As self protection, individuals might have to measure, quantify, and document all of the judgmental processes. In effect, this may make faculty psychologically and practically reluctant to make honest judgments where concrete documentation is unavailable. This may reduce many of the processes of judgment to one whereby peer evaluation becomes an accountant's debit and credit ledger. In addition, the concept of measurement in finite terms implies the process of measuring one individual against another - something that the academic world has consistently resisted.

One may realistically conclude that the establishment of "reasons" would place candidates for reappointment, promotion, and tenure, in one of two categories - satisfactory or unsatisfactory; everyone who could be viewed as "satisfactory" would receive rewards, while those few who could be documented as "unsatisfactory," would not. It seems to me that just being "satisfactory," and no more, would then be the University standard and the order of the day.

The Bylaw requirement of the BHE and its representatives, the presidents, to enhance the educational program of the University and its constituent colleges, might then be replaced by a statement "to maintain *satisfactory* educational programs."

We cannot accept "satisfactory" when it is excellence that we are after.<sup>12</sup>

One must keep in mind the fact that there existed firm legal underpinnings for the University's position concerning the "reasons" issue. Supporting case law existed not only in the City University<sup>13</sup> but also at the U.S. Supreme Court level in the two landmark cases, *Board of Regents v. Roth* and *Perry v. Sindermann*.<sup>14</sup>

### Workload

The position of the University on workload was built around two constraints; (1) the University had never enunciated a uniform workload policy and (2) New York City and New York State fiscal conditions and policies had begun to exert undue pressures in regard to the matter of faculty productivity. In fact, just prior to going into his annual budget retreat in April 1975, the Mayor, at a special budget press conference, warned the University that his new budget would require increases in teaching hours by City University faculty.

In the world of academe it has been generally accepted that there is no single standard for teaching faculty workload that has universal applicability. The City University workload concept referred to in Chapter III had not changed and there was no press on the University's part to achieve a regulatory standard particularly in terms of student contact hours per week. The University's position was one in which it was thought that reasonable increases in the teaching responsibility of individuals or departments might be desirable to correct existing inequities within any constituent college or on a system wide basis, or to achieve reasonable performance. It was not believed practicable to devise a weighted factor formula that could account for both the quantity and quality of individual contributions to the life of the university and its students.

Another facet of the University's workload position was one which sought to achieve greater flexibility in the utilization of its instructional staff with particular emphasis on that portion of the instructional staff not assigned to classroom teaching. For people in this category such as library personnel, student counselors and administrative personnel the University sought contract provisions which would allow it to assign such people in ways and at times that would maximize effective operations and would

<sup>12</sup> Remarks before the Board of Higher Education Committee on Collective Bargaining, March 11, 1975.

<sup>13</sup> *Legislative conference v. Board of Higher Education*, 38 AD 2d 478, aff'd 31 NY 2d 926 (1972); *Matter of Butler v. Allen*, 29Ad 2d 977 (3rd Dept., 1968); *Matter of Pinto v. Wynstra*, 22 AD 2d 914 (2nd Dept., 1964); *Matter of McMaster v. Owens*, 275 App. Div. 506 (3rd Dept., 1949); *Matter of High v. Board of Education*, 169 Misc. 98 (Sp. Term, Queens Co., 1938) aff'd 256 App. Div. 1074 (2nd Dept., 1939) aff'd 281 NY 815 (1939); *Matter of Hickey v. Carey*, 275 App. Div. 964 (2nd Dept., 1949); *Schaflander v. Brooklyn College*, N.Y.L.J. July 12, 1967, p. 13, col. 7 (Sp Term, Kings co., 1967); *Matter of Conway*, 10 Educ. Dept. Rep 43 (1970); *Matter of Bein*, 10 Educ. Dept. Rep. 117 (1970.)

<sup>14</sup> *Board of Regents v. Roth*, 408 U.S. 564, 92 S Ct. 2701, 33 L Ed 2d 548 (1972), and *Perry v. Sindermann*, 408 U.S.593, 33L Ed 2d 570, 92 S Ct. 2694 (1972).

serve best the needs of students. Still another aspect of this position was a call for all non-teaching instructional staff personnel to be employed on a 12 month basis rather than on an academic year basis.

Obviously, the university could not duck the productivity issue. Its position in this area is discussed next under the economic package.

### Economic Package

In reality, as it prepared for and entered into negotiations, the University had no economic package to put on the table. The Union was well aware of this. Obviously, there would come a time when the City of New York would advise the University as to within what dollar parameters, if any, it could negotiate. One thing was certain — if there were to be any dollar increases beyond the mandated salary schedule incremental steps such increases would be tied definitely to productivity increases based on such elements as student contact hours or class size.

The University position in regard to an economic item package was built around such principles as the following:

*The need to critically review the University's staffing and operations procedures to insure more efficient utilization of institutional resources in this period of escalating costs and funding constraints.*

The unprecedented rate of increase of the cost of higher education is rapidly outdistancing CUNY's anticipated City and State Funding capabilities. In the years to come we will have to harness our resources as well as enhance the quality of our education through the elimination of inadequate, duplicative, and under enrolled course offerings and programs.

Concomitantly, we need to assure the increased utilization of all our institutional resources, including faculty, professional and administrative staff. Particular emphasis must be given to more effective employment of personnel in classifications that are not presently carrying a full load especially those in areas of vital student service.<sup>15</sup>

Put even more specifically the University's early position as communicated to the Union stated the following:

The Board's obligations to exercise fiscal responsibility, the Board's accountability to the City and the State, and the University's dependency on taxpayer funding will determine what modifications, if any, can be made

<sup>15</sup> Memorandum of Vice Chancellor Newton to PSC, March 14, 1975, at Second Negotiation Session, which attempted to establish agreement on principles which would serve as guidelines to all of the re-negotiations.

in the current salary structure. The PSC should be cognizant that the unprecedented rate of increase of the cost of higher education is rapidly outdistancing CUNY's anticipated City and State funding capabilities.

Moreover, the PSC must recognize that proposals which call for increases in salaries and decreases in workload, fly in the face of economic reality. *Income* for your unit members is *expense* to the taxpayers who support this University. As a collective bargaining agent you are interested in the *size of the paycheck*. As management, we must be concerned about the *amount of service* the University receives for each and every paycheck that it issues.

Further, salaries and salary costs must take into account the percentage and dollar increases that result from a "movement within schedule" concept embodied in the current agreement if such a concept is to be continued in a successor agreement.

In view of the foregoing, we believe you may wish to rethink your salary proposals. In any event, the Board will defer making any proposals on this item until it receives the PSC's views and proposals on increased workload and until we have an opportunity to evaluate negotiating progress in general.<sup>16</sup>

Thus the lines of combat were drawn and the skirmishing began.

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<sup>16</sup> Proposals of City University to PSC, April 1, 1975, p.22.

# Chapter VII

## RE-NEGOTIATING THE CONTRACT

Let no one be deceived — collective bargaining is an adversarial process. The grievance - arbitration record at the City University over the first six years of contractual agreements with faculty speaks for itself; approximately 1104 second step grievances and 435 arbitrations (statistics for first step grievances were not recorded until 1975). A unique situation arising from the uniqueness of the City University itself as an institution — perhaps. But even more so than the statistical record, weight must be given to a host of additional evidence.

Firstly, an examination of the bargaining process itself is in order. In New York as in most other states in which laws existed governing employment relations with public employees, there were provisions for negotiation impasse procedures such as mediation and fact finding. Since the first unitary contract negotiation had gone this route the University and PSC negotiators believed themselves to be somewhat experienced in impasse techniques. The effect of this so-called know-how was to make contract re-negotiations a shambles. From the outset of negotiations the tone of the meetings was that of bargaining in good faith with impasse procedures "tongue in cheek." Both sides spoke more for the record than to the objective of reaching an agreement. There appeared to be covert understanding that this was the name of the game. So much so that at the beginning of April, at the fifth negotiations session, there was discussion by both sides of dates in July and August on which other commitments of principal negotiators would result in deferment of negotiations.

Another characteristic of this type of negotiation was that of scoring "points" for the record. Although by mutual consent negotiations were not taped both sides suffered no lack of note takers and both sides attempted verbatim notes insofar as possible. A typical University transcript of a day's negotiations (about 4 hours per day) ran 35 to 40 typed pages. It is important to understand that in the first unitary contract negotiation excerpts from such transcripts were used in the preparation of briefs presented to mediators and fact finders. In some few arbitration cases such notes were used to indicate or clarify the intent of the parties during negotiations. However, in the process of meeting this felt need both sides prolonged unduly getting down to "brass tacks" and devoted excessive periods of time to putting on their respective "dog and pony shows."

A second noteworthy feature of the negotiations was the attempt to "control" the dynamics of the table — the constant effort to get the other side to dance to your tune while you sat out their efforts to achieve the same goal. Substance was sacrificed frequently for effect and histrionics were the order of several parts of each day's session. All of this served in no way to expedite movement.

Last, but not least, was the obviously strong bargaining position of a financially crippled University and the even more obviously weak economic bargaining position of

the PSC. Perhaps this was put best by the chief negotiator for PSC who made it clear that if in the economic climate PSC couldn't win dollars it would have to fight that much harder to win its fair share of non-economic demands. But how does a union bargain with a university about to give up its 128 year tradition of free undergraduate tuition.

## FORMAL BARGAINING

Formal bargaining began at the end of February, 1975. The opening session could be likened to that of a major international conference staged by David W. Griffith. Opposing bargaining teams facing each other across a long conference table — they on one side, we on the other. Back of each side constituents were arrayed. On the Union side members of the PSC governing board; on the University side the Vice Chancellors from the central office of the CUNY system and a good number of college presidents.

The session began with table team introductions on both sides and polite palaver. This was followed by the reading of a "motherhood" statement by the president of PSC, Belle Zeller, and the distribution of the PSC demands to the University side. Upon questioning the Union certified that list as its *total demands*. The University then caucused in order to review this somewhat revised edition of the Union's demands. Presidents participated in this caucus and an agreed upon series of questions for clarification was worked up quickly. Upon resumption of the session the University sought and received the clarification it requested from the PSC side.

The rest of the session was devoted to housekeeping details such as the agreement to meet for negotiations in a rented suite at a midtown hotel on a shared cost basis. This was in the New York City mode of other major labor negotiations and exemplified the degree to which collegiality was more and more being folded into the traditional collective bargaining mold.

From this first session in February through the end of June 1977 twenty three (23) formal bargaining sessions took place. The chapter introduction best summarizes the flavor and substance of these sessions. Supporting evidence for those conclusions would include the following:

- The existing contract, although covering a three (3) year period had only been in force for eighteen (18) months.
- When a position paper was presented it was not only given to the other side but also *read* aloud to them.

- The chairman of the board (whose expertise in labor relations has been referred to earlier) recommended strategies much like a coach calling the plays for the quarterback from the bench.
- Devoting three full early bargaining sessions to the contract preamble. (Note: This in a fourth contract with each predecessor contract having included wordy "motherhood" type preambles.)
- Countless discussions as to the credibility of each side's data on numerous items (ours are better than yours).
- Two full sessions spent on including a reference to "sexual orientation" in a non-discrimination clause.

As the spring began to change to summer it became clearly evident that if ever two sides "waltzed" this negotiation was being danced to macabre music.

### SESSIONS #2 THRU #25

During this long period little that was substantive was considered seriously; i.e., in terms of reaching agreement. The tone set at the beginning prevailed throughout. When the Union opened with the classic move of presenting the "demands" (25 categories, each with many sub-sections), the University countered with its "goals" paper — a noteworthy document in terms of management strategy in that it attempted to establish a relationship between the sides which would recognize and accept the fact of the University's austere economic future, the threat to free tuition, the brief period in which the predecessor contract had been in effect, the heightened need for more management flexibility in this period of transition and the need for greater cost consciousness. The last point is particularly interesting in terms of how it was presented:

*The need to critically review the University's staffing and operations procedures to insure more efficient utilization of institutional resources in this period of escalating costs and funding constraints.*

The unprecedented rate of increase of the cost of higher education is rapidly outdistancing CUNY's anticipated City and State funding capabilities. In the years to come we will have to harness our resources as well as enhance the quality of our education through the elimination of inadequate, duplicative, and under enrolled course offerings and programs. Concomitantly, we need to assure the increased utilization of all our institutional resources, including faculty, professional and administrative staff. Particular emphasis must be given to more effective employment of personnel in classifications that are not presently carrying a full load, especially those in areas of vital student services.<sup>1</sup>

<sup>1</sup> David Netwon, Memorandum to Professional Staff Congress/CUNY, March 14, 1975.

The Union's response to the "goals" paper was totally negative and made the point that it was in no way responsive to the Union's "demands." In effect the Union's position was that they had come to negotiate not philosophize. This despite the University's strong pitch in the direction of justifying a goals approach as characteristic of "professional" negotiations as distinguished from the industrial negotiations mode. Thus pressed, the University presented the Union with its proposals just prior to the end of the third session on March 25, 1977.

The University proposals package was an imposing thirty page document which on its cover page stated the following:

The Board of Higher Education proposes to continue in effect the current contractual provisions applicable to the members of the negotiating unit, subject to the amendments indicated herein, and to such further amendments as shall appear appropriate in the course of contract negotiations.<sup>2</sup>

The use of the phrase, "subject to the amendments indicated herein" was a literal application since the proposal talked to each item in the existing contract either in terms of substantive change in wording or with such comments as delete the entire article or eliminate a specific paragraph or section of an article. Put mildly the proposals made were tough and hard and would have brought the Union back to square one. Tough, yes — realistic, no. The Union's response referred to the proposals as "outrageous and insulting." However, again for the record, they presented an oral response to each of the University's proposals, rejected them totally but indicated their readiness to negotiate.

April, May and June were devoted to debate and rhetoric on both sides. The City and State were emasculating the University's budget and the City's fiscal picture worsened steadily with a declaration of bankruptcy always imminent. Discussions of City-wide personnel retrenchment, wage cuts, and payless furloughs were the order of the day.

Two other factors precluded real negotiations. The dissident group within the Union (the Unity Caucus) made direct efforts to seek Board and Chancellor intervention into the negotiations and key Union officers began attempts to end run the University bargaining team by seeking and achieving behind the scenes meetings with the Chairman of the Board and even with the Chancellor.

This procedural breach brought with it a sense of uselessness and total frustration to the University's bargaining team. So much so that there existed a possibility of key members withdrawing from the team unless table team authority was restored. The team chairman, after making his indignation clear to the Union, was able to get the negotiations back on the track and received commitments from the Chairman and Chancellor which were reassuring.

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<sup>2</sup> Board of Higher Education, Proposals for Changes in the Agreement Effective October 1, 1973 and Expiring on August 31, 1975 Between the Board of Higher Education and the Professional Staff Congress/CUNY, dated March 25, 1975.



Eventually some bargaining took place and tentative agreement was reached in such minor areas as the preamble and unit stability and serious discussions took place on such matters as multiple year appointments and reappointments. But movement was so tortoise-like that the Union felt compelled to break the "confidentiality" agreement and on May 2nd, went public with its position. Going public meant calling a press conference and issuing a series of statements concerning the faltering negotiations. The Union's major "beef" concerned the University's failure to come forward with a salary increase proposal and the statement inferred that this failure was caused by dissension between the Board Chairman and the Chancellor aggravated by political moves to restructure the Board. The moves to restructure the Board were real and resulted from the Board's battle with the Mayor over harsh fiscal restraints on the University being applied during an on-going academic year.

In fact, the City's budget crisis became so severe by June of 1975 that it became apparent to both sides that to continue negotiations in this climate was to continue playing out a farce. On June 26, the Union issued the following statement:

The PSC negotiators wish to state for the record once again their dismay at the lack of progress after almost four months of negotiations. While recognizing the difficulties imposed on the parties by the financial crisis atmosphere in which we have been attempting to reach agreement on a successor contract, the PSC maintains its position that the BHE negotiators have been either unwilling or unable to move toward completion of our mutually stated goal of reaching agreement. The record thus far will show that in areas where the BHE seemed willing to reach agreement it has been unable to do so, and conversely in areas where the BHE seemed able to reach agreement it has been unwilling to do so. Thus both money and non-money items remain unresolved.

The PSC wishes to inform the BHE that a new agreement must reflect improvement in certain areas which we have previously identified as being critical to the PSC just as the BHE has made the same kind of statements to us. Such areas include but are not limited to: salary, due process - including "reasons" and authority for the arbitrator to fashion a meaningful remedy, and job security for titles which are currently non-tenurable. With indication of progress in these areas the PSC stands willing to thin out the number of issues currently on the table and to try to deal with those items identified as important to the BHE.

The parties have by mutual agreement decided to temporarily suspend negotiations until August. Perhaps this respite will serve us both well in that it will hopefully allow time for the Board's fiscal situation to be clarified. With that in mind, in holding to the assumption that the BHE's negotiators share with us a determination to reach agreement without the intervention of third parties, we look forward to a productive August.<sup>3</sup>

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<sup>3</sup> Professional Staff Congress/CUNY. Statement, June 26, 1975.

The University response came the following day:

The BHE negotiators regret the PSC's jeremiads regarding negotiations to date as expressed in its formal statement of June 26th. Our unsuccessful attempt to develop, jointly, some common principles and goals for these negotiations, notwithstanding, we have neither the right nor the inclination to determine for the PSC negotiators what their objectives should be in these negotiations. The fact that union objectives are frequently in conflict with employer objectives is a characteristic of collective bargaining. The existence of such disagreement does not mean an absence of good faith bargaining but merely reflects differing objectives and responsibilities of the parties.

The PSC's proposals still call for large increases in compensation and significant reduction of instructional staff workload. The BHE has insisted that the University's precarious financial situation precludes granting increases in compensation and requires increased productivity, including teaching contact hours. The fiscal exigencies of the State, the City and the University are recognized by both parties as being a serious constraint on the current negotiations. This hard fiscal reality, however, should not be used as an excuse for the PSC to attempt to extract from the BHE concessions which, if granted, will erode the academic character of the University, seriously impair its viability as an institution of higher learning and limit the Board's ability to exercise its statutory authority to manage the University.

The BHE negotiators repeatedly have called attention to the fact that the current negotiated Agreement, consummated on October 1, 1973, contains adequate provisions for appropriate BHE/PSC relationships and for the essential relationship between an arbitrator and academic judgment. Further, we have made it clear that in our view the professional responsibility of the faculty to render an academic judgment and the professionally accepted concept of no presumption of reappointment prior to the granting of tenure, must be preserved. We can, as yet, see no reason to grant concessions in these areas beyond those already embodied in our current contract.

Our acceptance of your request to temporarily suspend negotiations may not have been the wisest decision we have made to date. Our agreement to resume again during the week of August 10, 1975, however, provides the PSC with an opportunity to carefully reassess its proposals and posture.

We are concerned that progress in these negotiations will be seriously impeded so long as the PSC continues unrealistically to ask for more money and less work and refuses "to thin out the number of issues currently on the table." If the PSC, like the BHE, is truly desirous of reaching an agreement without the intervention of third parties, it can demonstrate this by clearing the table and permitting the parties to come to grips with the viable issues.

The BHE, as a public employer, has been negotiating in good faith with the PSC. The University is mindful that its current Agreement with the PSC

expires on August 31, 1975. We hope and expect to reach an agreement, as specified by the Taylor Law, before the onset of the coming academic year.<sup>4</sup>

Thus, the first four months of negotiation ground to a halt.

## SUMMER 1975

July did not become the "cool it" month anticipated. Quite to the contrary it became explosive. The Vice-Chancellor who chaired the University negotiating team had become a candidate for the presidency of a neighboring institution. This candidacy, although not leading to that presidency, did result in his being invited and his accepting a new position in the central office of the Chancellor of that University effective September 1st. In mid-July this appointment was announced and resulted in the need for the University to re-group its forces.

The Union showed no intention to sit idly by while the University planned its next moves. It requested and was granted a series of meetings with the Chancellor during the week of August 4th. The Union proposed meeting informally with the Chancellor or his designee, two people on each side, with the objective of reaching an agreement expeditiously. Yes, it was understood that they would have to go back to the table to put on their "dog and pony" show but that would be mere formality if behind the scenes agreement could be achieved.

This proposal was accepted by the Chancellor who then designated the Deputy Chancellor of the University and the author to represent him with full authority to conclude an agreement. It was clearly understood that during this period of "clandestine" negotiations that neither the Chancellor, the Chairman of the Board or any other Board member would meet with the Union.

A series of such meetings took place. Unlike the negotiations these sessions were devoid of rhetoric and got down to cases. Pushed hard by the University the Union came down with five (5) critical issues. These were the following:

1. *Reasons* - The Union had a need to bring to its constituents a "win" in the form of a contract requirement which would require a college President to provide when so requested a reason for each negative personnel action. Also a grievant had to be given the opportunity to have his day in court — a personal appearance before an appeals body.

2. *Greater job security for non-teaching professionals* - The non-teaching professional who was not eligible for tenure had to be the recipient of increased job security. Originally this was a demand for a type of tenure as evidenced by the Lecturers' CCE. This was then modified to a series of

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<sup>4</sup> David Newton, Memorandum to Professional Staff Congress/CUNY June 27, 1975.

reappointments for varying terms — e.g., first two years, annual appointments; next reappointment for a three year period followed by reappointments each for five year terms.

3. *Extension of arbitrators' authority* - In essence this got down to granting authority to the arbitrator to reappoint for a one year period and such reappointment even if it were to be a sixth year of service, would not carry tenure with it.

4. *Workload* - The Board as a part of its efforts to avoid the imposition of tuition had promulgated faculty workload guidelines at the end of July. These called for increased faculty classroom teaching time. Essentially these — senior colleges 12 hours, community colleges 15 hours for all ranks. In the promulgation of these guidelines the Board referred to them as "being neither excessive nor unreasonable and in keeping with our collective bargaining agreement." The use of the terms neither excessive nor unreasonable was a direct quote from the relevant contract article. Here the Union was willing to settle on the retention of the current contract verbiage but with the understanding that it would take the issue to court on the basis of such promulgation constituting a unilateral change in conditions of employment. (NOTE: The Union sought an injunction which was denied.)

5. *Salary* - The University budget for 1975-76 had been decimated — cut to the bone — with not one cent available for collective bargaining. Yet, the University offered to pay the traditional January 1, 1976 and July 1, 1976 movements in schedule (increments) as then provided by the University's salary schedules. This was a gusty offer made with no real assurance that it would be approved by the Board. Its cost to the University for the period January 1 to June 30, 1976 for January increments would have been \$4.5 million (annualized \$10.0 million for a full year); the July 1 increments (for non-tenured professional's only) would have carried an annual cost of \$600,000.

The last was the hang-up issue which came within a hair-line from concluding an agreement which except for the issues noted above would have kept the current contract intact. The University was ready to "give" in reasons, multiple year appointments for non-tenured professionals, and extension of arbitral authority and even to let the courts or PERB decide the workload issue.

The Union was not able to accept the salary offer because such an action would have moved them out front — out in front of the UFT and Al Shanker who were still negotiating. The UFT negotiation and other major City contract negotiations were stalled on the horns of a real dilemma. The Mayor had imposed a wage freeze and had applied to existing contracts an unusual concept of deferring salary increases. However, the City had not set any salary guidelines for *new* contracts. The Union (PSC) could not gamble on its judgment in accepting this offer since such a settlement could be perceived by some as establishing a pattern for other contract settlements. The tail did not have sufficient strength to wag the dog.

Very soon too the University had to withdraw its salary offer as a result of feelers it put forth to fiscal authorities. The City made it quite clear that there was not one cent in its empty coffers for City University faculty salary increases. When this was communicated to the Union there appeared to be understanding of the University's position (maybe even relief at getting off the hook). At this point the Union indicated its need to return to the bargaining table for formal sessions. The existing contract carried an expiration date of August 31 and we were now into the last week in August.

#### **SESSIONS #26 TO #34**

Now faced with the need to reconstitute a table bargaining team the Chancellor became creative. Designated to chair the team was the person next in line in the Office of the Vice Chancellor for Faculty and Staff Relations who had served as a strong right arm to the Vice Chancellor for several years. To assist her the Chancellor again designated the author and one other person. This third person was a man who was currently a Professor of Education at one of the constituent colleges of the University working on a second career. His record among other accomplishments included many years of service as the Personnel Director of the City of New York and several years as the Deputy Superintendent of Schools for Personnel in the Board of Education of the City.

Thus, the third phase of negotiations got underway and consisted of nine intensive sessions between August 26 and September 16th. To take some of the pressure off, the University indicated a willingness to continue to operate under the terms and conditions of the expiring contract at least until the end of September or even somewhat later if no agreement had been reached by then. A spirit of let's get it done prevailed but back of it all sat the dollar devil.

Both sides agreed to deal with high priority items only. True to form the Unions' submission went far beyond its previously dealt with five critical issues. The University listed nine (9) priority items. And so the waltz became a fox trot with a subtle threat of strike rearing its head. When on September 16th the University's final offer was a continuation of the current contract with not one dollar available for salary improvement, the Union deemed this position to constitute a declaration of impasse and so declared it to be.

#### **THE END OF THE LINE**

The Union then took the position that rather than go to fact finding immediately it would prefer that mediation be attempted. The University acceded and a mediation settlement took place on October 2, 1975. The attempt at mediation proved futile. In all fairness one would have to conclude that the negotiations failed in all phases not because of bad faith but because of the City's fiscal plight. Had it been possible to offer even some token dollars in the summer of 1975, deferred or otherwise, an agreement could have been achieved. However, the substance of the State emergency

legislation (the New York State Financial Emergency Act for the City of New York) made dollar offers impossible.

From October 1975 through April 1976 the University bargaining table team was never reconvened. However, negotiations with the Chancellor, the Deputy Chancellor and with the Chairman of the University Negotiating Team did take place on a sporadic basis. In the end it was the Chancellor himself who hammered out the settlement under crisis conditions which could be described best as a battle for survival for the University.

Before summarizing the major changes made in the new two year agreement it is interesting to review the money package which the University finally offered and which the Union accepted. The package included the following:

1. The salary schedules of the expired contract were continued. Each employee scheduled for an increment on either January 1, or July 1, 1976 would be credited with such increment but the increment would not be paid. This meant a different or higher salary of record than the salary paid.
2. On September 1, 1976, these previously credited rates would be paid with some very few exceptions.
3. Further increments due on January 1 and July 1, 1977 would be paid.
4. Welfare benefit funding would be increased from \$340 per capita to \$355 per capita effective September 1, 1976.
5. There would be a deferral agreement which would provide for the deferral of two weeks salary (14/366 of annual salary) to occur sometime between January 1, 1976 and August 1, 1976. Such salary dollars to be deferred for payment until July 1, 1978. Presumably on July 1, 1978 not only would the deferred salary be paid but also the increments previously credited and not paid.

This deferral concept which has been noted previously was a curious one in that the conditions under which deferred dollars were to be paid were stipulated by law. The conditions included among others that by July 1, 1978 New York City's budget must be in balance and the City must be able to raise funds in the open market. Furthermore, all of the financial cost provisions of the new agreement were subject to the approval of the Emergency Financial Control Board, a fiscal monitoring body set up under the same legislative act.

#### **MAJOR CONTRACT CHANGES**

What now follows is a summary of the major changes in the new agreement with an attempt to convey concept rather than specifics. The order in which these are

presented in no way reflects magnitude of importance. It simply follows the contract organization.

1. Two "directors" titles were withdrawn from the list of excluded personnel.
2. A new section on "reasons" was added. This mandated the President, upon request, to state his reason for the denial of an appeal from a negative personnel action.
3. The three-level classification of College Laboratory Technicians was reduced to two levels.
4. Provision was made for five year term appointments for certain non-tenured professionals after given years of service.
5. The arbitrator was given the authority to recommend that an individual be reappointed for a one year period if he determined that a procedural violation existed which indicated that no academic judgment could have been made. Such reappointment would have no effect on tenure.
6. Expediting the procedure for a disciplinary hearing by eliminating the requirement that the Board designate the membership of the disciplinary committee.
7. A new provision which provided for preferential hiring of persons who were retrenched. Entitlement to preferential rehiring was fenced in time wise.

One can only conclude that the mountain had labored and brought forth a mouse.

# Chapter VIII

## WHAT HATH COLLECTIVE BARGAINING WROUGHT

In assessing the effects of faculty collective bargaining on CUNY in the nine (9) year period, 1968 - 1976, conclusions need to be qualified and related to two major developmental factors. To begin with, faculty collective bargaining came to CUNY as a first in higher education. It came at a period in time when the University was in its major growth cycle, stayed during the University's plateau period and apparently has survived the University's downslide. Whatever the University's future there will be faculty collective bargaining in that future.

### FROM SMALL BEGINNINGS

Faculty collective bargaining agents like all collective bargaining agents are entrepreneurs with growth interests. In many bargaining instances what appeared to be small concessions on the part of management led to major substantive changes in the governance and administration of the University. This is clearly illustrated by tracing the evolution of a critical contract clause such as the one which deals with "reasons" for negative personnel actions.

#### Reasons

Since 1958 the University's faculty personnel policies and practices (appointment, reappointment, promotion, tenure, and evaluation of teaching and personnel and budget committee procedures), had been determined in accordance with a set of Board approved regulations known as the "Max-Kahn" guidelines. So named because these policies and practices were codified as a joint effort by Pearl Max, the then Administrator of the Board of Higher Education and Arthur H. Kahn, the then Counsel to the Board. One of the relevant principles spelled out was the following:

At every step on the appointment and reappointment procedure, it should be made clear to the candidate and to all concerned that, until the candidate gains tenure under the provisions of the statute and the bylaws of the Board, each appointment is for one year, there is no presumption of reappointment, and no reasons for non-reappointment need be given .

In the first contract negotiations both unions included in their demands the employee's right to be given the reason or reasons for any negative personnel decision made by the college or its president. The University took a very hard nosed position in this area and refused to budge from existing practice as noted in Max-Kahn above and

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<sup>1</sup> Minutes, Board of Higher Education, Cal. #3(b), December 18, 1967. - A re-statement.



in the course of negotiations the University succeeded in having this item negotiated off the table. This University position on "reasons" prevailed through August 1972, despite the Legislative Conference's threat to use the NEA's Dushane Fund resources to mount court action.

The first unitary contract with the Professional Staff Congress cracked the dam. Article 9.9 of that contract stated the following:

When a College President determines not to make a recommendation to the Board of Higher Education for reappointment or promotion of a person recommended to him by a College P&B Committee or other appropriate body, the individual affected by that decision shall be notified of the Committee's decision. The notice shall not state the reasons for the President's decision. The notice shall not state the reasons for the President's action.

Within ten (10) school days after receipt of the said notice, the affected individual may submit to the President a request, signed by him, for a statement of the reasons for the President's action. Within ten (10) school days after receipt of the request, the President shall furnish a written statement of his reasons to the affected employee.

The President shall not be required thereafter to justify his decision or his reasons .<sup>2</sup>

The crack became an open breach when the third contract (the re-negotiated first unitary contract) added to Article 9.9 a new provision, 9.10 which read:

In the event that an individual appeals through academic channels a negative decision regarding reappointment, tenure, a Certificate of Continuous Employment, or promotion, and the appeal is not successful, the individual shall be so notified by the President or his designee in writing.

Within ten (10) school days after receipt of said notice the affected individual may submit to the President a signed request, for a statement of reasons for the denial of the appeal. Within ten (10) school days after the receipt of the request, the President shall furnish a written statement of the reason(s) for denial to the affected employee.

Consistent with Section 20.5 of this Agreement the President's academic judgment shall not be reviewable by an arbitrator .<sup>3</sup>

The movement is clear-cut. From square one, no reasons need be given to the

<sup>2</sup> Agreement between the Board of Higher Education of the City of New York and Professional Staff Congress/CUNY, October 1, 1973, p.9.

<sup>3</sup> Agreement between the Board of Higher Education of the City of New York and Professional Staff Congress/CUNY, June 18, 1976, p.9.

requirement that the President has, when requested, to give reasons when he reverses a positive personnel action arrived at in the peer judgment process (Note: this is aimed at presidential power) to the requirement that the President give reasons when the peer judgment process denies an appeal from a negative personnel action (Note: this is aimed at presidential power and at the power vested in peer judgment process committees).

Since in every instance the CUNY peer judgment process resulted in *recommendations* to the President, it was the President who was put on the spot.<sup>4</sup>

An experienced labor relations person would have to deem this contract provision (9.10) not only grievance laden but also fair game for arbitral creativity in fashioning grievance remedies. From an administrator's point of view a new and difficult factor had been added to the academic decision making process.

### **Multiple Year Appointments**

The same kind of contractual movement took place in the area of multiple year appointments for non-teaching professionals in which the two major classifications were the Higher Education Officer Series and the Business Manager Series.

The management objective in the creation of these job title series was to provide management flexibility for functions previously performed by personnel working within the rigidities of the civil service system. Although the demand for some form of tenure in these titles has not been achieved, five year term appointments have all but vitiated the flexibility sought by management. Here, too, reasons for negative personnel actions will have to be given. Which non-tenured professional denied a five year term appointment at the point in time when eligible for such appointment, will not grieve?

### **Arbitral Power**

Probably the most outstanding contribution to academe made in the first CUNY contract was its forthright and clear-cut statement which protected the University from having its academic judgments second guessed by an outside-of-academe third party. The University's "nota bene" clause in its grievance procedure created consternation in the arbitral fraternity and gave the Union a major target to be attacked. And they did rise to challenge — and perhaps they have overcome.

The first unitary contract removed the protective shield (see discussion in Chapter V), and in the re-negotiated version a major step toward total destruction of the concept was taken. It should be noted that the apparatus of arbitral referral to a Select Committee set up in the first unitary contract still remains a sort of no-mans

<sup>4</sup> Leon M. Goldstein, Memorandum to Board of Higher Education, March 12, 1975.

land. Select Committees have been convened and have reported their recommendations. Many of these recommendations have not led to college action and potential court cases seem to be on the horizon.

Perhaps now that there are more and more arbitrators who understand that the academy is different from the factory the move toward increased arbitral power is timely.

### LEGISLATIVE OVERSIGHT

In the "good old days" in the public sector although state legislatures were concerned with budgets and costs of higher education they tended to be mindful of the privilege of the academy to set its own working conditions. Such matters as workload and productivity in the academy received little or no legislative oversight. Faculty collective bargaining has changed that.

In 1966 a high level New York State legislator known to be supportive of the University, in a private discussion with the University Chancellor, inquired as to what the Chancellor saw as potential problems in the area of higher education. Among other things mentioned by the Chancellor was the threat of collective bargaining at which the legislator evinced surprise and asked what besides salaries were the issues. When the Chancellor responded, "workload — nine hours" the legislator's comment was, "But Al, that is a long day!" Legislators and legislatures have come a long way since then.

In New York State as recently as 1973 the legislature passed and sent to the Governor a piece of Legislation which would have mandated faculty contact hours in institutions receiving support from State funds. Specifically, it called for 15 hours in community colleges, 12 hours for senior colleges in undergraduate areas and 9 hours in graduate work. This would have affected all of the institutions which comprise SUNY and CUNY. Only the fact that faulty wording of the bill made its provisions applicable to the private sector in the State which received Bundy Aid led to the Governor's veto. In several states including New Jersey and Hawaii such legislation does exist.

As state fiscal affairs become tighter and as more careful scrutiny of resource allocation develops we can look to even greater legislative interest in the productivity of college faculties.

### THE DECISION MAKING PROCESS

In the administration of a college as in any operating enterprise decision making is crucial to the sound functioning of the organization. Where so much of the governance of an institution is effectuated through a committee apparatus rather than through action by an individual, decision making is more difficult and sometimes less timely. When, in a college, one adds the additional factor of a very interested third

party (the Union) to the decision making process, the process is made even more difficult. Let us look at at least four points of decision-making in academe.

### **At the Bargaining Table**

One of the most critical factors in the collective bargaining process is the authority of the table team. Specifically the authority to accept, reject or counter on proposals at the table. Usually such authority is vested in the chairman. In an industrial bargaining situation top management is specific in its instructions to its representative; bottom lines are always clear. The union side is aware of this and bargains in earnest in order to reach agreement. In the academic bargaining mode the union is oftentimes unsure of the authority of management's representatives because the union is well aware of the decision making hierarchy within the institution. Too many committees have to be consulted, too many agreements have to be reached and there is too much room for slippage. What happens when a Board Chairman who chairs a board sub-committee on collective bargaining disagrees with the recommendations brought to him by the Chancellor? What happens when college presidents in a multi-college system disagree with positions advocated and/or taken by the bargaining team?

In many instances the union is in no better position because the table team has need to consult with a larger committee of members and with the union's officers. This is the enigma encountered at the bargaining table in terms of decisions and it results in drawing-out negotiations to interminable lengths. Very often in the last sessions just prior to reaching agreement poor decisions are made because of the desire and sometimes the need to "get it over with."

### **At the Department Level**

First level decisions affecting personnel, appointment, reappointment, tenure and promotion have been made traditionally at the department level by appropriate committees. In the evolution of governance these committees have gone through various stages as to size, 3, 5, 7, members. At the present time in CUNY they are called Departmental Executive Committees and are comprised of seven (7) members.

Personal experience supported by discussions with colleagues has indicated that at these committee sessions there sits an invisible but certainly influential third party — the union contract with its grievance procedure. All bad — certainly no. But what influence does the contract have on the process?

Does a department committee dare to fail to reappoint, promote or tenure an otherwise satisfactory Assistant Professor who is unable to get along with any of his colleagues, one who irritates everyone at department meetings, one who keeps running down his colleagues and the department as a whole to anyone at the College who will listen? Less personal and more academic, can a committee agree on criteria for judging the value of a candidate's scholarly output? Before unionization such a

committee never concerned itself with the need for such a degree of objectivity and specificity. Now they must because if and when prior to instituting a grievance the rejected candidate asks the President for his reason(s) for upholding the negative decision, the President is required to respond specifically.

It is the author's considered opinion that many more mediocre candidates are recommended by the department for reappointment and promotion and tenure now than before unionization.

#### **At the Committee Level**

In a multi-school college like CUNY the next two levels of decision making are a school-wide committee followed by a college-wide committee. Very often at these committee levels it is necessary to consider first the question; "Are we now the receivers of the buck?"

These levels of decision making are expected to provide the necessary guardianship for the continuing search for excellence; one committee from a school-wide point of view, the other from a college-wide view point. Does the existence of a labor agreement influence the process? Do we get a stretching of previously used constraints? The erosion of the quest for excellence is slow but one who has been involved can only conclude that it is taking place.

#### **At the President's Level**

At this stage an appeal from a lower level decision has been taken, an appeals committee has denied or sustained the appellant and now the President must accept the recommendation or override it. This is a lonely place.

Obviously accepting the appeals committee's recommendation is always the easier path to follow. But this is the level of decision making at which the person making the decision has been charged by the Board with;

...the affirmative responsibility of conserving and enhancing the educational standards and general academic excellence of the college under his/her jurisdiction. Such responsibility shall include but not be limited to the duty to recommend to the board of higher education for appointment, promotion, and the granting of tenure only those persons who he/she is reasonably certain will contribute to the improvement of academic excellence at the college .<sup>5</sup>

Assuming a negative decision the President knows that he will most assuredly be requested to give his reason for such response. One college president when asked to

<sup>5</sup> Board of Higher Education, Bylaws, Section 11.2(a).

respond to the proposal to include the reasons clause in the contract prior to its being included put the President's viewpoint in this matter in clear perspective when in a letter to the chancellor he said:

After a careful reading of the proposed contract clause on "Reasons," I find that it portends disaster for the President's ability to manage, and in ways I did not discuss on Friday at the committee meeting.

When one places the current contract Article 9.9 alongside the proposed contract Article 9.10 not only does the President have to give reasons but he also is required to justify his reasons. This is clearly evident when one looks at the difference in the third paragraph of each article.

Once the union gains access to a process which makes it possible for the grievant to request and be given presidential reasons for a negative personnel action, this route will be often traveled. Absent a clause which frees the president from the need to justify his reasons, justification of reasons would have to be presented. In all probability, the President's presence at grievance steps and arbitrations would be necessary. The President then would be faced not only with the onerous requirement of providing reasons but also with the additional commitment of time to defend the reasons given.

The above is in addition to the destruction of the peer judgment system. Let's stay clear of any further movement toward reasons .<sup>6</sup>

#### A GRIEVOUS FACULTY

Data in grievance have been presented in Chapter VII. An analysis of these data indicates that personnel action grievances comprise 80% of the total and contract interpretations 20%. Of the personnel action grievances 90% are grievances arising out of peer judgment process. The contracts have been grievance laden and there has been no attempt to get at this costly problem by more careful definition of what kinds of negative personnel actions should be grievable. It must be remembered that invariably when peer judgment decisions are grieved the grievant is appealing decisions made by "brother" union members — a situation that has no equal in industry.

It would appear worthwhile in terms of a better understanding of the substance and flavor of a faculty grievance to quote at length from a Step 1 decision rendered by the President of one of CUNY's senior colleges in a case in which an Associate Professor was denied reappointment for a fifth year:

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<sup>6</sup> Letter, Clyde J. Wingfield, President, Baruch College, March 3, 1976.

-----  
Professional Staff Congress/CUNY  
----- College

Re: Step One Answer in the  
Grievance of Professor --

Dear -----:

Under date of March 21, 1977, the PSC filed a grievance concerning the non-reappointment of Professor --- alleging the following violations:

Entire PSC/CUNY Agreement, specifically Articles 1, 2, 3, 18, 19, 20,  
22, 32, 34, BHE Bylaws, Policies and Guidelines, Retrenchment Plan  
and Governance Charters.

As remedy, the PSC seeks Professor ---'s reappointment. At the Step One meeting which was held on March 29, 1977, the Union waived its allegation of violation of Article 1. By agreement between the parties this answer is timely.

Professor --- was recommended for reappointment by his department, Political Science, and the School of Liberal Arts Personnel & Budget Committee. The College P&B Committee recommended denial of reappointment of November 17, 1976. Professor --- appealed this decision and on February 24, 1977, the Academic Review Committee recommended to me that his appeal be denied. I accepted this recommendation and so informed Professor --- on March 2, 1977.

The PSC objects to the fact that P&B Committee votes are not revealed. In not revealing votes, the College is acting in a manner consistent with Board Bylaws 8.13 and 9.2.

Favorable Personnel & Budget actions require a majority of all those eligible to vote. The Union argues that a simple majority of voting members should suffice. I understand that this University-wide practice was recently challenged by the PSC in an arbitration case involving Professor --- of the College of ---. In that case, arbitrator --- ruled that operation under the rule of the majority of the whole number (those members eligible to vote) is proper.

At the Step One meeting some questions arose concerning the composition of the membership of the Academic Review Committee. I understand that these matters have been clarified to your satisfaction. The PSC also

questioned the voting practices of the Academic Vice President, who chairs the Academic Review Committee, as well as the voting practices of the President, who chairs the College P&B Committee. With regard to voting rights of a chairman, *Robert's Rules of Order* indicates that when the presiding officer is a member of the Committee he has the same voting rights as any other member. Appropriate pages from *Robert's* are attached for your information.

Although votes are not revealed, it was determined that at the College P&B there were only 14 ballots cast on Professor \_\_\_\_\_'s reappointment out of 15 persons present. Upon review of the minutes of the meeting, I determined that one person left before the matter of Professor ---'s reappointment was considered.

The PSC argues violations of Articles 18 and 19 of the Agreement in that inadequate guidance was given; that almost all observations were conducted by Professor --- who chaired the department from January 1, 1973 until July of 1976; that the evaluation memoranda are terse and do not reflect a give-and-take; that Professor ---'s teaching is better than was stated and that in one case, the annual evaluation conference memorandum was not issued. In response to these criticisms and comments I point out the following: teaching observations were held during each and every semester of Professor ---'s appointment and were followed by observation conferences which were reduced to memorandum form; annual evaluations were held each year; it was totally proper for Professor --- to observe Professor ---; if Professor --- wished to add comments to amplify the memoranda he was free to do so; the observation reports and memoranda demonstrate the observers' thoroughness of attention and are often highly praiseworthy and there is an adequate file on which to base an academic judgment. The only technical violation which occurred in the evaluation process was in connection with the observation conducted by the new chairman in the Fall of 1976 and this was a breach of only the most minor sort and not damaging to the grievant.

Professor ---, pursuant to Article 9.10 of the Agreement, had asked for the reason for the denial of his appeal. On March 21, 1977, I informed Professor --- that I denied the appeal "for the reason that your record of scholarly and professional growth is not sufficient, in my judgment, to merit reappointment." During the Step One meeting, the Union argued that this reason was so general as not to be a reason at all. The Labor Relations Designee, --- explained to the Union that my reason related to one of the criteria upon which decisions to reappoint are based. The Statement of the Board of Higher Education on Academic Personnel Practice adopted on September 22, 1975 indicates that candidates for the second or subsequent reappointment are evaluated on the basis of a number of criteria and, in addition to criteria for the first reappointment, in the categories of scholarly and professional growth, candidates



"...are expected to offer evidence of scholarly contributions to their disciplines. Evaluations of the quality of such work may be sought from outside the department. Achievements in the period following the last reappointment should be evaluated on the basis of publications of scholarly works in professional journals, or reports of scientific experimentation; scholarly books and monographs, and evidence in progress..."

The PSC argues that Professor ---- meets the criterion indicated above and that no weight has been given to Professor ----'s works in progress and the high quality of his previously published works. These, the Union states, as well as the quality of those now in submission, are sufficient to meet the standards set forth in this criterion. Further, the Union argues that the President cannot base a decision upon one criterion exclusively and that failure to consider other criteria, such as teaching effectiveness, service to the institution and service to the public, is improper. In response, I state that in reaching my decision, I reviewed Professor ---- record in its entirety.

The Union argues that the members of the Academic Review Committee were not familiar with Professor ----'s current research, specifically articles which were presented to them at the appeals meeting, and that Professor ----'s work is of so high a quality that he clearly meets any standard established for research, scholarly growth and publication. The Union also raised the point that the evaluations failed to comment on the quality of the works in preparation for publication. In fact, in the annual evaluation of Professor ---- dated May 19, 1976, Professor ---- indicated that he fully expected Professor ----'s completed manuscript to be published. It is not true that members of the Academic Review Committee were unfamiliar with Professor ----'s works in submission for publication. Further, this line of argument addresses the quality of the academic judgment that was made, an area beyond the scope of the grievance procedure. Although I can readily understand that Professor ---- does not agree with the judgment reached, I find no evidence to indicate that it was arbitrarily or capriciously arrived at.

The Union asserts that the time devoted to Professor ----'s presentation at his academic appeal was insufficient. I discussed this matter with the Academic Vice President, Dr. ---- who assures me that there was sufficient time.

The Union presented arguments that the ---- College Governance Charter had been violated in that there was no Departmental Student Advisory Committee to provide input on Professor ----'s continued employment at the College. The Governance Charter provides for such committees, and indicates that the procedures governing the election of the committees are to be established in the Bylaws of each School faculty. The Charter further states that the chairman of the Student Advisory Committee is to communicate on matters of reappointment with the department chairman. The Bylaws of the

School of Liberal Arts and Sciences state that the Student Advisory Committees are to be elected by the appropriate Student Assemblies in a manner which is clearly spelled out and which places the responsibility for compliance upon the student body. It is a matter of fact that the Student Assemblies had failed to take appropriate action.

Student failure to establish appropriate committees came to the attention of the College this past Spring. Efforts have been made by the administration of the College to see that this problem is corrected. Nevertheless, there has been student input through the systematic student evaluation process. I am aware of the interest on the part of the Student Government in Professor — — —'s continued employment and I am also aware of the presentations made by students during the Step One meeting concerning this matter.

Although it is the position of the Union that there was not a proper exercise of academic judgment in this case, the Union argues that if it is the College's position that an academic judgment was made, then the Union argues that Professor — — —'s non-reappointment was retrenchment in disguise. As such, the PSC alleges, Professor — — —'s non-reappointment violates Articles 2, 32, and 34 of the Agreement. The College flatly denies that this was retrenchment in disguise or that any budgetary considerations entered into the decision not to reappoint Professor — — —. In fact, the College is currently recruiting to fill the vacancy which will occur as a result of his non-reappointment.

The Union argues violations of Articles 3 and 22 in that Professor — — —'s non-reappointment is part of an effort to keep the number of Associate Professors as low as possible and has the effect of reducing the number of persons who are eligible for promotion to full professor. I deny these allegations. The College continues to make meritorious promotions to all ranks when they are voted upon through the academic peer process.

After reviewing the PSC's allegations and the information presented at the Step One meeting I remain convinced that the decision not to reappoint Professor — — — was an academic judgment properly made through the established process for the exercise of peer judgment. The grievance is denied.<sup>7</sup>

Interestingly enough when the President was requested to give his reasons in this case he simply stated, "after a careful review of all appropriate materials, I denied your appeal for the reason that your record of scholarly and professional growth is not sufficient, in my judgment, to merit reappointment."

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<sup>7</sup> Letters Bernard Mintz Acting President Baruch College, May 27, 1977.

## GOVERNANCE AND ADMINISTRATION

In the CUNY collective bargaining management has taken and has held successfully to the concept that faculty and/or administrative governance are not bargainable issues. An outstanding student of the development of the phenomena of collective bargaining in higher education has deemed governance to be a "non-issue." In fact, he has continued to prophesy the eventual demise of faculty senates.<sup>8</sup>

This point of view concerning contractual exclusion of governance matters is by no means universally held. An examination of existing contracts will disclose the extent to which matters relating to governance have been included in contractual provisions.

At CUNY the University Faculty Senate has continued to co-exist alongside the Union. Perhaps this is due to the fact that both the Union and the Faculty Senate came to CUNY at about the same time. In the Senate's early stages many of the Legislative Conference's activist elder statesmen were elected to the Senate by their campus colleagues and wore two hats. The union activists were not happy with their roles as senators and they perceived the Senate as a potential threat to union development. This might have been but never got to be because as both the Union and the Senate matured a relationship developed in which the Union has used the Senate as a strong advocate pressure group. Absent this kind of relationship there most assuredly would have developed a battle to the death.

The one area in governance which appears to be most vulnerable to union onslaught is that of peer judgment. There has been much discussion and debate centered about the question of how to make the peer judgment process more accountable for its personnel decisions. This kind of discussion could be deemed "academic" in the true sense of the word simply because there is no real counterpart to this concept in any other labor-management relationship. Where but academe can we find employees recommending who shall be hired, who shall be retained, who shall be promoted or even to whom should a life time guarantee of employment be awarded. Even the concept of "recommend" in the process is applied in an unusual sense since in most cases such recommendations are accepted.

### MAJOR ISSUES

No two specialists in faculty labor relations either on the management side or the union side appear to agree on what are or will be the current major issues in faculty collective bargaining. If one were to find agreement on the substance of issues, one would probably find disagreement as to the rank order of importance of these issues. A greater degree of agreement exists when the areas of issues are clustered, such as (1) money - job security - retrenchment; (2) peer judgment - governance - reasons; (3) productivity and workload; (4) the process and procedures of collective bargaining.

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<sup>8</sup> Joseph W. Garbarino, Remarks at National Convention of College University Personnel Association, August 5, 1975.

## **Money — Job Security — Retrenchment**

There appears to be no doubt that the overall steady state or diminution of resources in higher education have propelled faculty unions into a position of relative moderation in "money" item demands. The largest number of re-negotiated contracts appear to feature the application of small percentage increases intended as cost of living adjustments and referred to as "COLA's."

This rather practical approach to salary increases in a tight job market situation has brought with it an intensified drive on job security which tends to focus on due process rights in such matters as reappointment, promotion, tenure and retrenchment. Retrenchment is a relative new comer but one which undoubtedly will be receiving more and more bargaining table attention.

In CUNY the retrenchments of the last two years which have been deep and which because of the City emergency financial actions have been effectuated with little or no advance notice they have been attacked bitterly by the Union. However, the hard facts of reality had to be accepted. Although but few tenured people were affected retrenchment has been seen as a spearhead in the drive to weaken the academic institution of tenure. At least one "expert" in collective bargaining on the management side is convinced that as faculty collective bargaining develops more and more sophistication, tenure will disappear from academe and it will be replaced by longer term periods of appointment and reappointment.

## **Peer Judgment — Reasons — Governance**

The emphasis on "reasons" in cases of negative personnel actions appears to be but a furthering of the drive for greater accountability in the peer judgment process with particular emphasis on the criteria used to form an academic judgment. Academic judgment has been viewed by unions as an umbrella not supported by strong ribs.

The criteria used by the National Labor Relations Board in its determinations of inclusion or exclusion of department chairmen are heavily weighted by the management prerogatives present in the jobs. Will this not make for increased administration pressures on governance plans to forgo committee based personnel judgments for more individually based judgments more like those present in industrial organizations? Is this not part of the trend toward increased management consciousness in higher education? What happens to the character of an institution when deans, presidents and chancellors recognize the growing degree of erosion of their authority?

## **Productivity and Workload**

The non-academic has traditionally perceived the academic life as a leisurely paced life style followed by pipe-smoking ivory tower inhabitants. Until costs of higher education and budgetary deficits became matters of public policy concern there existed no threats to this life style. Failure to control escalating costs gave rise to serious questions concerning the efficaciousness of institutions characterized by faculty as self-governing professional groups. Attention has turned to the simple question of how much work is performed by these professionals engaged in the production of educated people.

Methods of increasing faculty productivity are fairly standard — increased contact hours, larger class sizes and increased utilization of teaching technology. No matter how hard the unions fight in the end picture fiscal constraints will control the outcome. What is the magic involved in a maximum of a three course undergraduate teaching schedule covering 30 weeks of a 52 week year? Why not a 45 week work year or a four course teaching schedule? The arguments pro and con have received much attention in the professional literature but they have constituted debate and rhetoric. Push now comes to shove.

Not yet in force at CUNY but hovering in the wings is a package approach to salary increases tied to productivity which has been developed by the Emergency Financial Control Board with reluctant acceptance by some of the most powerful unions involved in municipal affairs. One part of the package is a formula for COLA payments based on one dollar (\$1.00) in productivity savings bringing with it an entitlement to receive that dollar in wage increases plus an additional dollar from a fund of "X" (\$50 million in one year) set aside by the City in its budget. The other part of the package is "gain-sharing" in which a union responsible for one dollar (\$1.00) in savings is entitled to share, perhaps as much as 50 percent, of that dollar in wage increases. This is provided the union has already earned its COLA and, of course, is in addition to the COLA.

One might take the position that while these concepts are applicable to areas where production can be measured they are not applicable to education because educational productivity is not subject to objective measurement. On the other hand some creative innovator might begin to devise a formula based on student credit hours produced and weighted in terms of type of teaching — e.g., lecture, laboratory, seminar, etc., related to classes of disciplines. Ludicrous — don't sell it short.

## **The Process and Procedures of Collective Bargaining**

There still are a number of college administrators who hold fast to the belief that the process of collective bargaining is not an adversarial process. There are others who believe that although there is every evidence to prove the adversary nature of the process, the relationship need not be an adversary relationship. Both schools of thought are guilty of failure to recognize reality and perhaps wishful hoping.

There are two sides, faculty - administration or, if you will labor - management. Each side contends with the demands (proposals) of the other and each side wants to receive the better part of the eventual bargain. There do exist major areas of philosophical agreement or at least lip service is paid to such concepts as institutional integrity, faculty quality, academic freedom, faculty governance, etc. But since Webster defines adversary as "one that contends with, opposes, or resists" the point is no longer moot. That which exists is!

Once one accepts the adversary nature of the process of collective bargaining and its procedures one must move to the consideration of the basic administration philosophy in its movement from a collegial point of view to that of a management view point.

There is need for administrators to become more skilled in management and to learn the language of management, particularly the meanings of the terms and concepts of labor relations. A person who fails of reappointment has simply been terminated or, if you will "fired." In a teacher's classroom observation evaluation, the teacher's performance was not "less than satisfactory," it was "unsatisfactory." When a person's employment is discontinued he or she has a right to know why. And finally academic judgment is no different from any other kind of judgment — it is forming an opinion or evaluating of something or some one.

Let us begin to understand that academe like so many other institutions in our society has characteristics peculiar to itself but on balance not that different.

## Appendix I

### The Legislative Conference of the City of New York

#### Collective Negotiating Committee Report - March 10, 1969

##### Policy Statement

As in the past, the Legislative Conference approaches the current negotiations in a spirit of cooperation with the Board, and the University authorities. Although the Conference viewed with dismay some of the University statements on collective negotiations during the recent election period, we are prepared and anxious to begin anew, without recrimination or ill feeling.

An overwhelming majority of the faculties have spoken out in support of collective negotiations and the Legislative Conference has been designated to represent the career instructional staff of the C.U.N.Y. Nor are we unmindful of the burden, and responsibility to all of those whom we represent, be they full professors, or science technicians, at the Senior or Community Colleges.

We are prepared to discharge these duties equitably, fairly, and as always in a professional and gentlemanly manner.

We hope that those in positions of authority to negotiate for the University will do the same, and convey to their representatives and subordinates their agreement to this attitude and position.

In this posture we will mutually arrive at agreements that will further the development of a University that can best serve the interests of all the people of the City of New York.

##### Agenda for Collective Negotiations

###### I. Schedule for Negotiations

- A. Weekly sessions beginning immediately after receipt of certification by Public Employment Relations Board.

- B. Sessions on Friday at 1:00 P.M.
- C. Mutual effort to reach agreement and a contract as promptly as possible, and in any event by 30 June 1969.

## II. Authority of Negotiating Committees

- A. It is expected that the Committees will be empowered to negotiate in good faith, and with the authority to enter into a firm contract.

## III. Exclusive Status of the Legislative Conference

- A. The Legislative Conference shall be the exclusive negotiating representative of the personnel in Unit One (career members of the Instructional Staffs of the City University).
- B. *Agency shop for all personnel in Unit One, with a service charge identical with membership dues, both covered by payroll deduction, and elimination of United Federation of College Teachers dues checkoff.*
- C. *Officers and employees of the Legislative Conference shall be permitted to continue on the payroll of the City University of New York, with provision for reimbursement to the city of the amount of the salary paid to such officer or employee for period of release for service to the Legislative Conference.*
- D. *"Union Recognition" clause, to provide the usual status of an exclusive collective negotiating agent to the Legislative Conference.*

## IV. Items for Negotiations

- A. Increased Take Home Pay (ITHP)
  - 1. Immediate increase from 5% to 8%.
  - 2. Retroactive to 1 Sept. 1967
  - 3. A larger increase if any New York City departments receive more than 8%.
- B. Basic Salary Increase.
  - 1. 30% average increase (15% per year for contract period).
  - 2. Allocation by Title and Line to be determined later.



- C. Reduction in Number of Incremental steps.
  - 1. In the Instructor rank, reduction from 14 to 8 steps.
  - 2. Commensurate increase in increments of shortened schedule.
  
- D. Community College Salary Schedules.
  - 1. Parity with Senior Colleges for those with equal qualifications. (Ph.D. or equivalent).
  - 2. Bylaw provisions for equivalency with the Ph.D. degree will be followed.
  - 3. Existing Full and Associate Professors, all of whom have been certified as having the Ph.D. degree, or its equivalent, or for whom the requirement has been waived, to qualify for present rank, will be recognized as having the equivalent (if without the Ph.D. degree).
  - 4. Reduction in incremental steps from 9 to 8 for Professors.
  
- E. Tenure Provisions for certain groups.
  - 1. Personnel appointed effective 1 Sept. 1968 or earlier, in the titles of Assistant Professor and Instructor shall receive tenure upon reappointment for the fourth consecutive year of full-time employment.
  - 2. Personnel appointed effective 1 Sept. 1968 or earlier, in the titles in the Science and Technology series shall receive tenure upon reappointment for the fourth consecutive year of full-time employment.
  - 3. The Bylaws be interpreted in such a way that the term "initial appointment" be considered as meaning initial appointment to a tenure-bearing Line.
  - 4. That legislation be introduced to provide that persons promoted to or reappointed with change of title to a professorial rank after having served as either an Instructor or Lecturer on a full-time annual basis, have such service credited toward the accumulation of time to achieve tenure.
  
- F. Status of Instructor rank.
  - 1. Automatic promotion to Ass't. Prof. on Award of Tenure.
  - 2. Immediate promotion of all Instructors with tenure.
  - 3. No future appointment as Instructors of individuals eligible for the Assistant Professorship.
  - 4. Raise limitation for Instructor from 5 to 10 years.
  - 5. Eliminate all 5-month and 10-month appointments by reappointment for 6-months or year. (annual).
  
- G. Promotional Opportunity.
  - 1. Increase in authorized percentage of Professors and Associate Professors.

2. Long range objective to provide distribution:

Professor	35%
Associate Professor	35%
Assistant Professor	20%
Instructor	10%

3. For period of contract:

	Year One	Year Two
Professor	24% (5% Increase)	29% (5% Increase)
Associate Professor	27% (5% Increase)	32% (5% Increase)

4. Purpose of percentage increase in higher ranks, to improve opportunity for promotion of qualified personnel, not to be subverted by use of higher titles for excessive initial appointments of new staff members.

5. Promotions to be based on (1) Teaching Effectiveness, and (2) the total of scholarly development, research and publication, and service on departmental, College and University Committees and faculty bodies, with effective teaching and effective participation in departmental, College and University operation regarded as paramount.

H. Increments accompanying promotions.

1. An increment to accompany each promotion.

I. College Science and Technology Assistants and Technicians.

1. Continuation of identical schedules for Senior and Community Colleges.
2. Single title, College Laboratory Technician, for all personnel in series.
3. Introduction of new title, Senior College Laboratory Technician, with higher salary schedule, for technicians with either special skills or special responsibilities, *and when available to be filled by promotion of existing personnel.*
4. A single salary schedule, or automatic promotions, for present A, B and C levels.
5. Tenure in 1-5 years, upon recommendation by departments.
6. Salary schedule improvement parallel with Instructor salary improvement.
7. Immediate elimination of mal-assignments (outside of job description).
8. 12 weeks annual leave (vacation).
9. Qualifications to require a Baccalaureate Degree, or Community College Degree plus 2 years experience, or High School Diploma plus four years experience.
10. A \$500 differential for those with 30 credits of study beyond the Baccalaureate Degree.

11. Right to participate in departmental meetings (without vote), and representation on departmental Committees on Promotions, and Appointments or Personnel and Budget (with vote) only when acting on appointment, reappointment, tenure, and promotion of Laboratory Technicians and Assistants.
  12. Attendance reports to be submitted in same manner as for classroom teachers.
  13. All regulations pertaining to Laboratory Technicians to be incorporated into a booklet, including among other items, (1) Job Descriptions, (2) Leave Regulations, (3) Departments authorized to have Laboratory Technicians, (4) Definition of Work Day and week, (5) College Holidays and emergency closings of College, and (6) Other pertinent information.
- J. Librarian Department Personnel.
1. 12 weeks Annual Leave (Vacation).
  2. 30 hour week (5 days X 6 hours per day).
  3. Library staff composition to provide:
    - 40% Instruction Staff personnel
    - 60 % Clerical personnel.
  4. *Improvement in promotional opportunity.*
- K. Registrar Series.
1. Tenure in 1-5 years, upon recommendation by department (in upper three ranks), but not in the post of head Registrar, who will earn tenure in the highest title held, but not as head of Department.
  2. 12 weeks Annual Leave (Vacation), with carry-over privileges.
  3. Parity with teaching ranks in salary (Registrar on par with Professor, Associate Registrar with Associate Professor, etc.).
  4. Improvement of the salary schedules for Community College *Registrar*, Associate Registrar and Assistant Registrar to bring them into parity with the Senior College Salary Schedules.
  5. *Improvement of Community College Assistant Registrar salary.*
  6. 30 hour week (5 days X 6 hours per day).
  7. *Departmental organization for registrar unit at colleges.*
- L. Business Manager and Fiscal Officer Series.
1. Tenure in 1-5 years, upon recommendation of department, except for the head Business Manager or Fiscal Officer, who will earn tenure in the highest title held, but not as head of Department.
  2. 12 weeks Annual Leave (Vacation), with carry-over privileges.

3. Salary schedule for Assistant to Business Manager to be made identical with that for *Assistant Professor*.
  4. Parity in salary schedule of Fiscal Officer series with schedules of the Business Manager.
  5. Attendance reports to be submitted in same manner as for classroom teachers.
- M. Higher Education Officer Series.
1. Tenure in 1-5 years, upon recommendation by College, for upper three ranks, except that head of any unit or office may earn tenure in highest title held, but not in the assigned or appointed duty.
  2. 12 weeks Annual Leave (Vacation), with carry-over privileges.
- N. City University Faculty Welfare Fund.
1. Change to a per Capita basis of payment.
  2. Per Capita payment to consist of \$266 base plus 15% for first year of contract and an additional 15% for second year of contract. (For first year of contract \$306 per individual; second year of contract \$346 per individual).
  3. Fund to be operated for all full-time instructional staff personnel, plus such other titles as may be mutually agreed upon by the Administration and the Faculty Welfare Trustees.
  4. The Fund to remain in charge of the City University Faculty Welfare Trustees in accordance with the Trust Indenture, Agreement and Bylaws.
  5. Members of the Executive Committee shall receive a reduction in teaching schedule of three hours per week (optional with the Committee member), secretarial services, office and required furnishing (desks, chairs, filing cabinets, telephones, etc.).
  6. The City University will continue to supply space, facilities and one or more clerical personnel for the Office of the Fund.
- O. High School and Elementary Schools.
1. Increased student per capita allotment to reach parity with Board of Education allotment for specialized High Schools.
  2. Funds to facilitate teacher attendance at Professional meetings and conferences.
  3. A full-time matron for each Elementary School, as in all other Public elementary schools in New York City.
- P. Retirement Systems.
1. 2.2% (25 year 55%) pension plan (as in the ERS).

2. One year average for pension computation in TRS (or if higher, the average of the last five years).
  3. One year average for pension computation in ERS for individuals not covered by 2.2% plan.
  4. 10-year Vesting in TRS and ERS.
  5. Tax sheltered Annuity Option for Annuity Contribution.
  6. *Initial election of retirement plan during first semester of service - not during first month only.*
  7. *Option to transfer into or from TIAA retirement system upon award of tenure or completion of five years of service, the option available during a full semester.*
  8. *Retirement in ERS and TRS upon completion of 20 years of service at age 55.*
  9. *Increase in City contribution to TIAA to match increased cost to City of improvements in TRS and ERS.*
  10. Cost of living adjustment, annually, for personnel retired on TRS or ERS allowances.
  11. Age 70 retirement option for ERS members.
  12. *Instructional staff members of the City University shall receive the benefits of all improvements received by any other members of the TRS.*
  13. *Instructional staff members of the City University shall receive the benefits of all improvements received by any other members of the ERS.*
- Q. Sick Leave Provisions.
1. Full credit as terminal leave for accumulated sick leave time.
  2. Sick leave provision modification to eliminate hiatus between end of sick leave pay and commencement of disability insurance benefits.
- R. Sabbatical Leave Funds and Regulations.
1. Increase of funds to support sabbatical leaves by \$500,000 each year until funds cover 1-semester leaves at full pay for all qualified applicants.
  2. Removal of Age 65 limitation.
  3. Make approval of 1-semester sabbatical at full salary mandatory for all qualified applicants who have not had a sabbatical leave for 14 years or longer.
- S. Teaching Load and Student-Teacher Ratio.
1. Teaching load of 9 contact hours.

2. Improvement of Student-Teacher ratio.
  3. Special and more liberal staffing ratios for Colleges and schools with departments in the Science, Technology and Industrial Arts areas, so that such departments will have sufficient staff without unfavorable impact on class size.
  4. Equitable teaching loads for departments and areas of Physical Education, Counseling, etc.
  5. Substantial increase in SGS *and evening session* Lines to level based on full-time equivalent students. To approach this goal during the two years of this contract, we must ask the following improvements:
    - a. A 20% increase in the number of line faculty assigned to each unit during the first year.
    - b. A 20% increase in the number of line faculty assigned to each unit (the percentage to be calculated on the base established in the first year) during the second year of the contract.
    - c. Distribution of titles to conform to the percentages established under negotiating item G.
- T. Personnel Records.
1. Right of personnel to see reports and evaluations made by any and all City University personnel, excepting letters and evaluations from without, or from another unit of the City University when dealing with application for initial appointment in the College.
  2. Vote of Appointments Committees and Promotional Committees be made available to persons affected.
- U. Faculty Control of Educational and Policy Matters.
1. No person shall be appointed to the position of Chancellor, Vice-Chancellor or University Dean without the approval of a majority of the members present and voting in the University Senate. No persons shall serve as Acting Chancellor, Acting Vice-Chancellor or Acting University Dean for more than one year without the approval of a majority of the members present and voting in the University Senate.
  2. No person shall be appointed to the position of President, Provost or Dean at any unit of the City University without the approval by a majority of the members present and voting in the Faculty Council, or other governing faculty body. No persons shall serve as Acting President, Acting Provost or Acting Dean for more than one year without the approval of a majority of the members present and voting in the Faculty Council, or other governing faculty body.
  3. No person shall be appointed to the position of President, Provost or Dean of a new College or Unit of the City University without the approval by a majority of the members present and voting in the University Senate.

4. The Charter of the University Senate and the bylaw provisions concerning the election and composition of the University Senate and the Faculty Councils and General Faculties of the units of the City Universities shall be incorporated into this contract and shall not be altered except by the methods provided in that charter and those bylaws.
5. No changes in the admissions and/or grading policies of the City University shall be approved by the Board of Higher Education unless initiated and submitted to the Board by the University Senate and no changes in the admission and/or grading policies of individual units of the City University shall be implemented by the administrations of those units unless initiated and submitted to the President of the unit by the Faculty Council or other governing faculty body of the unit. Curricula and programs at the Colleges and at the City University shall be introduced, modified or cancelled only after affirmative vote of the governing faculty body of the College involved, or of the University Senate in areas where the University as a whole is involved.

V. *Legislative Conference Consultation on Budgets.*

1. No proposal for a future budget for any unit of the City University shall be submitted to the Chancellor by any administrative office of such unit unless such proposal shall have been submitted to the *Legislative Conference Chapter* of the unit at least 2 weeks prior to submission to the Chancellor. No proposal for a future budget for the City University shall be submitted to the Board of Higher Education by any officer of the University unless such proposal shall have been submitted to the *Legislative Conference Governing Body* at least 2 weeks before submission to the BHE.

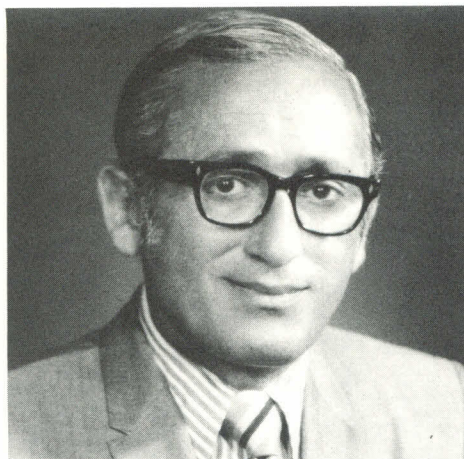
W. Facilities and Support Personnel.

1. Private offices for Professors and Associate Professors, and Semi-private (two per office) offices for Assistant Professors and Instructors, to be implemented in all new construction, renovation and leased quarters.
2. Standard office equipment: desk, chairs, filing cabinets, book cases, typewriter, etc. for each teacher, and phone in each office.
3. Improved secretarial services, with at least one clerk- typist for each five teachers, plus one stenographer for each ten teachers.
4. Research space and facilities appropriate to field of study, to be implemented in all new construction and renovation.
5. Improved Library Facilities and Book collections.
6. Substantial increase in funds for travel to professional Conferences and meetings.

7. Availability for Research use of Computer Facilities and Programmers.
  8. Research technicians in Science and Technology disciplines to provide opportunity for effective research.
  9. Increased number of lines for Higher Education Officer series to promote more effective college operation.
  10. Increased authorization for personnel in counseling areas, and in student services.
  11. Increased maintenance and custodial personnel to provide for effective maintenance and operation of buildings and other facilities.
  12. Conference Rooms, seminar rooms, lounges and dining facilities appropriate to a University, to be implemented through all new construction and renovation.
  13. Lounges, dining facilities, club and meeting rooms for student use, appropriate to a modern University, to be implemented through all new construction and renovation.
  14. Development of parking Facilities on self-liquidating basis for both staff and students.
  15. Development of Staff Housing.
  16. Improved security from burglaries, robberies, muggings, assaults, etc.
- X. Grievance Machinery.
1. Establishment of grievance procedures, ending in binding arbitration before an appropriate impartial arbitrator, for adjudication of all grievances arising from:
    - a. Interpretation of or violation of the terms of the contract.
    - b. Interpretation of or violation of the Bylaws of the Board of Higher Education.
    - c. Inconsistent or inequitable practices in the implementation of the contract or of the Bylaws of the Board of Higher Education as they apply to personnel represented by the Legislative Conference.
  2. Complaints and proceedings shall be conducted in a confidential manner.
  3. Paid released time for grievance hearings.
- Y. *Miscellaneous*
1. *Full salary less jury payment received for members of Unit One when on jury duty, if scheduled duties are prevented.*
  2. *Adequate notice of intent not to reappoint, following the A.A.U.P. guidelines.*
  3. *College physicians at Community Colleges be placed on same salary schedules in effect at Senior Colleges.*



- Z. Status of Legislative Conference.
1. Use of College Mail Distribution and Duplicating Facilities.
  2. Use of University Facilities for meetings.
  3. Availability of Lists of Personnel in Unit One, along with addresses, assignments (departments, et al.).
  4. Office and facilities for Legislative Conference representative at each campus.
  5. *Availability of bulletin boards for Conference use at the several Units of the University.*
  6. No discrimination against any person or persons represented by the Legislative Conference.
  7. The Legislative Conference reserves the right to add to the items for negotiation, and to revise or withdraw any items, until a contract has been agreed to.



After many years of varied campus-based positions at the City College of New York, Bernard Mintz was appointed Assistant University Dean of Business Affairs for the Central System's Office of the City University of New York in 1964. From 1965 through 1972, he successively held positions at CUNY, including Professor of Business Administration and University Dean of Business Affairs, Vice-Chancellor for Faculty and Staff Relations and Vice-Chancellor for Administration. As of March 1, 1972, Professor Mintz assumed the position of Executive Vice President, Professor of Management and Deputy for the President at the Bernard M. Baruch College of The City University of New York. On November 1, 1976, Professor Mintz was appointed Acting President of Baruch College. He served in this position until August 1, 1977. Currently, he is Vice-President for Academic Affairs at The William Paterson College of New Jersey.

His positions in The City University's central administration entailed responsibilities for university business affairs, including budget, and for the administration of the Central Office and for university-wide personnel and labor relations for both academic and nonacademic staffs. Professor Mintz was the chief negotiator for The City University of New York in its first faculty collective bargaining. (1969)

Professor Mintz was for many years a teacher of both undergraduate and graduate management courses at the then Bernard M. Baruch School of Business and Public Administration of The City College of New York, and he has served as a management consultant to a number of corporations in the private sector. Since 1969, he has participated extensively in professional organization-sponsored workshops and seminars in the area of university faculty collective negotiations. He is the founder of the National Center for the Study of Collective Bargaining in Higher Education at Baruch College and a member of both its National Advisory Board and its faculty.

Among his publications are the following:

"Labor Relations in Higher Education—An Overview" in Critical Issues in Education (The Morton Wollman Distinguished Lecturers 1969-70) published by the School of Business and Public Administration of the Bernard M. Baruch College of The City University of New York, 1970.

"The CUNY Experience", Wisconsin Law Review, Volume 1971, Number 1.

"In Defense of Academic Judgment—Settling Faculty Collective Bargaining Agreement Grievances Through Arbitration", Buffalo Law Review, Winter 1973, Volume 22, Number 2.

"Faculty Collective Bargaining in Higher Education: A Management Perspective", Journal of Law and Education, University of South Carolina Law Center, Volume 3, Number 3, July 1974.

"Faculty Collective Bargaining and the Arbitral Process", Journal of CUPA, (College and University Personnel Association), Volume 25, Number 3, July-August 1974.

Mr. Mintz received a B.S.S. degree in 1934 from The City College, and an M.A. in 1938 from Columbia University. He is A.B.D. at New York University.