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A New Morning in Higher Education Collective Bargaining, 2013-2019

William A. Herbert¹

Introduction

This chapter analyzes and contextualizes data concerning the growth in collective bargaining in higher education from 2013 to 2019, the interregnum between the economic fallout from the Great Recession and the health and economic consequences from the COVID-19 pandemic.

The chapter begins with a discussion of the democratic procedures established by collective bargaining laws for determining union representation, and the genuine choices higher education leaders have in responding to unionization efforts. It describes how institutional decisions over the decades to increasingly rely on contingent faculty, postdoctoral scholars, and graduate assistants to teach and research helped to create a ripe environment for the growth of union representation during the period under study.

The chapter demonstrates that between 2013 and 2019, represented faculty grew by 10%, with contingent faculty constituting over three-quarters of that growth. During the same period, the number of represented graduate assistants increased by over 30%, and there was an even larger percentage increase among postdoctoral scholars.

Historically, unionization growth and collective bargaining were centered at public colleges and universities, with bargaining units more prevalent at community colleges and representation provided by bargaining agents affiliated with three traditional academic unions: American Federation of Teachers (AFT), National Education Association (NEA), and American Association of University Professors (AAUP).²

This chapter reveals three important new trends: a groundswell of new collective bargaining relationships at private institutions; the rate of bargaining unit growth at 4-year public institutions outpacing community colleges; and non-traditional academic unions, the Service Employees International Union (SEIU) and the United Auto Workers (UAW), expanding their representational roles on campus.³ The chapter also examines the frequency of work stoppages in higher education over the seven-year period. It also presents four illustrative negotiated agreements reached during the COVID-19 pandemic demonstrating the role that collective bargaining can play even during an emergency. It ends with some final thoughts about the impact of the pandemic on collective bargaining in higher education.

These developments in collective bargaining come at a time when higher education faces multiple crises requiring informed and principled campus leadership dedicated to collaborative labor relations. Some crises have been long in the making: cutbacks in public funding, job and economic insecurities, racial, ethnic and gender inequalities, and student debt. These challenges have been exacerbated by the pandemic and require the recalibration of priorities by government policymakers, institutions, and unions.

A related crisis, the growing partisan-divide over higher education, is a new variant of American anti-intellectualism,⁴ with growing skepticism about the role of higher education.⁵ A 2019 Pew study found that close to 60% of Republicans and independents who lean Republican believe that higher education has a negative impact on our country.⁶ The survey reflects Michael Sandel's observations about the deep corrosive divisions and prejudices over possessing a college degree,⁷ which Arlie Russell Hochschild summarized as “[f]or the first time in recent history, the less

education you have, the more you lean right and distrust higher education itself.”⁸ This ominous upsurge in anti-intellectualism requires collaborative advocacy in support of higher educational mission and the tenets of academic freedom and freedom of speech on campus.

A. Data Collection and Methodology

The chapter draws primarily from three datasets gathered by the National Center for the Study of Collective Bargaining in Higher Education and the Professions (National Center). One includes all new collective bargaining relationships created during the period 2013-2019 involving faculty, graduate assistants, and postdoctoral scholars.⁹ The data was gathered from primary sources during the processing of representation cases at the National Labor Relations Board (NLRB) and public sector labor relations agencies. The chapter contextualizes this data with findings from earlier National Center studies dating back to 1976.¹⁰

The second dataset is of work stoppage activity in higher education during the same seven-year period, gathered by the National Center from government information, news services, and other sources.¹¹ The third dataset is a collection higher education collective negotiated agreements related to the COVID-19 pandemic. The data was collected by National Center through submissions made in response to a solicitation sent to administrators and faculty representatives between May and November 2020 and supplemented by agreements downloaded from university and union websites.

B. Back to the Future: Collective Bargaining in Historical and Legal Context

The prominent role that collective bargaining laws play in the growth and shape of unionization on campus has long been recognized.¹² What is often forgotten by scholars and practitioners is that the system of unionization and collective bargaining established by those laws was intentionally modeled after our political system.¹³

A 1915 report from the United States Commission on Industrial Relations may have been the first to expressly draw the analogy between political democracy and workplace democracy: “Political freedom can exist only where there is industrial freedom; political democracy only where there is industrial democracy.”¹⁴

Two decades later, representative workplace democracy was codified in the National Labor Relations Act (NLRA) in 1935, which states in part that it is “the policy of the United States...[to encourage] the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.”¹⁵ In the legislation, Congress concluded that collective bargaining rights were necessary because the lack of employee representation and bargaining power result in depressed wages, strikes, and other workplace disruptions.¹⁶

During the congressional debate over the bill, Senator Robert F. Wagner paraphrased former NLRB Chairman Lloyd K. Garrison, when he declared that “democracy in industry must be based upon the same principles as democracy in government. Majority rule, with all its imperfections, is the best protection of workers' rights, just as it is the surest guaranty of political liberty that mankind has yet discovered.”¹⁷

It took another three decades before the NLRA was applied to private non-profit higher education industry, and states enacted state collective bargaining laws applicable to public institutions.¹⁸ Although the NLRA applies to virtually all private higher education institutions, collective representation as a right exists only at public institutions in states with their own collective bargaining laws or regulations.

While clear differences exist between the NLRA and state laws, as well as between state laws, there are also fundamental similarities. Each law permits a republican form of exclusive representation in the workplace and defines the rights and obligations of labor and management. Representation is determined by the outcome of a democratic process that includes petitions, voting units, campaigning, secret ballots, and elections overseen by government officials.¹⁹

If a bargaining agent is selected by the employees, it has a legal duty to fairly represent the entire unit, despite conflicts and tensions that can exist between groups of represented employees.²⁰ The internal affairs of unions with private sector bargaining units are regulated under federal law, which mandates financial disclosures and grants a bill of rights for union members.²¹

An institution has several available options in responding to a representation effort by faculty and other employees.²² University leaders can permit faculty or others to select a representative without litigation and by taking steps to avoid fears of reprisals such as limiting the school's actions and communicative footprints on the question of representation.²³ For example, this less approach was adopted by Cornell University two decades ago by avoiding electioneering when its graduate assistants attempted to unionize.²⁴ Another alternative is for an institution to remain completely neutral on the question of representation and allow the at-issue employees to make their own choice without input from their employer. This perspective was adopted as a policy by the University of Michigan Board of Trustees in 2020 and has been stipulated to by other institutions.²⁵

An institution can also chose to voluntarily recognize a union representative, a procedure that predates the application of collective bargaining laws to colleges and universities. For example, in 1945 the University of Illinois Board of Trustees adopted a formal collective bargaining program for its non-academic employees.²⁶ Similarly, certain private institutions in the late 1940s recognized unions and negotiated contracts for their faculty and other employees.²⁷ The practice of voluntary recognition continues today under Nevada's rules and regulations²⁸ and agreements reached with Georgetown University, Brown University, New York University (NYU), and other institutions after 2012.²⁹

Lastly, university leaders who view union representation on campus as antithetical to the mission of higher education can retain firms that specialize in union avoidance tactics to aggressively circumvent organizing efforts.³⁰ Many of those tactics are commonly employed by private

companies, which were developed by business professors and presented at university-hosted seminars in the late 1970s.³¹

Following recognition of a union, the parties must engage in good faith negotiations that includes an exchange of proposals and information over their terms and conditions of employment and other related decisions.³² Collective bargaining is a more uniform process of decision-making than shared governance, with labor and management treated as legal equals for purposes of negotiations and arbitration. It is a bilateral system of checks and balances that necessitates compromises by both sides to reach an agreement, but there is no legal requirement that an agreement be reached. The subjects of negotiations can address campus workplace issues as well as broader issues impacting the common good.³³ Negotiations provide administrators with an opportunity to make proposals and exchange information to address managerial concerns.³⁴ Most subjects concerning terms and conditions of employment are mandatorily negotiable, while others are permissive or prohibited. When a final agreement is reached, the terms are codified into an enforceable written agreement for a finite period. The failure to reach an agreement can result in mediation, and in some circumstances, a work stoppage.

The trend in higher education unionization growth described in this chapter differs significantly from the steady overall national decline in union density since 1983.³⁵ In many ways, the recent unionization growth on campuses is a consequence of the “revolutionary” restructuring and redesign of academic appointments over the decades,³⁶ with the massive increase in contingent faculty appointments. While there are many external and internal factors that have influenced institutional decision-making, the result has been the creation of pool of insecure, low wage, and

marginalized academics at private and public institutions who view unionization and collective bargaining as the means of enfranchisement “to gain influence over governance patterns and secure greater economic and professional benefits.”³⁷

C. Trends in Representation Growth by Institutional Type and Sectors Prior to 2013

1. Faculty

Before analyzing the data since 2012, it is important to place it in the context of historic trends in higher education unionization.

Since the 1960s, disparities have existed in the relative size and growth of unionized academic labor by institutional-type and between public and private institutions. In the public sector, faculty representation steadily increased as the right to representation expanded across the country, with the largest concentration and growth at the community college level.³⁸

Until the past decade, representation growth at private institutions was slow and uneven with periods of slight increases and decreases.

Data from earlier National Center studies based on survey results illustrate the differences in faculty representation between institutional-types and sectors over four decades. In 1976, there were 179 faculty bargaining units at community colleges, 56 at 4-year public colleges and universities, and 66 at private institutions.³⁹ Data from a study ten years later showed a 62% (111) increase in bargaining units at community colleges, a 41% (23) growth at 4-year public colleges, and a 16.6% (11) increase at private institutions from 1976.⁴⁰ By 1996, faculty

bargaining units had grown again at public institutions but declined in the private sector: 18.6% (54) increase at community colleges, a 13.9% (11) increase at 4-year public institutions, and a -9% (-7) decrease at private colleges and universities.⁴¹

The 2006 National Center study found there were 300,644 represented faculty at public colleges and universities. The number of bargaining units increased from 1996 by 11.6% (40) to 384 at community colleges and 31.1% (28) to 90 at 4-year public institutions with an additional nine units identified as 2/4 public institutions.⁴² At private institutions, the number of bargaining units declined again by -7.1% (-6) with 17,860 represented faculty.⁴³

By 2012, two new important trends emerged. For the first time, the number of represented faculty and bargaining units at private institutions substantially increased. There were 26,241 faculty in 83 units, constituting a 46.9% (8,381) increase in represented faculty over 2006 and a 29.6% (19) increase in bargaining units.⁴⁴ Second, the percentage of relative growth at community colleges and 4-year public institutions slowed. In 2012, there were 348,250 represented public sector faculty in 568 bargaining units, constituting a 15.8% (47,606) increase over 2006. The number of new community college bargaining units increased by only 8.3% (32) to 416 and there was a 20.3% (24) increase to 142 at 4-year institutions, and one additional unit at a 2/4-institution.⁴⁵

2. Graduate Assistants and Postdoctoral Scholars

Prior to 2013, graduate assistant and postdoctoral scholar representation was almost exclusively at public universities and affiliated research foundations.⁴⁶ The one exception was at NYU. Graduate assistants there were represented in collective bargaining for 5-year period ending in 2005.⁴⁷

By 2012, there were 62,656 graduate assistants represented in 30 bargaining at public institutions and four research foundations affiliated with public institutions.⁴⁸ There were no represented graduate assistants at private universities, and representation of postdoctoral scholars was limited to approximately 6,700 in bargaining units at three public universities.⁴⁹ Consistent with the trend identified by Julius and Gumpert,⁵⁰ well over 50 per cent of the graduate assistants and postdoctoral scholars were represented by non-traditional academic unions in 2012.⁵¹

3. Factors Shaping These Trends

There are three major factors that help explain these trends prior to 2013. Historically, support for unionization differs based on status and rank, salary and benefits, autonomy, job security, and participation in institutional decision-making.⁵² Therefore, it is unsurprising that unionization is greater at community colleges and among graduate assistants than among faculty at research universities and private elite institutions.

Second, differences in institutional responses by sector to representation efforts have played a role. Aggressive union avoidance strategies are more common in NLRB elections.⁵³ Leaders at public colleges and universities are less likely to employ the same aggressive tactics.

A related factor is the legal doctrines and precedent that developed under the NLRA as the result of successful litigation pursued by private institutions in opposition to representation and collective bargaining.

The first doctrine was announced in the 1980 United States Supreme Court decision in *National Labor Relations Board v. Yeshiva University*.⁵⁴ In that ruling, the Supreme Court determined that tenured and tenure track faculty involved in shared governance are managerial and exempt from NLRA rights and protections. *Yeshiva* and its progeny led to a decline in faculty representation at private institutions,⁵⁵ as the data prior to 2006 reveals.

The successful use of the *Yeshiva* doctrine by private institutions resulted in traditional academic unions and full-time faculty becoming apprehensive about pursuing new organizing because of the costs and complexities of litigating managerial status,⁵⁶ and fear of retaliation without legal recourse if faculty are deemed unprotected by the NLRA. This explains, in part, why there were only 21 faculty representation petitions filed with the NLRB during the period 2006-2012.⁵⁷ One labor observer has described the situation under *Yeshiva* as “a legal quagmire” for faculty and unions “from which little good obtains.”⁵⁸

Another perennial legal issue affecting private sector representation is whether the NLRB can assert jurisdiction over religiously affiliated institutions without infringing on religious liberties protected under the First Amendment. This issue has been litigated for decades before the NLRB and the courts.⁵⁹ Some, but not all, institutions have cited this precedent as a tool to block

representation of faculty and graduate assistants on their campuses.⁶⁰ For example, Manhattan College has used litigation for a decade to thwart contingent faculty unionization, while LeMoyne College made a different decision and chose not to object to contingent faculty unionization on the grounds of a religious exemption.⁶¹

A third legal issue impacting union density in the private sector is whether graduate assistants are employees covered under the NLRA. As a federal appellate court noted, the NLRB “has been consistently inconsistently” over the decades on this legal issue.⁶²

Beginning in 1972, NLRB precedent treated graduate assistants as primarily students. In 2000, the NLRB ruled for the first time that graduate assistants had the right to representation. This ruling led directly to the first private sector collective bargaining relationship at NYU. Four years later, the NLRB reversed itself finding that graduate assistants did not have a right to organize or engage in collective bargaining under the NLRA.⁶³ This remained the state of law prior to 2013, which is an important reason for the lack of represented graduate assistants at private universities prior to the period under study.

D. Growth and Trends in Higher Education Representation, 2013-2019

The seven-year period between 2013 and 2019 saw a continuation of the growth in representation of faculty, graduate assistants, and postdoctoral with some new and continuing trends.

1. Faculty Representation Growth

Overall, the number of newly organized faculty at the end of 2019 was 411,921, a 10% (37,468) increase over the number represented in 2012.⁶⁴ Figure 1 sets forth the annual and total rate of unionization growth since 2012.

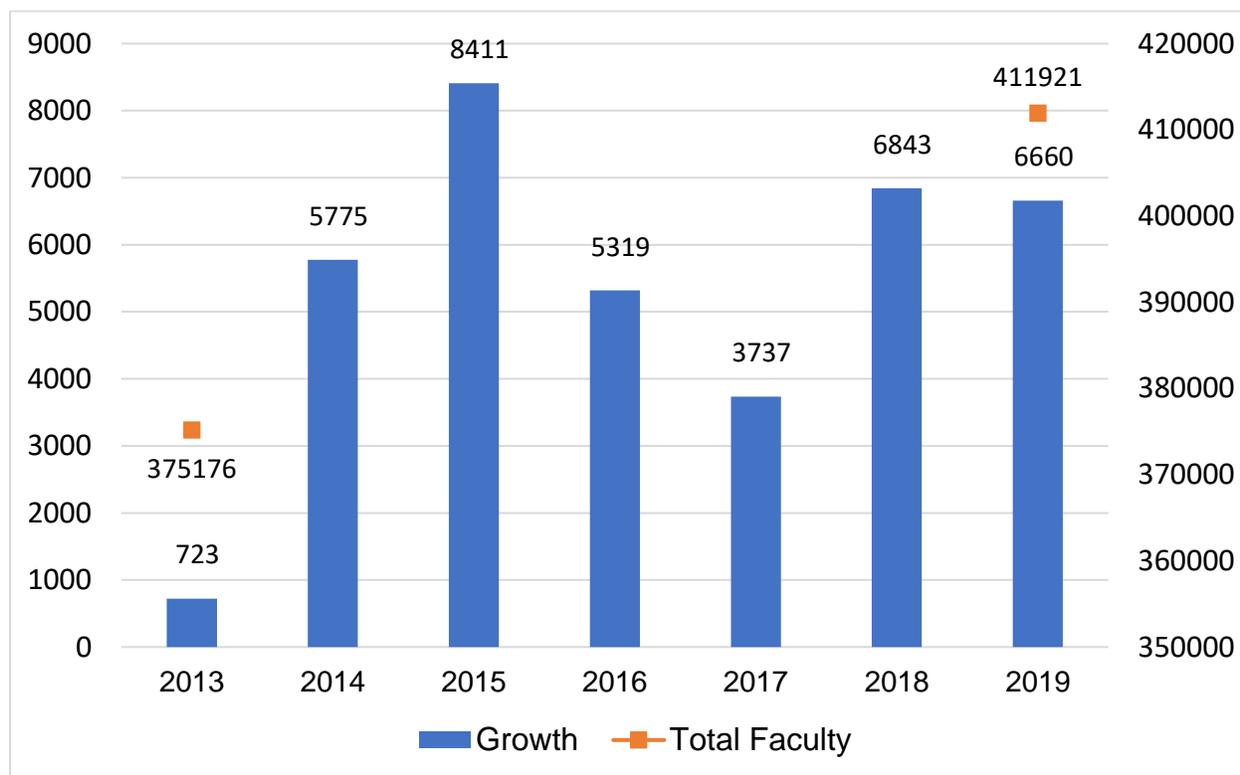


Figure 1: Annual and Total Growth in Unionized Faculty 2013-2019 (Source: Herbert, Apkarian, and van der Naald, 2020 Supplementary Directory of New Bargaining Agents and Contracts in Institutions of Higher Education, 2013-2019).

The most significant growth in unionized faculty took place at private institutions. During the seven-year period, represented faculty in the private sector grew by 16,104, which is a 61.3% increase over 2012. The number of faculty bargaining units on private sector campuses expanded by 80.9% (68). Viewed in another way, the growth in represented faculty on private sector campuses between 2013 and 2019 is equivalent to 90.1% of the total number found in the 2006.

The private sector growth was primarily among part-time and full-time contingent faculty. (See Figure 2). Over 95% of the new bargaining units were exclusively contingent faculty, with close to a half (47.7%) limited to those holding part-time appointments. The second largest group of new units included both part-time and full-time contingent faculty. Combined units with contingent and tenured and tenure track faculty were only 4.6% of the new bargaining units. (See Figure 2). By the end of 2019, there were also three new bargaining units at for-profit institutions with a total of 206 represented faculty.⁶⁵

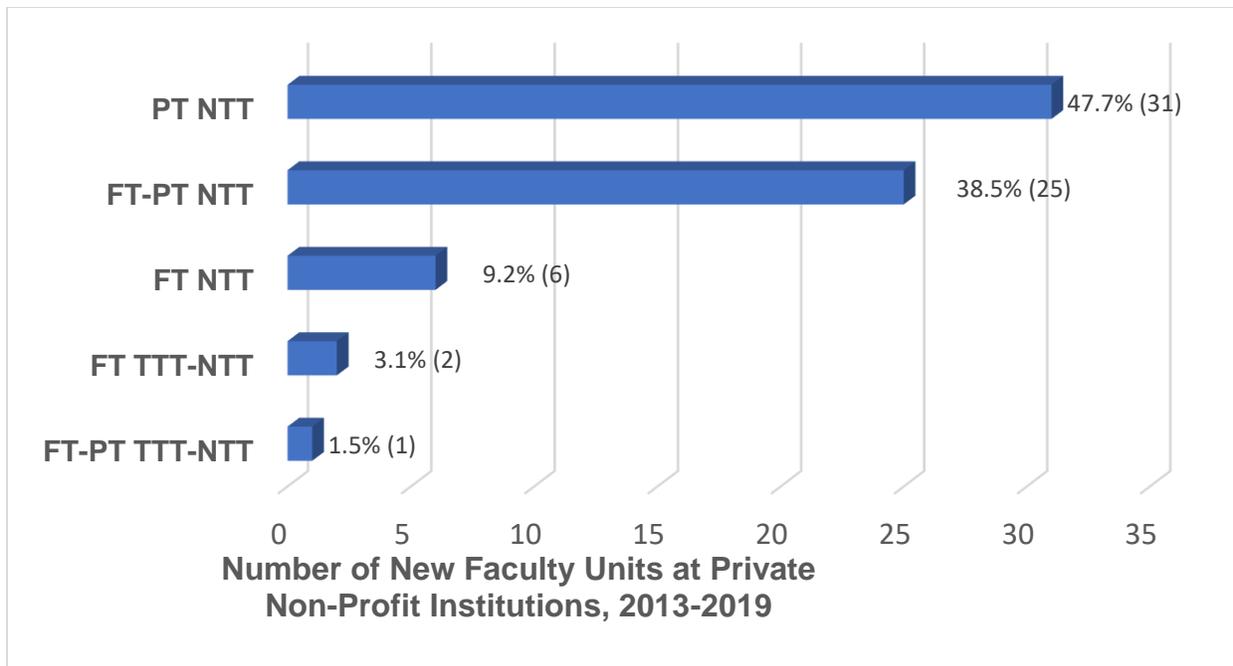


Figure 2: New Faculty Bargaining Units at Private Non-Profit Institutions by Unit Type, 2013-2019. NTT refers to contingent faculty, TTT refers to those with tenured and tenure track appointments, and FT and PT refers to those working part-time and full-time. (Source: Herbert, Apkarian, and van der Naald, 2020 Supplementary Directory of New Bargaining Agents and Contracts in Institutions of Higher Education, 2013-2019).

In the public sector, there were 50 new faculty bargaining units formed after 2012 but only a 5.8% (20,160) increase in the overall number of newly represented faculty. Consistent with the trend first seen in 2006, faculty unionization growth at 4-year institutions outpaced increases at community colleges. Over 70.3% (14,175) of the newly represented public sector faculty work at 4-year colleges and universities, while less than 30% (5,985) are employed by community colleges.

As in the private sector, new successful contingent faculty unionization played a key role in the overall growth, representing over 65% of the public sector increase.⁶⁶ A majority (26) of new units were composed only of contingent faculty, with 42% (21) limited to those with part-time appointments. Another 34% (17) were units of tenured and tenure track faculty, with another 14% (7) combined units of contingent and tenured and tenure track faculty. (See Figure 3). The inapplicability of the *Yeshiva* doctrine to the public sector enabled tenured and tenure track faculty to continue to unionize.

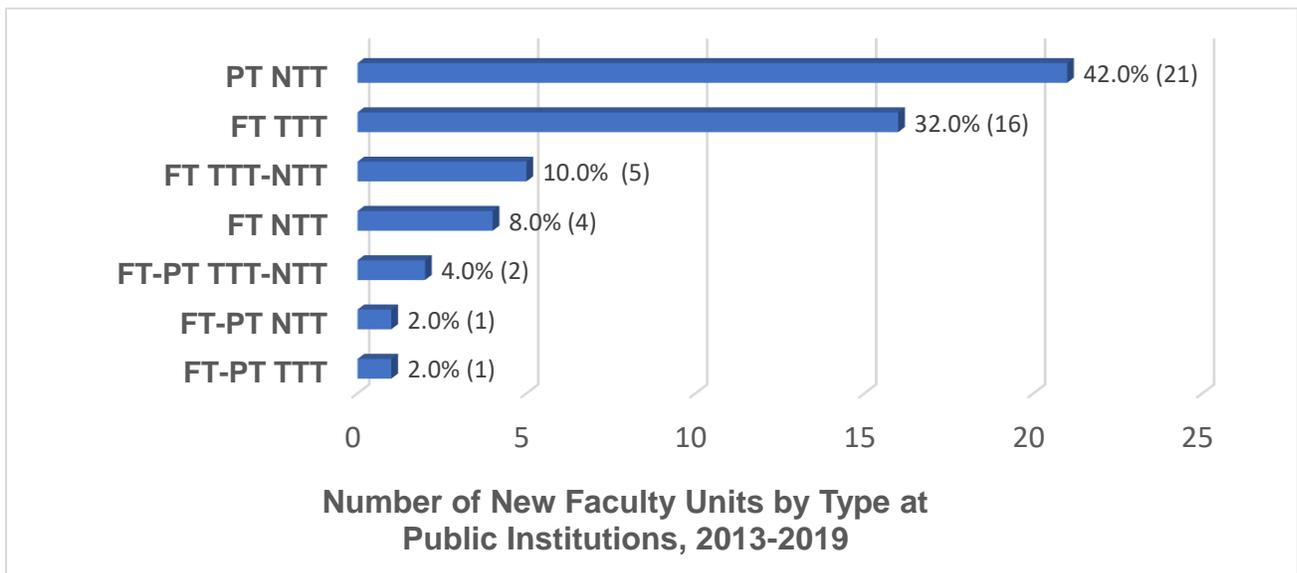


Figure 3: Number of New Faculty Units by Type at Public Institutions, 2013-2019 (Source: 2020 Supplementary Directory of New Bargaining Agents and Contracts in Institutions of Higher Education, 2013-2019)

2. Factors Shaping New Faculty Representation

The recent growth in faculty unionization is the consequence of various factors, some old and some new.

The first factor is the restructuring of academic positions. In 1970, the vast majority of faculty were full-time tenured or tenure eligible.⁶⁷ By 2011, over 70% of faculty held contingent appointments with most working in part-time positions,⁶⁸ a group long known to be the most supportive of unionization. A related factor was the shift in national union priorities to aggressively support the growing demands by contingent faculty for representation.⁶⁹

Another important factor is that the *Yeshiva* doctrine is largely irrelevant to contingent faculty representation because they are generally excluded from shared governance. Although the doctrine was invoked by some schools after 2012 to block representation efforts by tenured and tenure track faculty, and even some contingent faculty based on their role in shared governance, it was relatively infrequent.⁷⁰ The *Yeshiva* doctrine might become more pertinent to contingent faculty if AAUP's recommendations for contingent faculty to participate in shared governance are adopted on private campuses.⁷¹

In addition, the issue of NLRB jurisdiction over religiously affiliated institutions, was avoided when schools including Georgetown University,⁷² Notre Dame de Namur University,⁷³ and Fordham University decided not to claim a religious exemption on First Amendment grounds.⁷⁴ Those choices are consistent with the view of some labor law scholars and others, who believe that it is hypocritical for Catholic affiliated institutions to vigorously challenge unionization efforts in light of the Church's social teachings.⁷⁵

Other institutions have chosen the path of legal resistance including Duquesne University,⁷⁶ and Manhattan College, which have pursued litigation challenging the NLRB's assertion of jurisdiction over contingent faculty representation efforts. While a system of voluntary recognition is a legitimate compromise that would allow unionization without federal regulation, it has not been adopted at institutions seeking a religious exemption from the NLRA.⁷⁷

Another key factor in the growth of faculty representation since 2012 is the new dominate role played by the SEIU, particularly at private sector non-profit institutions. Labor scholars have long recognized that union for its innovative and proactive strategies that identify “key sectors, industries, occupations, and local labor markets, and complementing this strategic planning process with extensive background research on the selected organizing targets.”⁷⁸

In 2006, SEIU represented no private sector faculty,⁷⁹ and by 2012 it represented only two units with a total of 2,573 contingent faculty.⁸⁰ By the end of 2019, however, SEIU represented over 86% (56) of the new private non-profit units (See Figure 4) and 90.3% (14,359) of the newly represented faculty.⁸¹ It now represents faculty at private institutions in the District of Columbia and 11 states: California, Connecticut, Illinois, Massachusetts, Maryland, Minnesota, Missouri, New York, North Carolina, Vermont, and Washington.⁸²

SEIU overwhelmingly eclipsed AAUP, AFT, and NEA in representing newly organized contingent faculty on those campuses although historically the traditional academic unions were the predominate national affiliates of bargaining agents representing all unionized faculty.⁸³ (See Figure 4). SEIU's new role in contingent faculty unionization was not limited to the private

sector. Over the seven-year period, it also organized 26% (13) of the new public sector units with 46.3% (9,347) of the newly represented faculty at public institutions.⁸⁴ It is fascinating, and perhaps telling, that contingent faculty chose to align with the same union active in organizing low wage workers in other industries and that has led the nationwide campaign to raise the minimum wage to \$15.⁸⁵

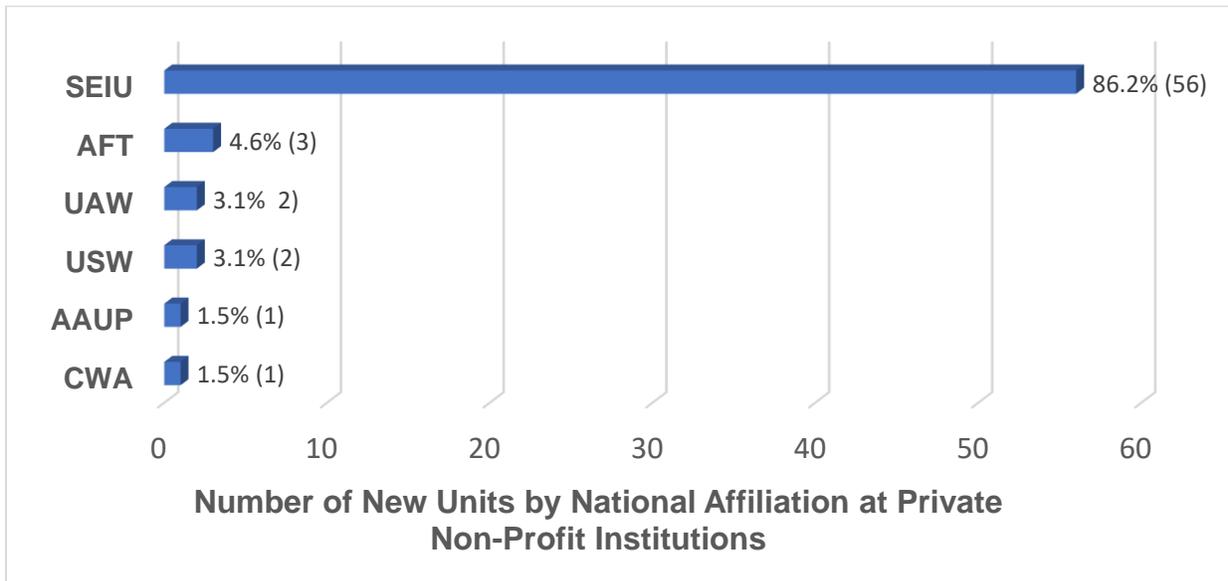


Figure 4: New Units by National Affiliation at Private Non-Profit Institutions Source: Herbert, Apkarian, and van der Naald, Supplementary Directory of New Bargaining Agents and Contracts in Institutions of Higher Education, 2013-2019

However, AAUP, AFT, and NEA remained dominant as the national affiliates for unions representing public sector faculty units. (Figure 5). Separately and jointly, the three traditional academic unions were the national affiliates of 72% (36) of the new public sector units with 52.7% (10,632) of the newly represented faculty.

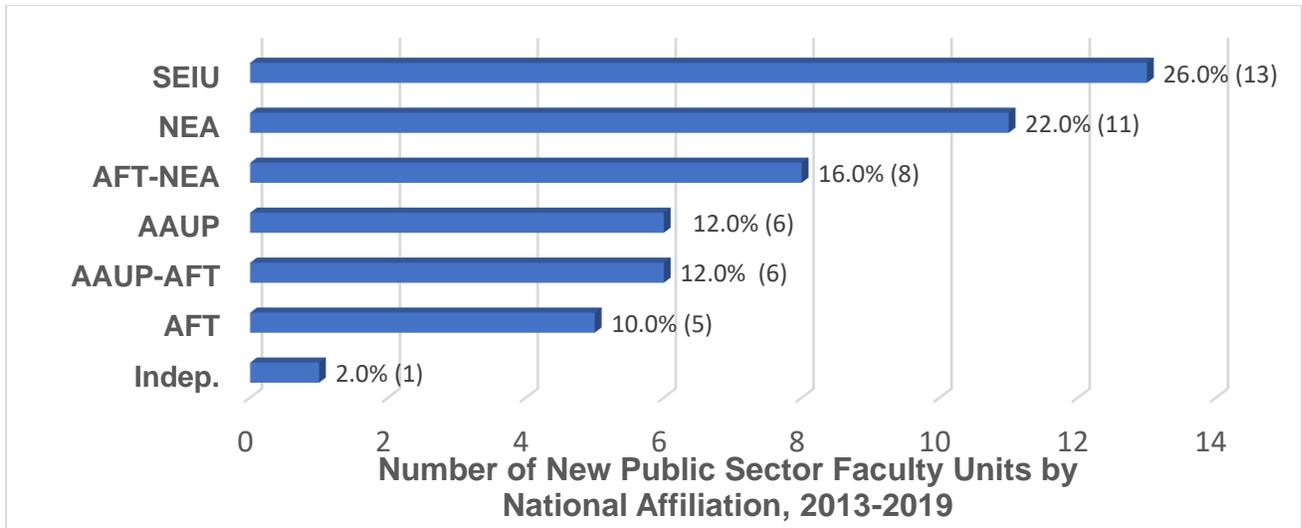


Figure 5: New Public Sector Faculty Units by National Affiliation, 2013-2019 (Source Herbert, Apkarian, and van der Naald, 2020 Supplementary Directory of New Bargaining Agents and Contracts in Institutions of Higher Education, 2013-2019).

3. Growth in Representation of Graduate Assistants and Postdoctoral Scholars

Since 2012, the number of graduate assistant bargaining units grew by 53.3% (16), representing a combined growth of 32.3% (19,627) in newly represented graduate and undergraduate employees.⁸⁶ Most (12) of the new bargaining units were limited to graduate assistants and one-third (4) also included undergraduate assistants.⁸⁷

During the same period, postdoctoral scholar units doubled (3) with a 47% (3,181) increase in represented employees. Additional postdoctoral scholars were represented in new faculty bargaining units and there was a new recognized public sector unit of 4,110 academic

researchers.⁸⁸ In the public sector alone, there was a 16.6% (5) increase in new graduate assistant bargaining units and a 66.6% (2) increase in postdoctoral scholar units.⁸⁹

4. Factors Shaping New Representation of Graduate Assistants and Postdoctoral Scholars

This growth in representation is reflective of higher education's increased reliance on graduate assistants and postdoctoral scholars to teach and research.⁹⁰ A 2018 study by the Economic Policy Institute found that in the ten years ending in 2015, there was a 16.7% increase in the number of graduate assistants employed.⁹¹ Other studies reveal an even greater growth in postdoctoral scholar employment over the past two decades.⁹²

A significant new trend in the period ending in 2019 was the rise in graduate assistant and postdoctoral scholar collective bargaining at private colleges and universities. In 2012, there were no graduate assistant or postdoctoral bargaining units at private universities. By 2020, there were 11 certified or recognized private sector graduate assistant bargaining units and eight negotiated contracts at institutions including Harvard University, NYU, Georgetown University, and Brown University.⁹³ In addition, the first private sector postdoctoral unit was certified at Columbia University along with three new private faculty units with postdoctoral scholars.⁹⁴

The new trend in private sector representation was primarily due to the change in NLRB precedent, which lifted the existing legal barrier to graduate and undergraduate assistant unionization. In 2016, the NLRB ruled in *Columbia University*,⁹⁵ a case brought by the UAW,

that student employees had representation rights under the NLRA. The decision precipitated a massive number of new representation petition filings. Overall, the greatest level of growth (72.6%) in graduate assistant representation took place in the two years following the *Columbia University* decision. This new trend might be halted if the NLRB adopts its current proposed rule to essentially overturn the decision by excluding all student employees from NLRA protections.⁹⁶

Another notable trend in 2013-2019 was the expanded role of non-traditional academic unions in representing student employees and postdoctoral scholars.

In 2012, the UAW represented 43% of the organized graduate assistants and three units of postdoctoral scholars.⁹⁷ Seven years later, the UAW represented 70.2% (13,780) of newly organized student employees in 31.3% (5) of the new units. It also represented three new postdoctoral units and one academic researcher unit.⁹⁸ Although SEIU represented no graduate assistants in 2012, it now represents 37.5% (6) of the new graduate assistant units and 11.7% (2,287) of the newly represented student employees. SEIU also represents two of the four new faculty units with postdoctoral scholars.⁹⁹

The AFT and AAUP, separately and jointly, were the national affiliates of three new graduate assistant bargaining units at Georgetown University, Brown University, and Portland State University, constituting 18.7% (3) of the new units and 15.8% (3110) of newly represented graduate assistants. They also represent two new faculty units that include postdoctoral scholars.¹⁰⁰

Another factor that explains the growth was the decisions by private universities to not contest the certifications of graduate assistant unions following an NLRB election or to voluntarily recognize a union after a non-NLRB election. Other institutions, such as Yale University, the University of Chicago, and Boston College, strongly resisted graduate assistant unionization based on perennial legal arguments and policy concerns that unionization would be detrimental to the educational goals of institutions and could harm faculty-student relationships.¹⁰¹ At Columbia University, it took a seven-day strike in 2018 before the university agreed to commence bargaining for first contracts for its student employees and postdoctoral scholars.

D. Work Stoppages, 2013-2019

There was a total of 52 strikes and one lockout in higher education during the period 2013-2019 among faculty, graduate assistants, and non-academic employees.¹⁰² The largest number of strikes per annum (13) occurred in 2018 and 2019, while the fewest (3) took place in 2014. Figure 6 identifies the total number strikes per annum in higher education beginning in 2012.

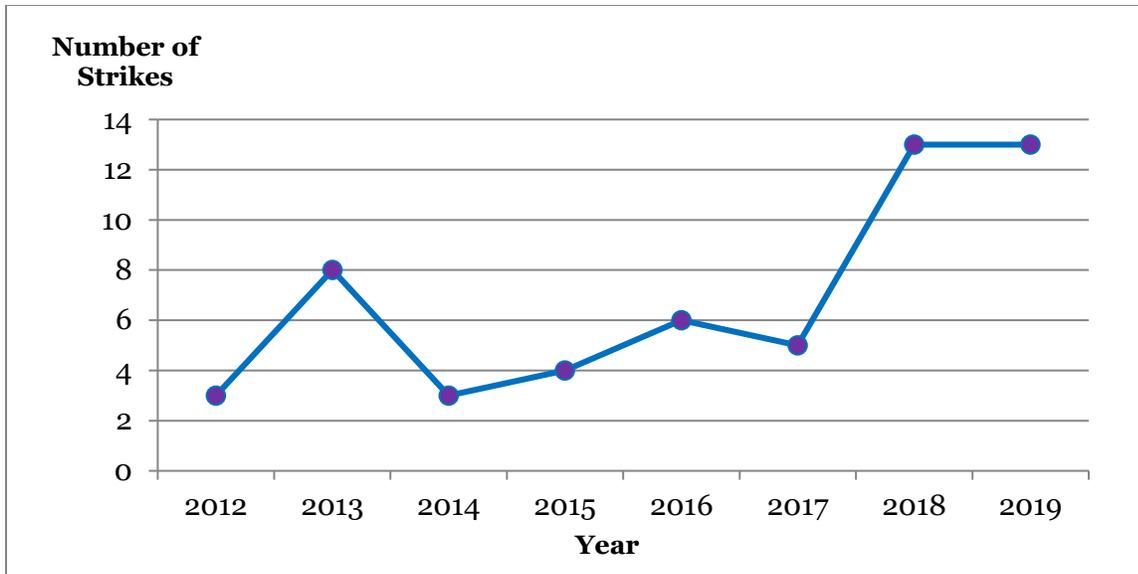


Figure 6: Total Number of Strikes in Higher Education by Year, 2012-2019 Sources Herbert and Apkarian, “You’ve Been with the Professors” and National Center January 2020 E-Note).

Close to 27% (14) of the 52 strikes in the period 2013-2019 involved faculty, although faculty strikes have historically been infrequent, particularly since the mid-1980s.¹⁰³ Seven of the strikes in 2013-2019 included tenured, tenure track, and contingent faculty, six were limited to contingent faculty, and one involved only tenured and tenure track faculty. AAUP and AFT, separately or jointly, were the national affiliates in 50% (7) of the faculty strikes. Although SEIU dominated new contingent faculty representation during the period, it was involved in only one faculty strike. The only faculty strike in 2019 took place at Wright State University, which lasted 20 days and was the longest since 2012.¹⁰⁴ The sole lockout of faculty during in the seven-year period was imposed at Long Island University and it lasted 12 days.¹⁰⁵

There were 11 strikes by graduate assistants in the seven-year period, 7 at public universities and 4 at private institutions. UAW was the national affiliate in over 63% (7) of the graduate assistant strikes and the AFT was the national affiliate in the other four strikes.

E. Collective Bargaining and the COVID-19 Pandemic

Collective bargaining relationships have played a role in resolving issues related to the COVID-19 pandemic. At some institutions, written labor-management agreements were negotiated, which enabled the completion of the Spring 2020 semester and the reopening in the Fall Semester. On other campuses, informal labor-management structures led to quick distribution of information and resolution of issues.

The most common terms in the approximately 200 written labor-management agreements covered compensation, evaluations, telework, technical training, online instruction, workload, sick leave, and health and safety. Other negotiated subjects included: extensions for tenure, post-tenure, promotion, and probation review; intellectual property; access to campus; availability of protective equipment; health insurance; and modifications to academic calendars and syllabi.

The following are four illustrative examples of negotiated agreements reached during the crisis. In October 2019, two new faculty bargaining units, represented by United Academics of the University of New Mexico, were certified at the University of New Mexico. Less than a year later, the university and the faculty union were able to reach pandemic related agreements, although they had not yet completed negotiations for first full contracts.

In August 2020, the parties signed memoranda creating an early retirement incentive program, establishing faculty health and safety protocols, eliminating the use of student evaluations in the Fall semester, permitting a one-year tenure clock extension for certain faculty, and allowing virtual participation in faculty and departmental meetings.¹⁰⁶ In September, the parties issued a joint statement explaining that they wanted to “create a culture of mutual protection” for the reopening in the Fall semester.¹⁰⁷ Among the announced terms was a reduction in the number of full in-person classes, and a series of other health and safety related measures. The following month, they signed another agreement permitting temporary and voluntary work reductions for tenured and tenure track faculty in the Spring 2021 semester to provide “flexibility to dedicate time to family care and other personal responsibilities related to the COVID-19 emergency.”¹⁰⁸

California State University and the California Faculty Association have a much older bargaining relationship, which has included periods of strong disagreements and protests.¹⁰⁹ In response to the pandemic, the university and the union negotiated a series of memoranda in May, June, and August 2020. Those agreements extended their current contract, created voluntary work reduction and early retirement programs, provided additional funding for faculty professional development during the summer, and required consideration of the pandemic’s impact when evaluating coaches.¹¹⁰

Columbia College Chicago, a private sector institution, and its part-time faculty union negotiated written agreements for the Spring 2020 semester. The agreements focused on issues tied with the transition to remote education during the pandemic. They included terms concerning

compensation, intellectual property, performance evaluations, faculty development funding, and limitations on the use of access to online classes by department chairs.¹¹¹

For four decades, the graduate assistants at the Florida State University have been represented by United Faculty Florida-Graduate Assistant Union. During the Spring 2020 semester, the university and union negotiated an agreement for the transition to remote learning. It excluded student evaluations and decreased scholarly productivity from employment evaluations, and provided that the failure to maintain satisfactory student status during the emergency would not be a basis for termination. A second agreement codified terms for the Fall 2020 semester, which included health and safety protocols, telework, and limitations on the use of student evaluations. In the agreement, the university committed that it would not terminate international graduate assistants for performance-related reasons during the pandemic, and it would provide them with assistance in navigating travel and immigration restrictions. Lastly, the agreement created a procedure for graduate assistants to request a funding extension and guaranteed a continuation of their housing benefits.¹¹²

Final Thoughts

This chapter has demonstrated the scope of unionization growth among faculty, graduate assistants, and postdoctoral scholars in the 2013-2019 period. It placed those increases in the context of historical trends in higher education. For decades, collective bargaining growth was primarily a public sector phenomenon. The recent data shows new significant unionization

growth in the private sector among contingent faculty and graduate assistants. Both groups are also central to the documented growth in the public sector.

These trends are the byproducts of various factors: decreased funding for higher education and other external pressures; increased reliance on non-tenure eligible teachers and researchers; changes in applicable laws; and the expanded roles of unions like SEIU and UAW in new campus organizing.

The chapter has highlighted how collective bargaining was modeled on republican democracy, outlined the genuine choices university leaders have in responding to unionization efforts, and presented examples of the role collective bargaining played in 2020 in resolving issues connected to the COVID-19 pandemic.

There is little question that the pandemic is placing a growing financial and operational strain on institutions, faculty, and students. In the face of the growing crisis, institutions have started to announce unilateral austerity measures including layoffs, program cuts, closures, and mergers. Collective bargaining can be an important means for administrators and labor to jointly develop timely solutions responsive to the crisis, but it requires creativity, transparency, compromise, and reexamined priorities and modalities. Conversely, the imposition of unilateral measures in responding to the financial turmoil might lead to new unionization efforts by unrepresented faculty and others on campus seeking to preserve their benefits and privileges or to attain a greater voice in decision-making.¹¹³

The need for labor-management alliances is particularly important at the present time to persuade federal and state policymakers to allocate greater financial support for higher education, and to help stem the tide of growing anti-intellectualism. It would be a fundamental mistake to permit the pandemic to become a justification for the diminution of higher education or the jettisoning of collective bargaining.

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² Kemerer, Frank R. and J. Victor Baldrige. 1976. *Unions on Campus* (San Francisco: Jossey-Bass Publishers), 50-52; Ladd and Lipset, 41-46. Historically, AFT, NEA, AAUP were not the first unions to negotiate collective bargaining agreements for faculty in higher education. In fact, NEA and AAUP initially resisted the concept of faculty unionization and collective bargaining, viewing it as inconsistent with professional status. Herbert, William A. 2017. "The History Books Tell It? Collective Bargaining in Higher Education in the 1940s" *Journal of Collective Bargaining in the Academy*: Vol. 9, Article 3 22-31, n. 138. <https://works.bepress.com/william_herbert/34/> [December 10, 2020].

³ The phrase "industrial union" is not used in this chapter to describe these organizations because the term is antiquated, and its use historically inaccurate. Both before and after changing its name from Building Services Employees International Union (BSEIU) in 1968, SEIU has a long history of organizing and negotiating on campus. Herbert, "The History Books Tell It?" 12-14, n. 73; see also, *County of Genesee and Genesee Community College* 7 NY PERB ¶ 4044 (1974) (SEIU petitioned to represent community college administrators); *Worcester Polytechnic Institute*, 213 NLRB 306 (1974) (SEIU represented college maintenance employees since 1969). Similarly, the UAW has been organizing clerical staff and graduate assistants on campus for close to fifty years. See, *Barnard*

College, 204 NLRB 1134 (1973) (excluding graduate assistants from a UAW proposed bargaining that included clerical staff).

⁴ Jacoby, Susan. 2008: *The Age of American Unreason* (New York, New York.: Pantheon Books).

⁵ Altbach, Phillip, *Harsh Realities: The Professoriate in the Twenty-First Century* in Altbach, Phillip G., Patricia J. Gumpert, and Robert O. Berdahl (eds.). 2011. *American Higher Education in the Twenty-First Century: Social, Political, and Economic Challenges*, Third Edition (Baltimore, Maryland.: Johns Hopkins University Press), 227-28.

⁶ Parker, Kim. 2019. "The Growing Partisan Divide in Views of Higher Education," (Pew Research Center, August 19) <https://www.pewsocialtrends.org/essay/the-growing-partisan-divide-in-views-of-higher-education/> [November 20, 2020].

⁷ Sandel, Michael. 2020. "Disdain for the Less Educated Is the Last Acceptable Prejudice," *NY Times*, Sept. 20, 2020 < <https://www.nytimes.com/2020/09/02/opinion/education-prejudice.html> > [December 1, 2020].

⁸ Hochschild, Arlie Russell Hochschild. 2020. "Unearned Credit: How our meritocratic system fosters inequality and despair," *New York Times Book Review*, Nov. 22, 2020, 19.

<https://www.nytimes.com/2020/09/15/books/review/the-tyranny-of-merit-michael-j-sandel.html> [December 1, 2020].

⁹ Herbert, William A., Jacob Apkarian, and Joseph van der Naald. 2020. *Supplementary Directory of New Bargaining Agents and Contracts in Institutions of Higher Education, 2013-2019* (New York, New York: National Center for the Study of Collective Bargaining in Higher Education and the Professions).

< <http://www.hunter.cuny.edu/ncscbhhep/assets/files/SupplementalDirectory-2020-FINAL.pdf> > [November 25, 2020].

¹⁰ *Directory of Contracts and Bargaining Agents in Institutions of Higher Education*. 1976. (New York New York: National Center for the Study of Collective Bargaining in Higher Education, April)

< <http://www.hunter.cuny.edu/ncscbhhep/assets/files/directory%20april%201976.pdf> > [December 5, 2020];

Douglas, Joel M. with Elisabeth A. Kotch. 1986. *Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education and the Professions* (New York, New York: National Center for the Study of Collective Bargaining in Higher Education, January); Hurd, Richard and Amy Foerster with Beth Hillman Johnson, *Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education in the Professions*. 1996.

(New York, New York.: National Center for the Study of Collective Bargaining in Higher Education, January);

Moriarty, Joan and Michelle Savarese. 2006. *Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education and the Professions* (New York, New York.: National Center for the Study of Collective Bargaining in Higher Education, January); Berry, Joe and Michelle Savarese. 2012. *Directory of U.S. faculty Contracts and Bargaining Agents in Institutions of Higher Education* (New York, New York.: National Center for the Study of Collective Bargaining in Higher Education and the Professions, September)

¹¹ Herbert, William A. and Jacob Apkarian. 2019. "You've Been with the Professors: An Examination of Higher Education Work Stoppage Data, Past and Present" *Employee Rights and Employment Policy Journal* Vol. 23 Iss. 2, Appendix. 277. http://works.bepress.com/william_herbert/43/; National Center Work Stoppage Data Report for Calendar Year 2019. 2020. National Center E-Note (January) < https://myemail.constantcontact.com/January-2020-Newsletter--News--Analysis--and-Updates.html?soid=1102372137664&aid=Rzj0_-PNjz0 > [January 2, 2020].

¹² Garbarino, Joseph W. 1975. *Faculty Bargaining: Change and Conflict* (New York, New York.: McGraw-Hill) 16-18; Ladd and Lipst, 4; Kemerer and Bladridge. 48-49, 19-20.

¹³ Wollett, Donald H., *Issues at Stake*, in Duryea, E.D., Robert S. Fisk and Associates (ed.). 1973. *Faculty Unions and Collective Bargaining* (London: Jossey-Bass, Inc.) 24 ("Collective bargaining is a system of representative government in which members of a body politic (in labor relations parlance, the groupings of jobs constituting the bargaining unit) participate, through a designated organizational representative, in decision-making which affects their working environment—salaries, terms and conditions of employment, and other matters related to this interests as an occupational group").

¹⁴ Quoted in Herbert, William A. and Joseph McCartin. 2019 "Janus's Progeny? A Supreme Court Threat to Majority Rule Looms," *The American Prospect* (March 21) < <https://prospect.org/labor/janus-s-progeny-supreme-court-threat-majority-rule-looms/> > [November 24, 2020].

¹⁵ 29 U.S.C. 151.

¹⁶ *Id.*

¹⁷ 79 Cong. Rec. 7571 < <https://www.govinfo.gov/content/pkg/GPO-CRECB-1935-pt7-v79/pdf/GPO-CRECB-1935-pt7-v79-8.pdf> > [November 25, 2020] While most leaders of industry steadfastly opposed the NLRA, other company officials assisted in the drafting the legislation. Wartman, Rick. 2017. *The End of Loyalty: The Rise and Fall of Good Jobs in America* (New York: Public Affairs) 33.

- ¹⁸ Herbert, William A. and Jacob Apkarian. 2017. "Everything Passes, Everything Changes: Unionization and Collective Bargaining in Higher Education," *LERA Perspectives on Work*, 30.
- ¹⁹ Under some public sector collective bargaining laws, a labor representative can be certified by a labor relations agency through an alternative procedure known as card check. Under a card check procedure, a representative can be selected when bargaining unit majority show support for representation through dues deduction authorization cards or similar written evidence. See, Gely, Rafael and Timothy Chandler, Timothy .2011. "Organizing Principles: The Significance of Card-Check Laws," *Saint Louis University Public Law Review*: Vol. 30, No. 2, 475-516.
- ²⁰ The likelihood of conflicts of interest between full-time and part-time faculty is one reason the NLRB has ruled that they should be in separate bargaining units. *New York University*. 221 NLRB 1148 (1975).
- ²¹ Lieberwitz, Risa L. 1987. Due Process and the LMRDA: An Analysis of Democratic Rights in the Union and at the Workplace, 29 *Boston College Law Review* 21 (December). The federal law was enacted in 1959 with bipartisan support following disclosure of corruption and undemocratic practices in certain unions.
- ²² The availability of alternatives is frequently unknown to university and college leaders because few "have labor relations expertise or decision-making styles conducive to effective institutional responses to union organizing drive." Julius, Daniel J. 2004. "Will Universities Lock Out Students?" *Academe*, Vol. 90, No. 1 (Jan. - Feb), 36. Nevertheless, the choices made, and the actions taken, will reflect on an institution's priorities, pressures, and values.
- ²³ The United States Supreme Court has recognized that "the economic dependence of the employees on their employer" must be considered in determining the lawfulness of employer speech and conduct concerning a representation effort. *NLRB. v. Gissel Packing Co.*, 395 U.S. 575, 617-18 (1969).
- ²⁴ Dullea, Henrick N. 2003. How Cornell Beat a Union by Letting TA's Vote. *The Chronicle of Higher Education*, January 17 < <https://www.chronicle.com/article/how-cornell-beat-a-union-by-letting-tas-vote/> >. [January 1 2021].
- ²⁵ University of Michigan Board of Regents. 2020. "Board Resolution Regarding Employer Neutrality, Cooperative Determination and Recognition of Bargaining Units, and Notification of Agreements" (June 25, 27-33) < <https://regents.umich.edu/files/meetings/07-20/2020-07-1-1.pdf> >. [November 27, 2020].
- ²⁶ Herbert, William A. 2017. "The History Books Tell It? Collective Bargaining in Higher Education in the 1940s" *Journal of Collective Bargaining in the Academy*: Vol. 9, Article 3, 4-9. < https://works.bepress.com/william_herbert/34/ > [December 10, 2020].
- ²⁷ Herbert, "The History Books Tell It?" 26-36. In comparison, Columbia University thwarted organizing efforts by its non-academic employees in the 1940s and 1950s through successful litigation to have it exempted from state and federal collective bargaining laws. *Trustees of Columbia University*, 295 N.Y. 605 (1945); *The Trustees of Columbia University in the City of New York*, 97 NLRB 424 (1951).
- ²⁸ Nevada System of Higher Education, Professional Employee Collective Bargaining Regulations, Codification of Board Policy Statements, Chapter 4 < <http://system.nevada.edu/tasks/sites/Nshe/assets/File/BoardOfRegents/Handbook/T4CH04ProfessionalStaffCollectiveBargainingRegulations.pdf> > [November 25, 2020]
- ²⁹ Herbert, Apkarian, and van der Naald. 2020 Supplementary Directory, Table 5.
- ³⁰ Logan, John. 2006. "The Union Avoidance Industry in the USA," *British Journal of Industrial Relations*, 44:4 (December) 651-675; Logan, John. 2020. "The labor-busting law firms and consultants that keep Google, Amazon and other workplaces union-free," *The Conversation* (Aug. 24) <https://theconversation.com/the-labor-busting-law-firms-and-consultants-that-keep-google-amazon-and-other-workplaces-union-free-144254> [November 29, 2020]
- ³¹ Mishel, Lawrence, Lynn Rhinehart, and Lane Windham. 2020. "Explaining the Erosion of Private-Sector Unions" (Washington, D.C. Economic Policy Institute (November 18) <<https://www.epi.org/unequalpower/publications/private-sector-unions-corporate-legal-erosion/?s=03>>
- ³² Hendrickson, Robert H., Jason E. Lane, James T. Harris, and Richard H. Dorman. 2013. *Academic Leadership and Governance of Higher Education: A Guide for Trustees, Leaders, and Aspiring Leaders of Two- and Four-Year Institutions*, (Sterling, Virginia.: Stylus Publishing Inc.).
- ³³ McCartin, Joseph A. 2016. "Bargaining for the Common Good," *Dissent* (Spring) < <https://www.dissentmagazine.org/article/bargaining-common-good-community-union-alignment> > [December 1, 2020]
- ³⁴ Julius, Daniel J. and Nicholas DiGiovanni, Jr. 2016. "What Factors Affect the Time It Takes to Negotiate Faculty Collective Bargaining Agreements?" *Journal of Collective Bargaining in the Academy* Vol. 8, No. 6, 5. < <https://thekeep.eiu.edu/cgi/viewcontent.cgi?article=1649&context=jcba> >
- ³⁵ Bureau of Labor Statistics, TED: The Economics Daily, Union membership rate 10.5 percent in 2018, down from 20.1 percent in 1983 (Jan. 25, 2019). <https://www.bls.gov/opub/ted/2019/union-membership-rate-10-point-5-percent-in-2018-down-from-20-point-1-percent-in-1983.htm> [January 1, 2021].

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- ³⁶ Schuster, Jack H. and Martin J. Finkelstein, *The American Faculty: The Restructuring of Academic Work and Careers*. 2006. (Baltimore, Maryland. Johns Hopkins University) 40-41, 191. Bowen and Tobin, *Locus of Authority*, 153. The movement in higher education labor relations toward a two-tiered system with low-wage temporary labor force is not unique. See, Hyman, Louis. 2018. *Temp: The Real Story of What Happened to Your Salary, Benefits, and Job Security* (New York, New York.: Viking Press); Wartman, *The End of Loyalty*.
- ³⁷ Kemerer and Baldrige. 64-67. There are, of course, a multitude of other external and internal drivers identified by earlier scholars, but wages, benefits and job security are among the most important. Kemerer and Baldrige, pp. 38-69. See also, Ladd, Jr., Everett Carll, and Seymour Martin Lipset. 1973. *Professors, Unions, and American Higher Education*. (Washington, DC: The American Enterprise Institute for Public Policy Research) 25-46.
- ³⁸ Garbarino, *Faculty Bargaining: 56-57*. Herbert and van der Naald, “A Different Set of Rules?” 13-19
- ³⁹ *Directory of Contracts and Bargaining Agents in Institutions of Higher Education*. 1976. (New York New York: National Center for the Study of Collective Bargaining in Higher Education, April), 1, Chart 1.
< <http://www.hunter.cuny.edu/ncscbhep/assets/files/directory%20april%201976.pdf> > [December 5, 2020]
- ⁴⁰ Douglas, Joel M. with Elisabeth A. Kotch. 1986. *Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education and the Professions* (New York, New York: National Center for the Study of Collective Bargaining in Higher Education, January), 105, Table 4.
- ⁴¹ Hurd, Richard and Amy Foerster with Beth Hillman Johnson, *Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education in the Professions*. 1996. (New York, New York.: National Center for the Study of Collective Bargaining in Higher Education, January), 119, Table One.
- ⁴² Moriarty, Joan and Michelle Savarese. 2006. *Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education and the Professions* (New York, New York.: National Center for the Study of Collective Bargaining in Higher Education, January), 89-90. Table 9a.
- ⁴³ Moriarty and Savarese, 86-87, Tables 9a and 9b. The study reported nine additional public sector units at higher education institutions with both 2 and 4-year campuses. Table 9a.
- ⁴⁴ Berry, Joe and Michelle Savarese. xi. Chart 1a; Herbert, Apkarian, and van der Naald, 14; Table 6.
- ⁴⁵ Berry and Savarese, xi. Chart 1a; Herbert, Apkarian, and van der Naald, 14; Table 6.
- ⁴⁶ Berry and Savarese, xiv, Chart 9.
- ⁴⁷ Herbert and van der Naald, “A Different Set of Rules?” 9-10.
- ⁴⁸ Herbert, Apkarian, and van der Naald, 20.
- ⁴⁹ Herbert, Apkarian, and van der Naald, Table 4.
- ⁵⁰ Julius, Daniel J. and Patricia J. Gumport. 2003. “Graduate Student Unionization: Catalysts and Consequences.” *The Review of Higher Education*, Vol. 26, no. 2, pp. 187-216.
- ⁵¹ Berry and Savarese, xii, Chart 8; Herbert, Apkarian, and van der Naald Tables 4 and 6.
- ⁵² Ladd, Jr., and Lipset. *Professors, Unions, and American Higher Education* 16 (“Faculty employed in the lower tier of academe—in terms of scholarly prestige, financial resources, and economic benefits—and those who are in the lower ranks, lack tenure, and who are younger, are much more likely to favor organized collective action.”). DeCew, 13; Altbach, 242.
- ⁵³ McNicolas, Celine, Margaret Poydock, Julia Wolfe, Ben Zipperer, Gordon Lafer, and Lola Loustaunau. 2019. “Unlawful” (Washington, D.C. Economic Policy Institute, December) < <https://www.epi.org/publication/unlawful-employer-opposition-to-union-election-campaigns/> > [December 11, 2020].
- ⁵⁴ 444 U.S. 672 (1980).
- ⁵⁵ DeCew, 44-49.
- ⁵⁶ Shaw, Patrick. 2006. *Prospects for Full-Time Faculty Organizing at Private Universities and Colleges*, in Ernst Benjamin and Michael Mauer (eds.), *Academic Collective Bargaining* (Washington D.C.: American Association of University Professors and Modern Library Association), 78-96; DeCew, 45,49
- ⁵⁷ National Labor Relations Board Freedom of Information Act Responses, NLRB Case No. LR-2017-0964 (May 11, 2017) and NLRB Case No. 2020-0423 (June 1, 2020) (in possession of author).
- ⁵⁸ Shaw, 91.
- ⁵⁹ *National Labor Relations Board v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979); *University of Great Falls v. National Labor Relations*, 278 F.3d 1335 (D.C. Cir. 2002).
- ⁶⁰ Herbert, Apkarian, and van der Naald, 14, footnote 8.
- ⁶¹ Donn, Clifford B. and Brenda J. Kirby, “Research Panel, An Inside Look at an Adjunct Faculty Unionization Campaign: The Case of Le Moyne,” *Journal of Collective Bargaining in the Academy*, (April 2018) Art. 47, 5.
- ⁶² Quoted in Herbert and van der Naald, “A Different Set of Rules?” 7.
- ⁶³ Herbert and van der Naald, “A Different Set of Rules?” 10.
- ⁶⁴ Herbert, Apkarian, and van der Naald, 19, Chart 8.

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- ⁶⁵ Herbert, Apkarian, and van der Naald, 17, Table 3.
- ⁶⁶ Herbert, Apkarian, and van der Naald, 17-19, Chart 7.
- ⁶⁷ Bowen and Tobin, 152
- ⁶⁸ Schuster and Finkelstein, 40-41; Bowen and Tobin, 153; Kezar and DePaola, “Understanding the Need for Unions: Contingent Faculty Working Conditions and the Relationship to Student Learning; 30; Scott, Daniel and Adrianna J. Kezar. 2019. “Intergroup Solidarity and Collaboration in Higher Education Organizing and Bargaining in the United States” *Academic Labor: Research and Artistry*: Vol. 3, Art. 10, 30.
- ⁶⁹ Berry, Joe. 2005. *Reclaiming the Ivory Tower: Organizing Adjuncts to Change Higher Education* (New York, New York.: Monthly Review Press).
- ⁷⁰ Herbert, Apkarian, and van der Naald, 15-16, footnotes 10 and 12.
- ⁷¹ AAUP Report, “The Inclusion in Governance of Faculty Members Holding Contingent Appointments” (January 2013) < <https://www.aaup.org/report/inclusion-governance-faculty-members-holding-contingent-appointments> > [January 4, 2021].
- ⁷² Wertsch, Nicholas M. Wertsch and Joseph A. McCartin, *A Just Employment Approach to Adjunct Unionization: The Georgetown Model* in Kim Tolley. (ed.), 2018. *Professors in the Gig Economy: Unionizing Adjunct Faculty in America* (Baltimore, Maryland. Johns Hopkins University Press) 87-103.
- ⁷³ Tolley, Kim, Marianne Delaporte, and Lorenzo Giachetti, *Unionizing Adjunct and Tenure-Track Faculty at Notre Dame de Namur University* in Kim Tolley (ed.), 115-116
- ⁷⁴ Herbert, Apkarian, and van der Naald, 14.
- ⁷⁵ Gregory, David L. 2016. Is Religious Liberty the Ultimate Management Prerogative? Some Reflections on Pacific Lutheran University and Service Employees International Union, Local 925, 33 *Hofstra Labor & Emp. Law Journal* 207 (Spring) 238. See also, Gregory, David L. & Charles J. Russo. 1999 “The First Amendment and the Labor Relations of Religiously-Affiliated Employers,” 8 *Boston University Public Interest Law Journal* 449, n. 40 (Spring)
- ⁷⁶ *Duquesne University of the Holy Spirit v. National Labor Relations Board*, 947 F.3d 824 (D.C. Cir., 2020), *pet for en banc rev denied*, 975 F.3d 13 (2020).
- ⁷⁷ The complex issues relating to unionization at religiously affiliated institutions was the subject of a recorded discussion at the 2015 annual conference of the National Center for the Study of Collective Bargaining in Higher Education and the Professions. The panel was titled “Impact of Pacific Lutheran on Collective Bargaining at Catholic Colleges and Universities” and the participants were: Nicholas P. Cafardi, Dean Emeritus & Professor of Law, School of Law, Duquesne University, Michael P. Moreland, Vice Dean & Professor of Law, Villanova University School of Law. Maryann Parker, Associate General Counsel, SEIU, Clayton Sinyai, Director, Catholic Employer Project and David L. Gregory, Dorothy Day Professor of Law & Executive Director, Center for Labor & Employment Law, St. John’s University School of Law, Moderator < <http://silo.hunter.cuny.edu/xgIL0KRt>>
- ⁷⁸ Hurd, Richard W. Hurd. Ruth Milkman and Lowell Turner. 2003. Reviving the American Labour Movement: Institutions and Mobilization, *European Journal of Industrial Relations* 9(1), 99-117.
- ⁷⁹ Moriarty and Savarese, 87, Table 7b.
- ⁸⁰ Herbert, Apkarian, and van der Naald, 16, 78, Table 6; Berry and Savarese, 11, Table 2.
- ⁸¹ Herbert, Apkarian, and van der Naald, 17, Chart 4.
- ⁸² Herbert, Apkarian, and van der Naald, Table 2.
- ⁸³ DeCew, 18-25.
- ⁸⁴ Herbert, Apkarian, and van der Naald, Table 2.
- ⁸⁴ Herbert, Apkarian, and van der Naald, 18-19, Chart 7
- ⁸⁵ See, Greenhouse, Steven. 2019. *Beaten Down, Worked Up: The Past, Present, and Future of American Labor* (New York: Anchor Books) 232-252.
- ⁸⁶ Herbert, Apkarian, and van der Naald, 20-21, Chart 14, Table 5.
- ⁸⁷ Herbert, Apkarian, and van der Naald, 20-21, Chart 14, Table 5a.
- ⁸⁸ Herbert, Apkarian, and van der Naald, 20, Tables 2 and 4.
- ⁸⁹ Herbert, Apkarian, and van der Naald, 20-24, Tables 4 and 5
- ⁹⁰ Kezar, DePaola, and Scott, 53-67.
- ⁹¹ Kroeger, Teresa, Celine McNicholas, Marni von Wiplert & Julia Wolfe. 2018. *The state of graduate student employee unions: Momentum to organize among graduate student workers is growing despite opposition*. Washington, DC: Economic Policy Institute <<https://www.epi.org/publication/graduate-student-employee-unions/>> [December 10, 2020].
- ⁹² Camacho, Sayil and Robert A. Rhoads, “Breaking the Silence: The Unionization of Postdoctoral Workers at the University of California,” *Journal of Higher Education*, Vol. 86, No. 2 (March/April 2015) 299.

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- ⁹³ Herbert, Apkarian, and van der Naald, Table 5 An empirical analysis of the provisions in 42 collective bargaining agreements applicable to student workers at public and private institutions in 2019 is contained in Herbert and van der Naald, “A Different Set of Rules” 20-28.
- ⁹⁴ Herbert, Apkarian, and van der Naald, 20, Tables 2 and 4.
- ⁹⁵ *The Trustees of Columbia University in the City of New York*, 364 NLRB No. 90 (2016).
- ⁹⁶ National Labor Relations Board, Jurisdiction-Nonemployee Status of University and College Students Working in Connection with Their Studies, 84 Fed. Reg. 49691-01 (Proposed Sept 23, 2019) (to be codified at 29 C.F.R. § 103).
- ⁹⁷ Berry and Savarese, xii, Charts 7 and 8; Herbert, Apkarian, and van der Naald, Charts 10 and 11
- ⁹⁸ Herbert, Apkarian, and van der Naald, Tables 4 and 5.
- ⁹⁹ Herbert, Apkarian, and van der Naald, 20, 22, Tables 4 and 5.
- ¹⁰⁰ Herbert, Apkarian, and van der Naald, 20, 22, Chart 10.
- ¹⁰¹ *The Trustees of Columbia University*, 9-13. See also Julius, “Will Universities Lock Out Students?” 36 (“Institutions have greeted graduate student unionization by seeking legal counsel often familiar with hard-nosed “no representation” campaigns and lockouts. Not only are decision-making structures inadequate to manage unionization, the arguments used to dampen employee enthusiasm - that unions destroy professionalism, harm teacher-mentor relationships, lead to increased litigation costs, damage learning environments, and result in greater conflict - are also largely unsubstantiated (and not persuasive to state and federal labor boards.”) Opposition to graduate assistant unionization can also come from faculty. See, Harvey, Marcus. 2006. “Graduate Employee Organizing and Representation” in Benjamin, Ernst and Michael Mauer, ed., *Academic Collective Bargaining*. Washington DC and New York: American Association of University Professors and Modern Language Association, 141 (“Graduate employee activists can experience profound disillusionment when respected professors, noted liberals and Marxists among them, fall in line with the forces marshalling in opposition to unionization.”)
- ¹⁰² Herbert and Apkarian. “You’ve Been with the Professors; National Center Work Stoppage Data Report for Calendar Year 2019.
- ¹⁰³ Herbert and Apkarian. “You’ve Been with the Professors. 256-260.
- ¹⁰⁴ National Center Work Stoppage Data Report for Calendar Year 2019.
- ¹⁰⁵ Herbert and Apkarian. “You’ve Been with the Professors. 268-270.
- ¹⁰⁶ University of New Mexico and United Academics of the University of New Mexico. 2020. Memoranda of Understanding (August 19); University of New Mexico and United Academics of the University of New Mexico. 2020. Memorandum of Agreement “Voluntary Retirement Incentive Option-Faculty” (August 19).
- ¹⁰⁷ Holloway, James Paul and United Academics of the University of New Mexico. 2020. Covid Joint Communication (September 3) < <https://provost.unm.edu/faculty-unionization/docs/joint-comm-docs/covid-joint-communication-09-2020-03.pdf> >
- ¹⁰⁸ University of New Mexico and United Academics of the University of New Mexico. 2020. “Temporary and Voluntary Reduction (TVR) in Full-Time Equivalent (FTE) for Spring 2021 for Unit 1 Faculty” (October 21).
- ¹⁰⁹ Hoffman, Elizabeth and John Hess, “Organizing for Equality within the Two-Tier System” .2014. Keith Hoeller (ed.), *Equality for Contingent Faculty: Overcoming the Two-Tier System* (Nashville, Tennessee: Vanderbilt University Press) 9-27.
- ¹¹⁰ California Faculty Association and California State University. 2020. Memorandum “Extension of Current Collective Bargaining Agreement,” (May 20); California Faculty Association and California State University. 2020. “Summer 2020 Professional Development and Training for Faculty as a Result of COVID-19 (May 22); California Faculty Association and California State University. 2020. “Impacts related to COVID-19 on Operations” (June 5); California Faculty Association and California State University. 2020. “Impacts related to COVID-19 on Coach Evaluations” (August 4). (in possession of author)
- ¹¹¹ Columbia College Chicago and Columbia College Faculty Union .2020. “COVID-19 Pandemic Phase 1” (March 26); Columbia College Chicago and Columbia College Faculty Union, .2012. “COVID-19 Pandemic Phase 2”; Columbia College Chicago and Columbia College Faculty Union. 2020. “Chair Access to Canvas” (April 8).
- ¹¹² UFF-FSU-GAU and FSU-BOT. 2020. “COVID-19 Health Emergency” (September 28). (in possession of author)
- ¹¹³ Kemerer and Baldrige, 64-67.