COLLECTIVE BARGAINING IN HIGHER EDUCATION AND THE HAWAII BARGAINING STATUTE: SOME COMMENTS

John A. Thompson

Collective bargaining in institutions of higher education is an issue which has generated much smoke and some fire. Questions about the appropriateness of this method of decisionmaking to university and college faculties have been debated endlessly (usually by professors who have never been involved in, or have never been to, a bargaining session). Issues of whether unions and faculty senates, or other governing groups, can co-exist; who represents whom or what, and who should pay the costs of operating an advocate organization are some of the concerns of those who are analyzing the bargaining scene.

The Setting for Bargaining in Higher Education

To effectively examine the issues stated above, three assumptions about universities, in general, and the system of public higher education in Hawaii, in particular, must be made.

Assumption One: That the character of higher education systems has changed over the past twenty-five years because of the tremendous growth in students, faculties, facilities, and, most important, costs. With these changes have come demands for greater efficiency in operations by students, administrators and the general public. The predictable response by boards of regents has been to institute management practices geared toward, but not often successful in, achieving these ends.

Assumption Two flows from *One:* That the "new" management practices will tend to stress centralized over dispersed decisionmaking, plus greater demands for accountability and uniformity at the expense of faculty uniqueness.

Assumption Three: That faculty governance structures, based upon influence over decentralized administrative jurisdiction, may not be entirely suitable in dealing with a more centralized and distant administration.

If these assumptions are correct, then it follows that the faculty will need to become its own advocate and centralize its responses to management. No longer can faculty rely on a governance structure which is, at best, underfinanced; no longer can faculty rely on what little finance there is coming from management to effectively defend its interests.

The faculty cannot expect the administrators of the university to be the sole protectors of its image to the legislature and the public. It must develop an action suitable to deal, on an equal footing, with administration both within the university and at the state level, while better portraying its achievements to the public.

Perhaps if faculties approach the onset of unions in that light, rather than equating them with the traditionally militant private sector trade unions, the shock will not be as great. Faculty unions are not "somebody else"—they are "you"—and the control and direction are in the hands of the membership.

Union-Senate Relation

Unions and faculty senates can and should exist together, but each should have a different function. This writer does not believe unions should invade domains such as student-faculty relationships, grading policies, ethics, approval of curricula and courses, and other academic matters. Likewise, faculty senates are not properly equipped to deal with wage, hours, and conditions of employment. The University of Hawaii Professional Assembly (UHPA), and the faculty senates have entered into an agreement which defines these boundaries and delegates to each group those tasks to which it is uniquely qualified. Decisions of this type will stop the sniping and recriminations which have characterized the advent of faculty unions on some other university campuses.

Some university faculty members have steadfastly refused to accept this new era in faculty-administration relationships. Major issues appear to be the propriety of using group-action techniques,

and the movement of faculty groups into the political realm. Another issue is related to the scope of items to be bargained; for instance, should university working conditions be reduced to *writing* in a contract? (The concern is that if they are *written* somehow the faculty will lose something—generally, undefined—that they had before.) Still another issue is whether the faculties should give up the time-honored volunteer method of dealing with faculty problems and replace it with a paid professional staff.

The Collective Bargaining Law in Hawaii

While academics ponder these issues they are not likely to investigate other governmental, or even private sector, jurisdictions to see if these issues have been successfully addressed in those places. For, indeed, discourse has occurred on these and kindred subjects by other unions for at least thirty years. The upshot of these discussions have been decisions made in the legislative halls, rather than the ivory towers. In approximately one-half of the states in the country there are statutes which allow and encourage bargaining by faculties, and more than 20 percent of the publicly-supported campuses of higher education are involved in this form of bilateral decisionmaking. Thus, the statute becomes the embodiment of the philosophy of the state and the unions as to the working relationship which will prevail between "government" and its employees. The State of Hawaii has mandated a set of relationships, by virtue of Chapter 89 of the *Hawaii Revised Statutes,* and some further attention to this important document by the university faculty seems apropos.

Act 171, which, when it was enacted became Chapter 89, 1 through 20, of the statutes, is a most interesting and complex document. After its passage it was hailed by many as the "model statute" on collective bargaining in the public sector, because it embraced many of the concepts which had been hammered out by thirty years of struggle in the private sector. Doctrines such as exclusivity of representation, dues check-off, grievance resolution, the right to strike, and statements of prohibited practices were included. In addition, three new and somewhat innovative ideas were stated: mandatory payment of service fees by the covered employees, pre-determination of the appropriate bargaining units, and the right to request binding arbitration on unsettled contract proposals (after certain procedural steps have been exhausted).

In an effort to reconcile collective bargaining with both the civil service system and a strong executive concept, an exceedingly restrictive exclusion clause [89-9(d)] was written into the law. This section of the statute is often referred to as the "management rights" clause, and reads as follows:

> Excluded from the subjects of negotiations are matters of classification and reclassification, retirements benefits and the salary ranges and the number of incremental and longevity steps now provided by law, provided that the amount of wages to be paid in each range and step and the length of service necessary for the incremental and longevity steps shall be negotiable. The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principles or the principle of equal pay for equal work pursuant to sections 76-1, 76-2, 77-31 and 77-33, or which would interfere with the rights of a public employer to (1) direct employees; (2) determine qualifications, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reasons; (4) maintain efficiency of government operations; (5) determine methods, means, and personnel by which the employer's operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergencies [L 1970, c171, pt of §2]

"89-9(d)" may be characterized as a "model clause" but only by those whose orientation is to severely limit bilateral decisionmaking between management and employee. The legislature has seen fit, also, to further circumscribe bargaining by enacting two recent amendments. The first, Act

31, makes the state health fund (medical insurance, dental plan, and life insurance) non-negotiable. The second, Act 164, says that in any fiscal year that a salary increase is bargained there shall be no normal incremental step raise awarded.

Some Recommendations

Thus Chapter 89, as it is presently constituted, presents somewhat of an anomaly as far as bargaining in higher education is concerned. The external trappings are these, i.e., service fee, exclusivity, and the right to proceed in prohibited practice if management either fails to bargain in good faith or does not administer the contract fairly. The "guts" of bargaining, which is the "scope of negotiations," is more severely curtailed than in other state statutes.

The writer would recommend two major modifications to Chapter 89. First, that section 9(d) be eliminated or changed radically. The State is the most powerful employer in Hawaii. It is, in effect, a monopoly since public-sector employees have no other jurisdiction in which to apply for a job. It has far greater financial resources, and is not plagued with the concern of making a profit as a private-sector corporation must. Yet the state and county administrators defend 89-9(d) as essential to protect the State's interest in its right to manage.

Nevertheless, in the private sector, under the National Labor Relations Act or the Hawaii Employment Relations Act, there are no statutory provisions for management rights. Private-sector employers do not find it necessary to hide behind a management rights clause in the statute, as the public-sector management claims it must, in spite of the fact that the public-sector management represents one of the largest and most powerful employers. Usually, private-sector contracts include a negotiated management rights clause. Clearly unions in the private sector do not want to be "managers," do not want to take away basic management rights such as to hire, to fire, and to promote. The public-sector unions too are willing to negotiate management rights clauses in contracts.

Forty years of experience in private-sector negotiations, without statutory management rights clauses, has shown that management, no matter how small or large, can negotiate management rights clauses in its contracts.

Experience in public-sector bargaining in Hawaii has shown that management rights clauses have interfered in the good faith negotiation process between management and union. It is, as shown in the private sector, clearly an unnecessary and very expensive interference. For some unions that issue has done more than any other single element to polarize their members against management. And this is still happening as management is permitted to continually raise the spectre of non-negotiability. This issue is one conflict that is unnecessary.

The second recommendation is that the service fee be collected on a percentage base rather than pro-rata as is now done. At present each faculty member pays the same fee. This seems unfair since the effect of collecting the $108 service fee from an employee making $10,000 a year is clearly greater than collecting from another earning $35,000. The present system is highly regressive. While a percentage base would still have regressive features, they would not be as severe as they are in the present system. This would make faculty more aware of the union and would create greater equity among all ranks and between the community colleges and four-year campuses.

Conclusion

Faculty unions are a new phenomena, less than seven years old. They will grow rapidly in the next five years and will encompass nearly all universities, just as collective bargaining has among public-school teachers. It behooves faculty to put aside old prejudices and recognize the changing order of faculty-administration relationships. Likewise, it behooves unions to fight for statutes which will promote a fair and equitable bargaining climate for Hawaii. The two recommendations to the present statute suggested in this article will do much to create such a climate.

John A. Thompson is the President of the University of Hawaii Professional Assembly and has served as the chief negotiator in the latest contract talks between the University of Hawaii and the Assembly. He is a Professor and Chairman of the Department of Educational Administration in the College of Education.