Perspective on the controversies that have erupted over academic collective bargaining and its impact on academic government.

faculty unionism and university governance

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> The governing body of a university makes no attempt to control its professors and instructors as if they were its servants. By practice and tradition, the members of the faculty are masters and not servants.—Justice Cardozo (quoted by McHugh, 1971, p. 70).

> The developments of the next several years under faculty collective bargaining should indicate whether collective bargaining will alter the traditional role of the faculty or whether the faculty will alter the traditional concept of collective bargaining.—Vice-Chancellor Bernard Mintz, The City University of New York (1971, p. 124).

the shared authority model

Academicians have not, as yet, done much serious work on governmental processes in academe. There is general agreement—not just in academic novels—that universities constitute a political sys-

tem; the decisions which universities make for their "internal life" clearly reflect the kinds of political judgments and jurisdictions normally exercised by governmental bodies of or within modern states (see, for example, Moodie and Eustace, 1971, p. 295). But there is an amazing paucity of systematic thought, let alone empirical research, on conceptual models of academic decision making.

A sort of consensus has developed on the merits of the so-called shared authority model, a model which has been depicted in the *Statement on Government of Colleges and Universities* (1966). The legitimacy of this landmark Statement is supported by its adoption in 1966 as the official governance model of the American Association of University Professors and by its endorsement, somewhat more hesitantly perhaps, by the American Council on Education and the Association of Governing Boards of Universities and Colleges. The 1966 Statement posits that decision making in the university requires *both* the full-time efforts of professionalized bureaucrats or bureaucratized professionals (a component called, rather misleadingly, the administration) and the part-time but intensive governance participation of the faculty, with lesser roles for the trustees and the students. As Sanford Kadish, former AAUP president, has observed, the model put forth by the 1966 Statement exists nowhere perfectly, "but it has tended to be the mode of *rapprochement* between bureaucracy and professionalism in institutions of higher education to which faculties have traditionally aspired" (1968, p. 163). Even if some members of administrations and boards of trustees have not seemed overly enthusiastic in their "aspiration" to this model, many of them have applied its principles in their actual governance relationships with faculties—as much conventional wisdom and some empirical investigation suggest. (See, for example, Deegan and Mortimer, 1970; Mason, 1972, pp. 91-174; McConnell and Mortimer, 1971; and Mortimer, 1970.)

The shared authority model presents an aspiration. Yet its supporters also claim for it inherent, realistic applicability because of what the 1966 Statement calls the "variety and complexity" of the tasks performed by academic institutions and the "inescapable interdependence" particularly between the administration and the faculty, and between these two groups and the trustees. Certain crucial tasks—such as teaching, evaluating student performance, curriculum planning, and deciding on faculty status—can most competently be performed by the faculty; other important decision-making situations require the competence or full-time effort of the ad-

ministration. Shared authority is said to be the only effective basis for operating an academic enterprise; all other ways would produce unprofessional, illegitimate results, at least in the long run.

other models

Acceptance of the shared authority model leads to distrust of certain other models. The *hierarchical model* of the governmental bureaucracy, the business corporation, or the armed forces is considered completely out of place where the most sensitive and crucial decisions—those pertaining to teaching and research—are made essentially "down" at the level of the "assembly line" by the individual professor in his classroom, study, or laboratory. As Logan Wilson, the long-time president of the American Council on Education, once put it, the differences between the professor and the administrator are "more analogous to those between the infantry officer and the artillery officer than to those between the captain and the general" (quoted in Mason, 1972, p. 3. Note also Corson, 1960, pp. 129, 130; and Clark, 1961, pp. 300-301). In the hierarchical structure the "higher-up" commands legitimately because he is assumed to know more about the organization's business: this is nowhere less true than in the university. Equally inappropriate for academic decision making, from the point of view of shared authority, is the *interest group or political model.*

> Most issues of university policy are questions requiring qualitative judgments rooted in values and principles. Such questions cannot readily be broken down into component units over which highly politicized interest groups can bargain. . . . To pursue university policy as a task of trading off the interests of competing groups . . . [obscures] the special character of a university [Foote, Mayer, and Associates, 1968, p. 18].

As Dallas Sands observed, it is "invidious" to reach academic decisions "on the balance of partisan self-interest . . . rather than by the balance of reason and persuasion"—as if academic components "were political constituencies to which the one-man one-vote rule should apply" (1971, p. 175). Not only the political but more specifically the *democratic model* is seen as being in conflict with shared authority. The Berkeley faculty study stressed this point:

> A university is not a natural democracy composed of members each of whom is distinguished by an equal claim to power; it is a highly artificial community deliberately arranged so that the educational relationships among the members constitute the starkest kind of contrast to relationships based on power.... Qualitative distinctions... [must be made constantly] not only concerning ideas, but also concerning individual achievements [Foote, Mayer, and Associates, 1968, p. 80].

In many important respects the academic decision-making process of the shared authority model does not resemble a democratic system, and mere majoritarianism seldom has any place in it.

It is hardly surprising that shared authority should appear in very crass contradiction indeed to the *collective bargaining model* where employers and employees bargain and clash in conflicts of interests which are frequently irreconcilable and can only be resolved by contests of force, "brute" or otherwise. Basic "production point" arguments are easily marshalled to prove the "regressive" aims of labor unions as compared to faculty aims under shared authority.

> Whoever heard of the union in industry helping to choose... the president, the plant superintendent, or the shop foreman? Do unions in industry decide what should be produced, what raw materials should be bought, or what processes should be used? The traditional structure of the university is that faculty members have a role... that reaches far beyond even the wildest dreams of the most radical unions [Clyde Summers, as quoted by Sands, 1971, p. 156].

Nevertheless, it is the collective bargaining model which currently is providing the most serious challenge to shared authority. Has the economic recession in academe, the sudden transition from the fat years to this period of Nixonian privation, simply led to the instant borrowing of an "alien" model which apparently has worked well in private industry and even in public employment? Or has the model of shared authority been found to lack effectiveness on so many campuses that a drastic change of model became necessary? Or is it assumed now that the two contrasting models can, after all, be applied at the same time and place without overly great

injury to the basic principles and strategies of either shared authority or collective bargaining?

collective bargaining and shared authority: doubts

A study of university government published in 1967 expressed the fear that the shared authority model might not survive if faculties were to resort to collective bargaining. The authors felt that the attempt to divide campus jurisdictions between the bargaining agent and organs such as university senates would prove "unstable over time," with a steady expansion of union influence and decline of the senate. More and more issues would be removed from the sphere of shared authority and appear at the bargaining table (*Faculty Participation in Academic Governance*, 1967, pp. 20-24, 65). William F. McHugh criticized the notion, "still in currency," that academic and economic issues were easily distinguishable and that unions and traditional governance organs could exist side by side: "this seems an unrealistic analysis" in light of experience (1971, p. 84). Dallas Sands found "brute strength, whether it be economic, political, or any other kind, . . . oddly out of place in that human institution which is or ought to be uniquely committed to the rule of reason" (1971, p. 173).

Matthew Finkin provided a first survey of the actual impact of collective bargaining on traditional university government in other than two-year colleges. He concluded, in 1971, that it was too early to predict whether the shared authority model could survive where collective bargaining was introduced, but he hoped the outlook might become more optimistic as more and more "mature" academic institutions entered the collective bargaining sphere. A year later Finkin studied one such institution, the City University of New York (CUNY), and found that collective bargaining as such did not "mandate" the undermining of the academic character of CUNY—but again, he did not rule out such undermining if the contract negotiations then taking place were to take the wrong turn (1971, pp. 149-162; 1972, p. 17).

The AAUP's attitude toward collective bargaining has been termed "schizoid" (Wollett, 1971, p. 7). In 1972, a prestigious *minority* of its National Council—including Association president Kadish, first first vice-president Robert Webb, and Committee A chairman William Van Alstyne—warned that the "industrial model" would thrust out the "academic model," that with collective bar-

gaining traditional organs of faculty government would disappear and the holiest principles of the Association would become mere bargaining counters (Kadish, Van Alstyne and Webb, 1972). Before 1966 many members of the AAUP probably considered collective bargaining to be incompatible with its principles.

collective bargaining and shared authority: optimism

Since 1966 the majority in the AAUP increasingly, and after 1972 overwhelmingly, has seen no contradiction between collective bargaining and the governance principles of the Association. At the 1972 annual meeting in New Orleans, the incoming president and first vice-president, Walter Adams and Carl Stevens, led an enthusiastic convention majority toward a strong collective bargaining stance. Stevens emphasized that the shared authority model had not been permitted to operate by the administrations of a great number of institutions; therefore collective bargaining, rather than undermining the 1966 Statement, should be used to shore up its ideals. Faculty members must use the leverage of collective bargaining to achieve de facto and de jure recognition of their right to share effectively in the making of decisions which belong in the domain of their own professional competence. If AAUP chapters refuse to engage in collective bargaining, numerous faculty members will in effect be denied their best chance to participate in sound and effective academic governance. Besides, as Stevens insisted—and this second point can perhaps stand up regardless of the merits of the previous one—the quality of a contract, with respect to governance and other matters, depends on the aegis under which it is negotiated. The AAUP's long-standing concern with the quality of academic government must now be extended to those situations where governance rights are achieved by collective bargaining; new policy positions must be developed to adjust collective bargaining norms and procedures to the model of the 1966 Statement (Stevens, 1972).

Accordingly, the AAUP's Committee N on Representation of Economic and Professional Interests, in its policy statement on collective bargaining of October 1972, put much emphasis on governance problems; two of the four advisory points for chapters which achieve representation status stress their obligation to establish structures and procedures which provide for faculty participation in accordance with the 1966 Statement (AAUP, 1972). Even if some

consider the question of the compatibility between unionizing and shared authority as unresolved, the AAUP is evidently not willing to leave academic collective bargaining to its two main competitors. The AFT (American Federation of Teachers, AFL-CIO) and the NEA (National Education Association) draw most of their experience from elementary and secondary schools, and, at best, two-year community colleges; "as a result, the AFT and NEA policies toward the scope of bargaining in higher education are virtually identical to their policies formulated for elementary and secondary schools" (Moskow, 1971, p. 35). Because of its "feel" for higher education, the AAUP may have a chance to beat the AFT and NEA in academe if it can present a unified and determined collective bargaining stance.

Impetus for Bargaining. Two factors, at least, are currently making faculties less optimistic about shared authority and therefore more eager to try the union model—the making of systems-wide decisions away from the campus and the new "managerial" techniques on the campus. The 1966 Statement, in spite of a recently added footnote acknowledging the growth of "autonomous statewide bodies superordinate to existing Boards of Trustees" and declaring that the objectives and practices of the 1966 Statement are equally applicable to these bodies (see p. 336 of the *AAUP Bulletin* for Autumn 1972), does not really contribute much to the increasingly urgent problem of securing faculty participation in academic decision making at statewide levels. As Donald Wollett remarked, "the establishment of statewide systems of higher education has had a sharp impact on the role of the faculty on the individual campus, even on those campuses which have well functioning procedures for faculty representation." Consequently, many faculty members "have become restive over the loss of control that they once thought was theirs" (Wollett, 1971, p. 8: note also Mason, 1972, p. 67).

A second kind of frustration, also affecting the faculty's view of the feasibility of shared authority, has resulted from the introduction of new managerial techniques on the campus. As described convincingly by Rourke and Brooks, the computer has upset a traditional balance of communication flow and control between faculty and administration; the department, that primary locale of faculty power, especially has suffered (1966, pp. 37-38, 108).

In any event, collective bargaining is in the air. Formal recognition has been granted to faculty bargaining units on more than

three hundred campuses, involving approximately 15 percent of the nation's faculty members. Hundreds of other institutions, including an increasing number of four-year colleges and universities, are preparing for certification of faculty representation. Some twenty states have passed enabling legislation which compels, or permits, public institutions to recognize duly elected faculty bargaining representatives. In 1970 the National Labor Relations Board announced its readiness to assume jurisdiction over collective bargaining in most private institutions.

Peaceful Coexistence? A veritable "domino" effect is evident, in spite of several setbacks for the unions. Besides, the public pronouncements of "the other side" are by no means offensive to AAUP-ers imbued with shared authority doctrines. For example, Israel Kugler of the AFT in 1968 urged unions and senates to complement one another: "rather than being opposed to senates, the Federation seeks to achieve full, not merely advisory, authority for senates." An NEA leader in New Jersey insisted that unions and senates do not compete "but serve different functions," and the NEA agent at CUNY was found "sincere" in his attempt to incorporate many senate functions into the contract (Mortimer and Lozier, 1972, pp. 21, 26).

Collective bargaining is in the air, and commentators are reaching the comfortable conclusion that "blanket statements about the inevitability of conflict between coexisting senates and bargaining agents" are out of place; Mortimer and Lozier (p. 3) conclude that "very likely, incompatibility will be the result in some institutions; in others, the two organizations may find convenient and compatible accommodations which will strengthen the effectiveness of each group." Collective bargaining and shared authority "do not have to be an either-or dichotomy"; higher education may "utilize collective bargaining rather than be utilized by it" (Mintz, 1971, p. 124).

Faculties and administrations could well succeed in developing new approaches to collective bargaining which would modify some of the more crassly unacademic aspects of an industrial model of unionization. Dallas Sands mentions the possibility, for example, of "joint bargaining committees constituted on the basis of proportional representation," rather than giving exclusive status to the agent who happens to win a majority vote, however narrow; he also suggests that a contract should not necessarily have to run for a specified period, so that the periodic "convulsions" around the time of

contract renewal might be avoided. Sands calls for "experimentation" to discover what kind of collective bargaining works best in universities and for other-than-conventional legislation to provide "alternative means in lieu of economic warfare" for bringing the bargaining parties together—with specific guarantees for the faculty's rights of shared authority (1971, pp. 169-171, 176). And Dexter L. Hanley suggested a "professional negotiating team" consisting of faculty members *and* administrators (1971).

In many institutions the financial plight of the faculty may be so desperate, interferences with academic freedom so common, and conditions of academic governance so primitive that nothing meaningful would be sacrificed by applying the union model. Yet in a great number of other institutions the question of whether shared authority principles can be adapted to the principles and conditions of collective bargaining remains highly unsettled.

In the following section, some governance-related problems will be discussed which have become evident in the brief experience with collective bargaining: first, the dependence of a unionizing faculty on such outside agents as labor relations boards or arbitrators; second, the incorporation of governance provisions into contracts, and the attempts in the contracts to resolve jurisdictional conflicts between governance organs, "management" rights, and union authority; finally, and very briefly, such aspects of collective bargaining as the agency shop, the strike, and relations with the "consumers"—the students.

determining the bargaining unit

One of the more crucial, yet often quite subjective, decisions facing a campus that is undertaking collective bargaining is how to determine the membership of the bargaining unit. Should the unit consist only of full-time faculty members, or should part-time faculty also be included even if their primary economic and other concerns are off campus? Should there be only teachers and researchers in the unit, or should librarians and all kinds of "professional support staff" be added? Should the bargaining unit be confined to one campus, or should it contain an entire system—a system which might consist of community colleges, technological and agricultural institutions, four-year colleges, and graduate and professional schools? Should certain administration personnel, such as assistant and associate deans, be in the unit, and, more important, should

department chairmen be included? Finally, should some faculties—for example, law or medicine—be authorized to remain outside the regular bargaining unit?

Such questions of unit determination are, in the final instance, decided by an agency outside the university—usually the National Labor Relations Board (NLRB) for private institutions and a state labor relations board for public institutions. Yet, as McHugh notes (1971, p. 62), "the size and composition of the bargaining units can often be decisive in terms of which organization will win recognition or certification." A labor relations board, by deciding on a certain type of unit, can make it virtually impossible for an AAUP chapter, for example, to become the bargaining unit, and may, in effect, throw an election to the AFT or NEA or some other competitor. For example, the New York Public Employment Relations Board (PERB) initially ruled that at the City University of New York (CUNY) there should be two bargaining units, one for the permanent faculty and one for the part-time faculty. During the elections in 1968 and 1969 an "inhouse" agent (later affiliating with the NEA) won representation for the full-time faculty and the AFT for the part-timers. As McHugh observed, if PERB had determined to have only one unit at CUNY, the AFT would probably have been victorious; by the division of the unit, another agent was given a chance (1971, p. 79). (Since then, the two bargaining units at CUNY have merged into a single AFT-NEA unit—the Professional Staff Congress.)

Professional Support Staff. The AAUP has traditionally limited its membership to full-time teachers and researchers and, more recently, certain librarians—but excluded what is currently referred to as "professional support staff," such as student counselors, financial aid specialists, admissions officers, laboratory assistants, and technicians. In one case—the system of the State University of New York (SUNY)—the category of professional support staff amounted to fully 27 percent of the bargaining unit (Mortimer and Lozier, 1972, p. 9). Arguments against including this category of staff in the bargaining unit were summed up by McHugh: such persons are not subject to the peer group-determined procedures for appointment, promotion, and tenure as are faculty; their work hours generally require a regularized eight-hour work day with some kind of supervisory system; they do not participate in the community of an academic department, the crucial decision-making unit of the faculty, and they have not played a role in the other governance struc-

tures of the faculty; finally, the principles and protection of academic freedom have not been applied to them.

Nevertheless, PERB ruled for SUNY that the professional support staff should be in the same bargaining unit as the professors, finding that "they share a community of professional interest with the rest of the permanent staff because they are engaged in directly supportive activities that are clearly and closely associated with the function of teaching or research." Although the board admitted that the question was "not free from doubt," it felt obliged to apply its basic policy "not to fragment employees having a basic community of interest." Differences between professors and professional support staff did not "constitute conflicts of interest that would prevent meaningful and effective negotiations"; the differences in working conditions did not have the same significance as those involving, for example, "professionals and rank-in-file employees" (McHugh, 1971, pp. 75-76).

PERB's decision on the SUNY bargaining unit may be destined to be the rule rather than the exception: "the definition of bargaining units appears to be pushing toward a homogenization of regular faculty with . . . professional non-teaching staff," although contrary decisions were also noted (McHugh, 1971, pp. 76-77). At its 1972 annual meeting, the AAUP duly voted to grant membership henceforth to all those nonacademic professionals who had been included in a bargaining unit as a result of labor relations board rulings.

Not clear, as yet, is the impact of this kind of homogenization on traditional governance relationships. Will a homogenized bargaining unit still care for the kinds of principles which the 1966 Statement tries to establish? Even long-time, full-time faculty members have had difficulties in appreciating their own role in the shared authority model, as Dykes so clearly points out (1968). Mortimer and Lozier foresee the development of "new alliances" in the university as a result of the presence of faculty and support personnel in the bargaining unit (1972, p. 11). Will these new alliances depend on a consensus quite unrelated to the norms of the 1966 Statement?

Department Chairmen and Deans. Fortunately, some aspects of unit determination by labor relations boards appear to be strongly supportive of traditional governance practices. Mortimer and Lozier analyzed contracts in four-year institutions and found that department chairmen were generally included in the bargaining

unit, although they were excluded in most of the community colleges; "this seems to be consistent with the hierarchical structure of many two-year colleges where the department chairman tends to be viewed as a representative of the administration" (1972, pp. 11-12). The heart of faculty participation in university government, the department, cannot function properly with the chairman as agent of "management"; surely, such a role would upset all the traditional relationships and balances in a faculty member's daily life in academe. Mortimer and Lozier, quite rightly, call for the appointment of "department stewards" in those institutions where the chairmen have to become agents of the administration (1972, p. 13), but evidently the labor relations boards are not pushing in that direction.

The New York board (PERB), in the SUNY case, also decided to keep associate and assistant deans within the bargaining unit, against the wishes of the AFT as well as the AAUP. The board argued, appropriately enough, that in a university setting, "since the faculty themselves aid in the development of policy and in certain instances may actually set policy," the managerial exclusion must be confined within narrow boundaries. "Given the faculty's role in faculty governance," only the highest administration officials should be excluded. As McHugh notes, each administration position should be individually reviewed "to ascertain the extent of supervisory responsibility and involvement in the policy decision-making process in the particular institution in question" (1971, p. 89). Apparently, PERB was aware of this responsibility.

Discrete Faculties. In other benchmark developments, the law school faculty at Fordham University was found "discrete" enough by the NLRB to comprise a separate unit, and this separate status was also granted the law school faculty at St. John's University in New York. (At St. John's the law faculty was excluded by the consent of the collective bargaining agent and the administration; at Fordham, the administration contested this exclusion.) If this type of ruling were to set a trend, the liberal arts faculties eventually might find themselves as the sole members of the central bargaining unit of the university, apart from all kinds of "discretely" separate units on the periphery—with not quite foreseeable consequences for problems of universitywide governance.

Superinstitutional Systems. Another problem of unit determination concerns institutions which form part of a system, usually statewide. In New York, PERB ruled that the appropriate unit for

the huge SUNY system was at the statewide level; separate bargaining units for the individual campuses of SUNY would "balkanize" the system and would result in "a loose confederation of competing educational enterprises and therefore not a university at all." Besides, "almost all allegedly local issues will have serious statewide ramifications, either of an economic or policy nature." Similarly, the many campuses of the CUNY system, in New York City, were put into one bargaining unit. However, it is too early, according to McHugh, to see these pro-system decisions in New York as a definite trend in other states (1971, pp. 80-83). Nonbalkanization as an absolute good has been challenged by Finkin, who found one of the difficulties of collective bargaining at CUNY to be precisely the universal composition of the unit, "encompassing education from the community college through the graduate school" (1972, p. 16). In any case, balkanization fears did not seem to have been prominent when law schools were authorized to remove themselves from bargaining units. Since statewide systems, as was noted above, do present one of the major challenges to the feasibility of the shared authority model, statewide bargaining certainly looms as one possible answer—but at the kind of cost Finkin implies.

Impact of Labor Relations Boards. The NLRB promised in 1971 to take into account in its academic ruling "certain practices and organizational structures [in colleges and universities] which do not parallel the traditional practices and organizational structures in private industry." Moreover, the Board welcomed "the fruits of any research" in the academic area, for the use of its staff (see Mason, 1972, p. 25). It is evident that the NLRB and state labor boards will have considerable impact on academic governance through their powers to shape bargaining units; the quality of these configurations will be a reflection, partly, of their understanding of the academic scene. Since a good number of boards of trustees and administrations may not have consumed many "fruits of research," especially concerning shared authority, it may well be that a good number of their faculties may prefer final authority on specified campus matters to rest in a PERB rather than in their own boards or presidents. If off-campus authority can be legitimate in terms of its learning about the world of academe, then on many a campus it may become a welcome balancing force against those boards or administrations whose authority model is hierarchical rather than shared.

resort to arbitration

Arbitrators, like the labor relations boards, are off-campus agents who through collective bargaining are destined to become influential in governance and other spheres of the university. Highly formalized grievance procedures, which include the possibility of final appeal to outside arbitrators, are among the most characteristic—and certainly most time-consuming—features of the unionized institution. Matthew Finkin made a first thorough survey of the arbitration of academic grievances in early 1973. While by no means all awards (decisions) were available to him, he did locate and study fifty-five awards concerning sixteen institutions; forty-one of these concerned matters of faculty status—traditionally one of the most crucial jurisdictions of faculties in university government.

During the first three years of the contracts at CUNY, as many as 115 grievances on matters of faculty status were filed, and 60 percent of these were submitted to arbitration (Finkin, 1973, p. 2). Earlier, Vice-Chancellor Mintz had reported that during the first year of the contracts at CUNY some 130 grievances had reached the appeals level of the chancellor of the system; four awards had been handed down by arbitrators, and two additional cases were in "mid-hearing." According to Mintz, most of the grievances concerned job security—that is, the failure to reappoint temporary or nontenured faculty members—and involved charges of procedural violations against department chairmen and department committees who claimed to be exercising their "academic judgment." Apparently "the most grievance-laden" situation arose from "classroom observations and annual evaluations of faculty," practices imposed by the contracts with rather strict detail (1971, pp. 121-122).

Numerous arbitration awards, evidently, will affect jurisdiction in matters of faculty status. According to the 1966 Statement, this jurisdiction is "primarily a faculty responsibility" and includes such decisions as "appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal." This "primary" jurisdiction of the faculty is at the heart of a faculty's participation in campus governance, yet under arbitration it may not be maintained as a sphere where the faculty is predominant. Moreover, the arbitrators may be particularly unsuited for this particular task. Mintz (1971, pp. 121-122) expressed in strong terms his doubts about the arbitrators' substituting for professorial peer judgment:

> Our arbitration experiences have been rather unfortunate in that one begins to have doubts about the wisdom of placing academic contract dispute adjudication in the hands of industry-oriented professionals. This statement is made with no intent to impugn either the expertise or integrity of any arbitrator, but rather to decry the difficulty and frustrations involved in explaining and justifying conventional and traditional procedures in the academic world to such arbiters. How does one explain that "failing of reappointment or tenure" is not synonymous with "dismissed" or "fired"? Or the consistency in a department's not recommending a man for reappointment, followed by the department chairman writing a fine letter of recommendation for such an unsuccessful candidate?

The CUNY agreements do specify that the arbitrators shall be "familiar with the customs, practices, nature and spirit of the academic community," but Mintz (1971, pp. 121-122) hints that not much will come of this because of "market thinness" and the procedural problems of challenging particular panel members. Also Finkin is worried about "the education of the arbitrator to the issues in the case and to the implications of his decision for the academic community," particularly because the earlier arbitral awards could become precedents for later cases, formally or informally. Finkin (1972, pp. 11-12) finds it "at least questionable" whether a body of arbitrators can develop competence similar to a body of colleagues who are "knowledgeable in academic values and sensitive to the implications of their decisions." Sands (1971, p. 172) wonders whether professors should not challenge any nonpeer judgment in the sphere of academic freedom, regardless whether it results from a decision by an administrator or an arbitrator; yet, in the end, he is prepared to accept carefully chosen and academically sensitive arbitrators as a reasonable means of resolving differences of opinion on questions of academic freedom.

In the CUNY contracts the attempt was made to keep decisions constituting "academic judgment" from the final appeals stage represented by binding arbitration; however, this provision was complicated, if not rendered meaningless, by the clause that academic judgment nevertheless could be taken to arbitration if the claim was made that the *procedure* in the academic judgment was arbitrary or discriminatory in areas such as appointment, reappoint-

ment, tenure, or promotion. The arbitrator should rule in such cases whether the grievance relates in effect to procedure rather than academic judgment, and he is specifically prohibited from substituting his judgment for the academic judgment.

Finkin wonders, rightly, whether this distinction between "procedural" and "academic" will provide a sufficiently precise standard to restrain the arbitrators (1973, p. 2). In his most recent draft, confirmation for his earlier doubts in this respect can be found. The procedure and academic judgment distinctions "*nevertheless require consideration of the underlying merits,*" and thus "it seems that arbitrators have brought to bear *their own reactions to the merits of these decisions* in deciding whether there was a true academic judgment or an abuse of procedure" (1972, p. 25; italics added). In at least two cases Finkin noted that the arbitrator had, in effect, "adopted as a standard for judgment the *reasonableness* of the department's standards for the qualification of its members." In another case the arbitrator undertook, quite openly, to determine the qualifications and competence of a faculty member.

In spite of one arbitrator's remarkable assertion that, "as every educator knows, the capability of a teacher is ascertainable by scientific measurement," Finkin wonders about "the competence of arbitrators to make determinations involving subtle matters of teaching, scholarship and colleagueship" (1973, pp. 21, 27). In the contract demands of the CUNY union, the whole concept of academic judgment by peer groups appears in an odd light. "Academic judgment" must be specifically defined for each occasion and "an analysis of each member of the department or program in a relative position must be made to determine the validity of academic judgment" (Finkin, 1972, p. 8). As academic judgment becomes as suspect as, let's say, discrimination, the arbitrator would seem to have innumerable openings for substituting his judgment for that of professorial peer groups.

It is certainly possible that effective restrictions on arbitrators' intrusions into primary faculty jurisdictions might be devised for contracts. For example, in the agreement at St. John's University (where the AAUP chapter is one of the bargaining agents) a wide range of peer judgments pertaining to faculty status appear to be excluded from grievance-arbitration procedures (Article X). Another AAUP contract, at Oakland University, has seemingly impressive restrictions on the arbitrator's authority. Properly structured, resort to arbitration does not necessarily lessen the auton-

omy of a faculty—particularly not, of course, in institutions where administrations have not heeded peer judgments in the past. Besides, faculty bodies themselves "are not wholly immune from arbitrariness, administrative pressure or ineptitude." Arbitration might be used to correct administration (and faculty!) abuse, while still leaving intact primary prerogatives of peer judgment (Finkin, 1973, pp. 4, 45-46).

The main task is to devise an arbitration system in which the arbitrator's personal value judgments of academic decisions, such as on faculty status, are minimized—or else a system in which the arbitrator is particularly close to the values of academicians. Finkin noted the totally absent, or at best cursory, references in awards to academic practices and to the "common law of the [academic] shop." He suggested a "national academic tribunal"—a standing body of academicians along the lines, perhaps, of the AAUP's Committee A—to substitute for ad hoc arbitration and to develop "consistent decisional law." Such a national tribunal would bring relief from the balkanization of inconsistent, often contradictory, decisions of many particular arbitrators working a system of what has been called "judicial roulette" (1973, pp. 44, 47-49).

incorporating the governance model

> A notion still in currency is that academic and economic issues are easily distinguishable. It is believed in some quarters that the bargaining process will be confined to economic issues and that academic issues may be relegated to existing governance bodies such as faculty senates or councils and the like. Thus, the bargaining agent will have jurisdiction over economic issues and governance bodies will determine academic policies. In light of experience to date, however, this seems an unrealistic analysis since the scope of bargaining has encompassed both academic and policy issues customarily handled by faculty senates, as well as purely economic matter [McHugh, 1971, p. 84].

If, as McHugh believes, governance and economic issues are not easily distinguishable, it is essential to guarantee in the contract the functioning of the traditional governmental systems of the university, at the level of the department as well as at the college and universitywide levels. More specifically, it would be essential to in-

clude the norms of the shared authority model in any collective bargaining arrangement. This happened emphatically at St. John's University, where the 1966 Statement was formally incorporated in Article II of the contract.

But many of the current contracts do not seem to demonstrate much concern for incorporating governance clauses. An analysis of more than fifty agreements in community or junior colleges revealed, perhaps not surprisingly, "that only a minority contain provisions calling for formal faculty participation in decision-making concerning educational policy" (Wollett, 1971, p. 15). Moreover, a survey by Mortimer and Lozier of governance-related provisions in the contracts of ten four-year colleges similarly demonstrated little, if any, interest in upgrading or guaranteeing faculty participation along the lines of shared authority (1972, pp. 39-40).

Even some of the AAUP-related contracts, except at St. John's, seem vague in this respect, at least on paper. At Oakland University, existing constitutions and "practices" in the governance sphere "shall be continued," but they are not specifically incorporated into the contract; participation in committees appears as the only governance-related task of faculty members which is mentioned in the contract. The contract at Rutgers contains no preference whatever to governance, and neither does the one at Belleville Area College. At the University of Rhode Island there is reference to the University Manual, which remains "in full force and effect."

Jurisdictional Conflicts. The evidence on incorporation of governance norms is inconclusive. Where contracts appear more specific, conflict of jurisdiction clauses are even more specific—and generally seem to resolve any conflict in favor of the collective bargaining sphere rather than the governance sphere. For example, at St. John's, "the presently constituted" governance bodies—"e.g., the University Senate, faculty councils, departmental personnel and budget committees, etc."—shall continue to function, but only "provided that the actions may not directly or *indirectly* repeal, rescind or *otherwise modify* the terms and conditions of this Agreement" (Article II, par. 2.5, my emphasis).

This kind of elastic clause must be reconciled with the 1966 Statement, which is also part of the St. John's contract; it is difficult to imagine many governance actions which would not "modify" some of the contract's terms, at least "indirectly." Similarly, at Oakland University the guarantee for the not-to-be-"diminished" right to carry out "past practices" of governance is, in fact, specifi-

cally diminished: "in the event of conflict between such established rights, privileges, and responsibilities and the provisions of this Agreement, the terms of this Agreement shall be controlling" (Article XV).

Finkin mentions the demands of the union at CUNY, which "would explicitly prohibit the University Faculty Senate and other faculty governing bodies . . . from engaging in any activities which include 'those areas and interests which fall within the domain of the Collective Bargaining Agent.' " Also, the university would be prohibited from financing or "agreeing with" a governance body with respect to any matter which "affects" or "impinges on" the contract. As Finkin concludes, "it is clear that under these demands internal faculty governing bodies will have jurisdiction over only those matters for which the bargaining agent chooses not to assert that *it* has jurisdiction." Given the interrelations between governance decisions and working conditions, the union could claim that "almost any matter falls within its 'domain' or 'impinges' on its rights." Thus, if the demands at CUNY were granted, faculty governance participation would be "at the sufferance of the bargaining agent" (1972, pp. 3-4, 10). Apparently, jurisdictional conflicts between the contract and governance organs will not be resolved in favor of the latter.

Management Rights. Another threat to the spirit, at least, of the 1966 Statement, particularly its attempt to balance the power of the various components, may result from the kinds of "management rights" clauses which appear frequently in collective bargaining agreements. Michael Moskow notes "the high incidence" of such clauses (1971, p. 51). At the University of Rhode Island, "management rights" include "the authority to manage and direct . . . all the operations and activities of the University to the full extent authorized by law"—and the "employees" must attend all faculty and department meetings (Article II).

Another AAUP contract, at Ashland College (Ohio), stipulates that "the management and control" of the institution "in all its phases and details" and "the direction and control of the employees" shall remain vested in the college, except as limited by the express terms of the contract, which does incorporate a seemingly sound faculty senate. This senate document reflects the kind of looseness not untypical of the spirit of the 1966 Statement; the exclusive tightness of the management-rights clause contrasts with the looser provisions of the senate document in ways not so easily

reconciled with the 1966 Statement—and certainly not advantageous for the faculty's side of the power balance.

Similarly, the AAUP contract at the New York Institute of Technology strongly emphasizes all kinds of supposed management rights—"to direct" the faculty, "to control" the operation of the Institute, "to introduce" new methods and programs of teaching, and so on—relieved by the promise that "AAUP governance guidelines" will be followed. This kind of language again suggests a weak obligation in the shared authority sphere as compared to the incisiveness of the management rights. At St. John's University, where the 1966 Statement is part of the contract, there is reference to "the desirability of generally resting final authority in the Administration, as *specified therein* [that is, in the 1966 Statement]" (Article II, par. 2.4., my italics)—which is not really what the 1966 Statement specifies at all in terms of its norms, principles, or possible applications.

Could it be that some of the unionizing institutions are, in effect, heading for an initial compromise between "management" and "employees" under which the faculty gains power in the economic sphere and the administration preserves a kind of supremacy in the governance sphere which the 1966 Statement certainly does not envisage? As more experience is gained with collective bargaining, faculties may recover some of the management rights. Of course, this discussion on incorporation of governance provisions was based on paper clauses in contracts; the reality on a campus may be quite different—and more encouraging for governance rights.

by-products of unionizing

Certain apparently inherent by-products of collective bargaining, with obvious impact on academic governance, will be mentioned very briefly—the need for exclusive representation and at least an agency shop; the appropriateness of the strike as an instrument of faculty power; and the consequences for the student consumers.

The Necessity of Exclusive Representation. In 1969 the AAUP insisted that a chapter which engages in collective bargaining could *not* require any person to become a member of or make a financial contribution to the Association as a condition of his enjoying the benefits of representation. As Sands observes, if a profes-

sor objects to the principle or practice of collective bargaining in his university "it arguably would violate his academic freedom to compel him to participate in or be identified with such activity." At the same time, he wonders whether the arguments for some kind of restricted shop—closed, union, or agency—are really "less relevant or substantial" for professors than for others engaged in collective bargaining. Sands concludes that in order to counterbalance the strength of management, at least an agency shop—whereby all those included in the bargaining unit, union and nonunion members alike, pay dues, or fees, to the union—will be required. He contends that "regular use of collective bargaining . . . would involve a much more continuous kind of service than the Association [AAUP] has rendered . . . heretofore; it, therefore, might be reasonable for the bargaining agent to claim a fee from nonmembers for their proportionate share of the cost of such services" (1971, pp. 166-167).

The agency shop will probably have to come, although in many states its legality is still undetermined. At CUNY, approximately two-thirds of the regular faculty are union members; the remainder are "freeloaders" who do not pay their annual contribution of $120, yet enjoy the benefits of the highest-paid university system in the United States. At some other unionized campuses the proportion of union members is even lower—at SUNY, for example, considerably lower. The doctrine of "exclusivity"—only one certified collective bargaining agent per unit of faculty—has been sustained in the state statutes and in academic contracts (McHugh, 1971, p. 83).

The consequence has been intense competition among the various affiliates of NEA, AFT, AAUP, and local and statewide groups. A majority of votes decides, and the stakes of winning a campus are extremely high, particularly in this initial unionizing period. The resulting "political atmosphere," as Mortimer and Lozier call it (1972, p. 19), is bound to have a profound effect on all kinds of relationships in the university, including governance. What comes to mind, once again, is the delicate nature of the balance and consensus prescribed in the 1966 Statement; a campus where rival unions must continuously appeal to the masses of voters of the faculty component may not be in the mood for either balance or consensus.

The Strike. With respect to the strike, the AAUP (1972) is again on the side of the "angels," as yet:

> It is the policy of the Association (with which chapters should comply whether or not they are acting in a representative capacity) to call or support a faculty strike or other work stoppage only in extraordinary situations which so flagrantly violate academic freedom or the principles of academic government, or which are so resistant to rational methods of discussion, persuasion, and conciliation, that faculty members may feel impelled to express their condemnation by withholding their services, either individually or in concert with others. It should be assumed that faculty members will exercise their right to strike only if they believe that another component of the institution (or a controlling agency of government, such as a legislature or governor) is inflexibly bent on a course which undermines an essential element of the educational process.

In an earlier statement, still on the books, the AAUP specifically rules out strikes for the mere purpose of securing economic benefits. However, Sands concludes that strikes in universities need not be considered quite so extraordinary: the "essential" nature of a university's functioning "is insufficient to support a doctrinaire repudiation of the right to strike" (1971, p. 162). Merton Bernstein (1972) implies that strikes could not be outlawed in the university and might have salutary effects in spite of being "potentially very destructive weapons"; he prefers, and calls for campus experimentation with, limited types of strike—the "non-stoppage strike" and the "graduated strike."

Faculty strikes, obviously, would have great dramatic effect and would attract much attention if they were not used too often. In economic terms, in the short run at least, professors would certainly suffer more from a strike than their "employers," whose "profits" would hardly be affected by the strike. Yet the strike as a weapon is bound to be present on the unionized campus and its use—real, threatened, or at least implied by many precedents in the private and public sector—will at times provide leverage to faculties. (To date, the faculty strike has been used very sparingly, perhaps most notably at Oakland University in 1971.) The effect on university government, once again, will be particularly one of mood. If, in the professional milieu of the academic institution, things have gone so far that a strike must be maintained for more than one or two token days, the ensuing governance relationships between faculty

and administration may at the end reflect shared authority—but not in the spirit of the 1966 Statement.

Impact on Students. What about the consumers on the campus, the students? Are they likely to be the hapless victims of Big Administration and Big Faculty? Will they too attempt to unionize, as did the teaching assistants at Wisconsin (Feinsinger and Roe, 1971) or as proposed by at least one student government? Frederic M. Brandes, executive director of the University Student Senate at CUNY, insists that "students must become part of the collective bargaining process." Academic senates, where students participate, will partly be replaced by collective bargaining—in which students are not yet represented. Therefore, "as members of the academic community of interest," students must share in the bargaining "to protect their education" (1973).

Whatever advances students had made through minor or more substantial inputs into the shared authority model may be rendered considerably less meaningful by faculty unionizing. Consumers outside the campus have not been organized effectively to counter collective bargaining, and university students may find getting together for this purpose even more difficult. The possible effects—on governance and all kinds of other academic purposes—of a second set of unions, representing the peculiarly complex (and numerous) component of the students, certainly stagger the imagination.

room for both unions and senates?

It is not difficult to foresee conflicts between unions and the traditional organs of university government. It would be convenient, obviously, in the unionized university simply "to establish by contract the faculty's independent authority"—to be exercised through the customary organs such as the department, the college assembly, or the senate. But many unions may prefer to by-pass and make impotent these customary structures, and to have *all* faculty authority exercised at the bargaining table and through the bargaining agent (Finkin, 1972, p. 9). At some institutions, at least, the union may be inclined to see the senate as an antiunion device, as a body somehow controlled by and subservient to the administration.

Such perceptions may be correct, or based on unfounded suspicions and erroneous impressions, but antagonism is produced in any case. Thus, a union is likely to become upset when the senate gets close to what the union considers its own jurisdiction, and the

senate—as, for example, at CUNY—will protest vehemently when the union makes demands which include governmental jurisdiction previously exercised by the senate. The unionized campus may see rivalry between faculty members serving on, or supporting, the traditional structures and the unionists; of course, even more faculty energies are bound to be wasted by what could be virtually continuous electioneering on the part of competing unions.

Yet at some other institutions the union and the senate, and perhaps a nonunionizing AAUP chapter, may cooperate effectively. Apparently they did at CUNY for the purpose of keeping the chairmen within the bargaining unit. Particularly at the level of the state legislature, senate and union officers should find it worthwhile to collaborate. Some unions may sincerely try to keep out of the senate's domain, and serious jurisdictional conflicts may be avoidable. After all, many faculties may want to use both systems—the senate operating in the consultative-communal sphere where the components share authority through consensus; the union working its side particularly in the economic sphere through confrontation tactics and use of its muscle. The union could be generally useful as a much needed leverage device for the senate: a board may listen more respectfully to the senate if it knows that the union looms in the background, somewhere to the "left."

Senates and the other traditional structures of faculty participation in governance will have to maintain some kind of balance of strength with respect to the union. For the sake of this balance, greater faculty participation and loyalty will be needed to invigorate the shared authority model. Faculties at unionized campuses may no longer be able to afford their favorite tactic of civic withdrawal, of leaving the governance scene to a few (slightly suspect) activist-politicians among their colleagues and the administration. Senates and other faculty structures must stand on their own feet and not depend on the administration, let alone the union. Unfortunately, Dykes (1968, pp. 10, 41-42) was only too accurate in his analysis of many faculty members' neuroses, lethargy, and lack of civic spirit with respect to governance. Where senates are decaying in the unionized university, it may not be jealous unions or weak senate leaders that are to blame but the faculty itself because in its traditional ways it has failed to mobilize sufficient support for its governance structures.

The civic rebirth, if not birth, of the faculty may be the most crucial task for the nonunionizing AAUP chapter on a unionized

campus. (If the AAUP is the bargaining agent, it is to be hoped that its devotion to the 1966 Statement will be sufficient to keep the senate alive, however weak and "Dykesian" the latter might be.) Traditional academic governance structures can survive even where the union is strong, but probably only if faculties change their civic ways. If they do, they may enjoy the cake provided by their contract, as well as the shared authority exercised by their senate.

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