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Cleveland State Law Review

Volume 22 | Issue 3

Book Review

1973

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Alan Miles Ruben
a.ruben@csuohio.edu

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Recommended Citation

Alan Miles Ruben, *Book Review*, 22 Clev. St. L. Rev. 614 (1973)
available at <https://engagedscholarship.csuohio.edu/clevstlrev/vol22/iss3/17>

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and Ehrlich.² However, by reading the original edition, readers should be able to determine whether legal education has changed over the last century, if so, for what reasons, and should also be in a position to consider if, when, and how, legal education and law schools will have to change in order to meet the expectations of law students and the needs of a society that the legal profession must serve.

*Reviewed by Alan Miles Ruben**

FACULTY POWER: COLLECTIVE BARGAINING ON CAMPUS,
edited by Terrence N. Tice. Ann Arbor, Mich.,
Institute of Continuing Legal Education, 1972. 368 p.

This book is the outgrowth of a conference convened by the Institute of Continuing Legal Education in the fall of 1971 to consider the legal, economic and institutional implications of the newly emergent phenomenon of collective bargaining in academia.¹ The potential for faculty negotiation is not insignificant since an estimated one-third of the million persons employed in the nation's more than 2,600 institutions of post-secondary education can be classified as "faculty." Further, as Dean Theodore St. Antoine points out in his prefatory remarks, the movement toward unionization and the introduction of the bargaining process is likely to affect higher education profoundly as professors obtain increased political power as well as increased participation in governance and economic benefits.² The volume's appearance at this time is therefore most welcome.

Thanks to the organizational discipline imposed by the editor, this work, unlike so many other collections of conference papers, is

² New York, McGraw-Hill, 1973. 91p. \$10.00.

* Member, Pennsylvania (Philadelphia) and Ohio (Cleveland) bars; Professor of Law, Cleveland State University College of Law; General Counsel, Ohio Conference, American Association of University Professors. Member; National Panel of Arbitrators, Federal Mediation and Conciliation Service.

¹ The first election of a faculty collective bargaining representative for a four year institution appears to have been conducted in 1969 pursuant to petition by professors at Central Michigan [State] University under the Michigan Public Employment Relations Act, MICHIGAN STAT. ANN. §§17.455(1) - 17.455(16) (1968). Community college representation elections have been held at least since 1965 when teachers at Henry Ford Community College organized and invoked the procedure of the Michigan statute.

² Regretably, however, none of the contributors were moved to accept Dean St. Antoine's gambit and discuss the political ramifications of professorial organization. Two other observations by Dean St. Antoine require some comment. Economic studies to which he refers purport to show that the share of the country's aggregate income going to wage earners as a class has remained constant and unaffected by unionization. These analyses should not be misinterpreted. They do not necessarily lead to the conclusion that collective bargaining has not resulted in compensation levels for a particular unit in excess of that which would have prevailed in the absence of unionization. Neither does Dean St. Antoine's interesting reference to the law school experience, where relatively high ratios of students to instructors are the rule, lead to the conclusion that the productivity of educators may govern faculty salary structure differentials. "Productivity," as thus measured, would not appear to explain for example, the enviable compensation scales of medical schools where high ratios of faculty to students seem to predominate.

more than simply a potpourri of comments from the nineteen participating lawyers, educators, administrators and public labor agency officers. The reader is thus entreated to be tolerant of the few areas of repetitious treatment that remain.

According to the editor, *Faculty Power* is designed to supply information for faculty or administration considering entering the collective bargaining relationship as well as to provide guidance for legislators charged with drafting labor laws applicable to higher education. More ambitiously stated, the objective is to fill a void in labor relations literature and "lay a lasting foundation for any works which follow."

As an information resource (albeit with a limited lifespan) the book deserves high marks. Whether it will indeed become a keystone of the literature remains to be seen. The book does fill a need of researchers and practitioners by bringing together in one volume data which, if available at all, might otherwise have to be assembled from a multiplicity of sources.

The bulk of the text — 194 pages — is devoted to useful appendices, e.g., a compendium digest of state public employee labor relations acts, a selective annotated bibliography, an analytic summary of eight faculty collective bargaining contracts and a list of the bargaining agents (as of January, 1972) at 163 institutions of post-secondary education. Less praiseworthy is the inclusion without critical comment of the much-questioned original and revised legislative proposals of the U.S. Advisory Commission on Inter-governmental Relations as "model comprehensive State Public Labor-Management Relations Acts."

The text proper is divided into five parts, denominated respectively: "Principles and Practices of Collective Bargaining," "Institutional Differences," "Alternatives to Collective Bargaining," "Faculty Organization," and "The Bargaining Process: Problems and Procedures." These, in turn, are subdivided into fourteen topics thereby promising a full range of treatment. But, breadth of coverage comes at the expense of depth. The average length of the articles is only ten pages and within such narrow compass the authors have found it impossible to do more than identify major problems, describe selected recent developments, or outline some of their principal recommendations.

The opening assignment — explaining in shorthand fashion the complicated interstitial framework of laws which govern faculty negotiations — falls to Prof. Russell Smith of the host Michigan University Law School. For thirty-five years after the adoption of the National Labor Relations Act, Prof. Smith notes, labor relations in the nation's private colleges and universities were not deemed sig-

nificant enough either from the standpoint of impact upon interstate commerce or effectuation of the purposes of the Act so as to warrant federal attention and were therefore subject to regulation only by agencies of states having "Little Wagner Acts" applicable to nonprofit educational corporations. In point of fact, however, we have no reports of any representation elections or formal bargaining procedures under the aegis of such state agencies during this period. In 1970, in consequence of petitions of Cornell and Syracuse Universities,³ the National Labor Relations Board (N.L.R.B.), for the first time assumed exclusive jurisdiction over labor relations in private post-secondary academic institutions with annual revenues of one million dollars or more,⁴ thereby extending its umbrella over eighty percent of all private colleges. The N.L.R.B.'s action, however, did not affect professors at public institutions since they are excluded from the coverage of the Act. Accordingly, "de jure" collective bargaining at state institutions continues to be dependent upon the existence of state labor laws authorizing faculty in the public sector of higher education to organize and obligating their institutions to negotiate with them. At the present time, however, only sixteen states have enacted such comprehensive public employee labor legislation. Although similar to one degree or another to the federal statute, each of these state acts is sufficiently different in significant respects to preclude monolithic treatment of the subject. Prof. Smith approves of the diversity in state labor legislation as if the variant provisions reflected the scientific approach of master experimenters judiciously accepting only what has proven workable and seeking new alternatives to what has failed. This reviewer is skeptical of whether "experimentation" realistically describes the state legislative process at work.

In any event, neither the federal labor law, which was designed for the industrial setting, nor any public sector legislation, which was formulated for the governmental hierarchy, has yet come to grips with the peculiar collegial organization of the academic community. The application of conventional wisdom with respect to determination of such issues as the "appropriateness of a unit," the permissible "scope of negotiations" and who are "supervisors," is of limited utility for traditional university operations and has produced some unhappy results.⁵ The shaping of a labor relations jurisprudence

³ 183 N.L.R.B.41 (1970), overruling, *Trustees of Columbia University*, 97 N.L.R.B.424 (1951). The Board exercised jurisdiction over faculty and other academic employees in *C. W. Post Center (Long Island University)* 189 N.L.R.B.109 (1971).

⁴ 29 C.F.R. §103.1 (1972). The N.L.R.B. has recognized that the industrial model doesn't square fit the collegial system. E.g. *Adelphi University* 195 N.L.R.B. No. 107 (1971); *Syracuse University*, 204 N.L.R.B. No. 85 (1973). But divergent viewpoints have been expressed on how an accommodation should be made.

⁵ On whether department chairmen are supervisors, compare *C. W. Post Center (Long Island University)* 189 N.L.R.B.109 (1971) and *Syracuse University* (1972) (yes) with *Fordham University*, 193 N.L.R.B.134 (1971) and *Rosary Hill College*, 202 N.L.R.B.165 (1963) (no).

for academia is not, unfortunately, an undertaking of the present volume. All that the contributors can do in this regard is to ask some questions.

Discussing the "practical considerations" of faculty bargaining, Prof. William McHugh sees a full and frank information exchange as essential during the negotiations, so that the cost effect and institutional priority impact of various proposals can be ascertained. For this purpose he urges the use of computer systems to recover complex data not presently available. Adelphi University and the local chapter of the American Association of University Professors (A.A.U.P.) have recently moved in this direction through an arrangement whereby the Research Institute of the American Arbitration Association will serve as an independent, impartial data bank. Yet, there will likely be resistance to the expansion of information flows: ". . . some administrative functionaries look upon information control as a major fulcrum of their authority and therefore seem reluctant to share it with faculty except on a piecemeal basis."

Turning to another nettlesome aspect of bargaining, Prof. McHugh asks how the desire of students to participate in the decision-making process can be accommodated. There appears to be no ready answer. A tri-partite format would be untenable. On the other hand, offering students membership on joint-study committees which may be established in connection with the negotiations seems unlikely to satisfy student activists.

In his closing comments to Part I of the text, Prof. McHugh makes explicit the basic premise of many of the volume's contributors. As educational institutions become larger, more complex and more impersonal, as their members become conditioned to confrontations, roles are increasingly perceived in terms of "interest" rather than "status" and, in consequence, an adversary relationship will develop between administrators and faculty. For many colleges, the observation may prove to be quite accurate. Yet such a situation is neither inevitable nor immutable. The opportunity to view the institution as representing a community of interests and to approach negotiations as problem-solving sessions will continue to be present.

"Institutional Differences," the theme of the next portion of the book, begins with a description of procedures for representation and decertification elections, impasse resolution and contract ratification under the Michigan Public Employment Relations Act. These procedures are similar both to those provided under the public sector labor legislation of fifteen states and to those mandated under the National Labor Relations Act. The discussion, therefore has general interest.

The by-now-familiar decisions by both the N.L.R.B. and counterpart state agencies on whether department chairmen, part-time

faculty, librarians, counsellors, and other professional support staff ought to be included within the faculty bargaining units are re-ploughed but with minimal consideration of just how the seemingly inconsistent determinations may be harmonized by reference to differing institutional patterns of operation.

Since publication of the book, the N.L.R.B. has announced its acceptance of the position advanced by the A.A.U.P. and other faculty organizations that appropriate faculty units presumptively include department chairmen unless in particular cases a convincing showing is made that chairmen function primarily as "supervisors" and representatives of the administration.⁶ The Board has also recently reversed its prior rulings by holding that part-time instructors are to be excluded from the faculty unit.⁷

The special characteristics of the community colleges, where collective bargaining has made its greatest inroads, are seen as deriving essentially from the ties of these institutions to the secondary school system. The explosive growth of the two-year college movement within a limited time span has precluded the development of an academic tradition. And, indeed, there is as yet no clear understanding as to who are the "faculty" in the context of the community college environment.

How bargaining in community colleges differs from that in four-year institutions as a result of these characteristics is not, however, explored. Instead the treatment of the subject by Karl Jacobs, President, Rock Valley College, is limited to a series of homiletic precepts gleaned, apparently from his own experiences, e.g., "It would be ill-advised not to consult with an attorney when the contract is written, but be careful not to let the attorney handle the writing." (Only lawyers will be able to understand it.)

The third division of *Faculty Power* concerns alternatives to bargaining. Professor Charles Rehmus likens the traditional model of governance built upon the faculty senate to pre-Wagner Act industrial representation through company unions. Both are internal organs premised upon a belief in the essential unity of all components of the organization and both exercise only advisory authority. Faculty unions with external affiliations, according to Prof. Rehmus, espouse the belief that "conflict will inevitably arise as the generalized goals of the institution, [which faculty share] are translated into decisions on operation and policy." Hence, it is the union's role in negotiations to make sure that the decisions reflect faculty interests.

⁶ Rosary Hill College, 202 N.L.R.B.165 (1973).

⁷ New York University, 205 N.L.R.B.16 (1973). For the earlier rule see Fordham University, 193 N.L.R.B.134, 139 (1971).

Prof. Rehmus proposes an alternative in the form of a bilateral decision-making model providing "a strictly interior pattern in which substantially all important decisions are jointly made by administrators and faculty." Such a voluntary, consensual arrangement — negotiations without a union — has been proven successful, according to Prof. Rehmus, at the University of Scranton. It is difficult to grasp the superiority of this system over the decision-making machinery which can be established in a faculty union negotiated contract. Cf. St. John's University (A.A.U.P., 1970) and Ashland College (A.A.-U.P., 1972).

For reasons known only to the editor, Prof. Belle Zeller's description of bargaining, or rather, the result of bargaining, at the City University of New York appears as part of the presentation of "Alternatives to Collective Bargaining," Part III of the text. The discussion of the relationship and apportionment of responsibility between the Legislative Conference, (the bargaining agent), on the one hand, and the University Senate and the individual college councils, on the other, is entirely worthwhile. But, the reviewer had hoped for something more — an account of the dynamics of the negotiations. Prof. Zeller was one of the participants in the framing of the first major college collective bargaining agreement, yet not a word is written about the process which led to that contract, how the faculty was organized for bargaining, the strategies and tactics employed or the conflict points and their resolution. The absence of this kind of case study is one of the major shortcomings of the volume.

Equally unfortunate is the omission from the section on "Faculty Organization," (which restates and elaborates upon the "pros and cons" of bargaining), of any treatment of the three principal faculty organizations, the American Association of University Professors, the American Federation of Teachers and the National Education Association. The philosophies of these three groups are certainly not identical and choice of one or another as bargaining agent may materially affect not only the course of negotiations, but the future direction of the institution itself.

The concluding segment of the book incorporates the remarks of five attorneys, experienced either as arbitrators or as negotiators on problems and tactics associated with the bargaining process in higher education. As expected, conflicting viewpoints are presented on the desirability of "management rights" clauses. Surprisingly, however, all contributors seem to agree on the futility of attempting to restrict by legislation or administrative regulation the subjects of bargaining. I would underscore the trenchant comments made by several of the discussants on the necessity for "face-saving" during negotiations. This bit of advice ought to be required reading for every member of a bargaining team.

What *Faculty Power* does best is to provide an orientation for the lay reader who is without an extensive background in labor law and relations. It outlines the framework within which campus negotiations take place and identifies some of the fundamental problems which must be dealt with. It begins a dialogue on alternative models to industrial union-type bargaining and suggests the diverse impacts upon university governance and priority setting which these alternatives may have. It does convey some practical advice from administration and faculty representatives who have already been through the negotiating process which can be utilized by those who are about to receive their baptism. It offers a taste of technique and introduction to strategy.

Many of the volume's inadequacies which have been adverted to in the course of this review are beyond the control of the editor and contributors. Collective bargaining on campus is in a state of rapid development. Some of the informational content of the work is already obsolete, and we can expect that more of the text will become so in the near future. Given the paucity of hard-core research in this area, it is understandable that the book does not include any in-depth studies of how collective bargaining develops on a campus and how its advent changes (if indeed it does change) the character of an educational institution. Since the volume is based upon 1971 data, we cannot expect evaluations of the contract administration process to have been incorporated therein. Such studies are rare in 1973. For the same reason, a discussion of contract renewal negotiations and a comparison of such second-round bargaining with the initial sessions are understandably absent from the book.

Other shortcomings were, however, within the power of the contributors to remedy. For example, can meaningful comparisons of the provisions of collective bargaining contracts be made without reference to the differing negotiating environments out of which they arose? Perhaps a more sensitive index than here presented of the kind of collective agreement which will be reached at particular campuses could have been constructed by considering the pre-existing modes of university government and decision-making.

But it would be unfair to dwell upon the limitations of *Faculty Power*. It is an early contribution — and a good one — to the development of the professional literature in the area. What we will need now are new editions as the practice spreads, our experience and research increase, our analysis becomes more precise and our body of knowledge grows.⁸ Indeed, perhaps a loose-leaf service might be the preferable format for such an ambitious undertaking — to encompass the whole of the subject of faculty bargaining at post-secondary educational institutions.

⁸ The Institute has indeed announced a sequel, *FACULTY BARGAINING IN THE SEVENTIES* which is scheduled for publication in November, 1973.