Union Organizing and The Law: Part-Time Faculty and Graduate Teaching Assistants

by Gregory M. Saltzman

Gregory M. Saltzman *is professor of economics and management at Albion College and adjunct associate research scientist at the Institute of Labor and Industrial Relations, University of Michigan. He holds a Ph.D. in economics from the University of Wisconsin—Madison.*

Saltzman co-authored a study published in Thought & Action *in 1999 about faculty and staff participation in college and university governance. He recently surveyed public-sector bargaining law in Michigan. Other publications include a National Bureau of Economic Research paper on public-sector bargaining in Illinois and Ohio and journal articles on job applicant screening and Congressional voting on labor issues.*

Saltzman participated in the University of Wisconsin Teaching Assistants' Association from 1977 to 1980. He was a member of the bargaining team for contract negotiations in 1977-78 and 1979-80, and served as chair of the grievance committee and legislative liaison.

Part-time and contingent employment is more widespread in college and university teaching than in most other sectors of the economy.[1] Institutions often hire part-time or nontenure-track faculty or teaching assistants (TA's) to obtain instructional services at low cost.[2] Colleges and universities, critics charge, exploit instructors who cannot find full-time, tenure-track jobs, especially in glutted fields such as the humanities. These low-paid contingent workers may feel stigmatized and trapped by working in contingent positions.[3]

Some dissatisfied part-time, nontenure-track faculty and TA's have unionized to gain higher salaries, greater benefits, and increased job security. NEA, for example, won a 1998 representation election for a bargaining unit of almost 500 part-time faculty at Columbia College in Chicago.[4] A year earlier, more than 1,000 University of Alaska adjuncts voted for American Association of University Professors (AAUP) and American Federation of Teachers (AFT) representation, and nearly 2,000 part-timers in New Jersey's state colleges voted for AFT representation.[5]

Organizing activity among TA's increased during the 1990s. University of Iowa TA's voted to unionize in 1996.[6] AFT became bargaining representative for some Wayne State University TA's in 1998; an effort to include the remaining TA's and research assistants followed.[7] TA's and research assistants at the University of Minnesota voted against union representation in 1999.[8] But the United Auto Workers (UAW) won representation elections for TA's at UCLA, Berkeley, and six other University of California campuses in 1999, following a systemwide strike in December 1998.[9] In May 1999, the UAW filed a petition for a representation election for TA's at New York University.[10]

A move to form a TA union at Yale University may have national implications. After staging unsuccessful recognition strikes in February 1992 and April 1995, Yale TA's withheld grades for their students in December 1995 and early January 1996, but continued to perform their other duties.[11] This "grade strike" also failed to win union recognition, but it may lead to a National Labor Relations Board (NLRB) ruling, currently pending, that TA's at private universities have a protected right to organize and bargain. Such a ruling could

spur organizing among TA's at other private institutions.

This *Almanac* chapter describes employment conditions and special provisions of labor law that pertain to unionizing part-time or nontenure-track faculty and TA's—the right to organize and bargain, unit determination, and the duty of fair representation in combined full-time/part-time bargaining units.[12] The essay also discusses relations between full-time, tenure-track faculty and contingent employees. Most observers emphasize conflicts of interests between these groups. "[T]he academic profession," note two observers, "has slowly but inexorably become bifurcated into two faculties: the tenured 'haves' and the temporary, part-time 'have nots.'"

> The reason for the two faculties is that the one sustains the other: the low costs and heavy undergraduate teaching loads of the have-nots help make possible the continuation of a tenure system that protects the jobs and perquisites of the haves. Because tenured faculty benefit directly and personally from this bifurcation of the academic profession, they have a vested interest in maintaining it.[13]

Here, in contrast, we discuss potential *benefits* for full-time faculty when part-time or nontenure-track faculty and TA's unionize to improve their working conditions.

EMPLOYMENT AND EMPLOYMENT CONDITIONS: PART-TIME FACULTY AND TA'S

The proportion of part-timers in the academic workforce grew from 22 percent in 1970-71, to 32 percent in 1982-83, and to 42 percent in 1992.[14] Heavy reliance on part-time faculty by a rapidly growing community college system—in which the part-timer proportion grew from 40 percent to 64 percent between 1971 and 1995—explains much of this growth.[15] In 1992, when the proportion of part-time faculty reached 60 percent in community colleges, part-timers represented only 39 percent of the teaching force at public four-year or master's-level institutions, 36 percent at private liberal arts colleges, and 23 percent at research universities.[16]

Research universities employed relatively few part-time faculty; instead, they relied on substantial numbers of part-time teaching assistants. The University of Michigan, for example, currently employs 1,700 TA's.[17] The number of Yale TA's nearly tripled in the past 20 years—to 1,039 in 1996-97.[18] TA's and adjuncts handled 70 percent of undergraduate classroom hours at Yale.[19]

Most part-time and contingent employees, noted a recent study of the entire U.S. workforce, faced substandard working conditions, including "lower pay, less-skilled jobs, poor chances of promotion, less job security, inferior benefits (such as vacation, health insurance, and pension), and lower status overall within their places of employment."[20] Controlling for productivity-related personal characteristics, such as level of education and years of work experience, the study added, part-timers earned about 20 percent less than full-timers among women with regular jobs; the differential for men was about 24 percent.[21]

College and university instructors showed a similar pattern. Full-time faculty members earned about $4,000 per course in 1993, after adjusting for time spent on other tasks; part-timers averaged $1,500 per course.[22] Part-time faculty were less likely to receive benefits. Only 17 percent of part-time faculty received employer-subsidized health insurance in 1993; 20 percent received employer pension contributions. The corresponding proportions for full-time faculty were 97 percent and 93 percent.[23] Part-timers often experience unfavorable employment conditions: professional isolation, exclusion from curricular discussions, and no access to voice mail, E-mail, or an office. Few part-timers have employment security; low enrollments can lead to last-minute class cancellations and loss of salary. Departments may exclude part-timers from consideration when a full-time position opens because of the stigma often attached to these appointments.[24]

TA's, like part-time faculty, typically received lower pay and sub-par benefits.[25] TA's often accepted these conditions, believing their jobs were brief apprenticeships leading to full-time, tenure-track positions. But lengthy spans as TA's and poor prospects for tenure-track jobs, particularly in the humanities, undermined this perception.

Substandard working conditions among part-timers and TA's created employee dissatisfaction; sustained contingent status focused

these employees on improving current conditions. Increasing numbers also made these groups ripe for organizing: Large bargaining units made it hard for employers to replace strikers but easy for unions to generate sufficient funds for contract negotiation and enforcement. But would labor law assist or hinder this organizing?

THE RIGHT TO ORGANIZE AND BARGAIN: PART-TIME AND NONTENURE-TRACK FACULTY

Many K-12 teacher unions, particularly in large cities, won recognition before enactment of statutes protecting their right to organize and bargain. Teachers typically had to strike or threaten to strike and mobilize labor movement allies to pressure school boards to grant recognition. In small cities and rural areas, teachers gained recognition only when legislation required school boards to bargain and unions won majority support in representation elections.[26]

College or university faculty unions occasionally won recognition without legal protection of their right to organize and bargain. AFT won bargaining rights in the Chicago City Colleges by striking for recognition in 1966, for example.[27] In November 1998, NEA won recognition of full-time and part-time faculty units at Goddard College.[28] Goddard trustees could have resisted unionization by invoking two decisions: the *Yeshiva* doctrine against full-time faculty, and a 1975 NLRB ruling against the part-timers.[29] But the Goddard trustees respected the majority vote decision in each unit.

Most boards of trustees, in contrast, recognized faculty unions only if forced by law. Part-time and nontenure-track faculty traditionally lacked the power and militancy to win a recognition strike. Nor could faculty unions control the labor supply to force recognition: unions have little role in training or job placement and have not matched organized medicine's ability to restrict entry to the profession by raising standards.[30] In the future, faculty unions might create hiring halls for adjuncts, perhaps by offering inducements to adjuncts, such as health insurance. Their success would depend on the union's ability to provide well-qualified faculty to employers. But for now, effective organizing of part-time or nontenure-track faculty depends on whether labor laws, as interpreted by labor boards and the courts, require employers to bargain with faculty unions with majority support.

Most full-time, tenure-track faculty in private colleges or universities, ruled the U.S. Supreme Court in the *Yeshiva* decision (1980), have no legally protected right to organize and bargain.[31] These faculty members, said the Court, are managers, not "employees" under the National Labor Relations Act (NLRA), since they participate in academic affairs and personnel decisions. The *Yeshiva* doctrine does not prohibit unionization or bargaining—witness the Goddard College case. But these faculty members have no recourse under NLRA if the administration takes reprisals for union activity or refuses to bargain with a union with majority support.

The *Yeshiva* doctrine did not apply to most part-time or nontenure-track faculty at private institutions because their limited participation in decision-making did not make them managers. In 1982, for example, the NLRB rejected an attempt by the University of San Francisco (USF) to use *Yeshiva* to deny bargaining rights to part-time faculty who participated in curriculum development. The NLRB, noting that USF's part-time faculty did not participate in decisions on graduation requirements, faculty hiring or tenure, or budgeting, ruled that NRLA covered these faculty members.[32]

State courts and labor boards often followed NLRB precedents when interpreting public-sector bargaining statutes. In 1987, a hearing examiner for the Pennsylvania Labor Relations Board excluded full-time, tenure-track faculty at the University of Pittsburgh from coverage under Pennsylvania's public-sector bargaining law, citing the *Yeshiva* doctrine.[33] But the Pennsylvania Labor Relations Board overruled the hearing examiner in 1990, and the *Yeshiva* doctrine has not been applied in the public sector since then.[34]

The 1990 Pennsylvania ruling favored faculty unions, but the ruling did not help the part-time faculty union at the University of Pittsburgh. The part-timers voted to unionize after the hearing examiner, as part of the 1987 decision, ruled that part-time and nontenure-track faculty were nonmanagerial employees with a protected right to organize and bargain.[35] But the 1990 ruling reestablished a

combined full-time-part-time unit, effectively nullifying the union representation vote by the part-timers. The part-timers were left without union representation when a majority of the combined unit voted against union representation in 1991.[36]

Part-time or nontenure-track faculty often face the legal argument that casual or temporary employees have no protected rights under collective bargaining laws. In the *University of San Francisco* case, NLRB felt it necessary to deny the employer's claim that part-time faculty were temporary employees in order to approve a bargaining unit of part-time faculty.[37] In a 1997 public-sector case, contingent employees at Eastern Michigan University were denied bargaining rights. Lecturers whose employment was not guaranteed beyond one semester but who were appointed for three consecutive semesters, ruled the Michigan Employment Relations Commission, were casual or temporary employees and, hence, could not form a collective bargaining unit.[38]

But in another 1997 public-sector case, an Alaska superior court judge upheld an Alaska Labor Relations Agency ruling that University of Alaska adjunct faculty had a protected right to organize and bargain despite their short-term appointments. The university argued that the state bargaining law did not cover adjuncts, and that a representation election held in a previous semester should not bind current adjuncts because of high turnover. "If an employer was privileged to defeat a representation petition based on the transient nature of its employee population," said the judge, "then every employer would use this process to frustrate the collective bargaining rights. The law does not support this position."[39]

Labor boards and courts, when recognizing a right to organize and bargain for part-time or nontenure-track faculty, adopted standard remedies for employer discrimination against union supporters. Carleton College, the NLRB ruled in 1999, violated NLRA by refusing to renew the annual contract of an adjunct instructor in the music department who tried to organize a union for adjunct music faculty.[40] The Board upheld an NLRB administrative law judge's ruling that Carleton administrators, "and perhaps also its tenure and tenure-track faculty," opposed a union for adjunct faculty and that the non-renewal occurred, in part, because of union activity. The NLRB ordered the instructor's reinstatement with back pay.

THE RIGHT TO ORGANIZE AND BARGAIN: TEACHING ASSISTANTS

The Teaching Assistants' Association (TAA) at the University of Wisconsin-Madison, the first TA union to win a contract, gained recognition without legislative protection in 1969.[41] Student activism associated with Vietnam War protests fueled the TAA's recognition drive. In 1969, a conservative Wisconsin legislator, believing that out-of-state graduate students instigated campus protests, introduced legislation to eliminate out-of-state tuition remission for the majority of TA's who came from out of state—a large cut in effective compensation. Many TA's, galvanized by this proposal, joined TAA, which demanded recognition as TA bargaining representative. The university granted the demand despite the absence of legal compulsion, in part because the chancellor, an institutional labor economist, favored collective bargaining.[42]

Subsequent events illustrated the importance of a legally protected right to organize and bargain. The university's new chancellor, a chemist who lacked his predecessor's sympathy for collective bargaining, negotiated a new contract with TAA in 1978. But a TAA victory in a key arbitration case apparently hardened the administration; in 1979 the university demanded the unilateral right to determine which employees the contract covered and which grievance cases could go to arbitration. TAA, rejecting these demands, unsuccessfully struck for five weeks in 1980, and the administration withdrew union recognition.[43] Six years later, TAA secured a state law protecting its right to organize and bargain for the TA's, and eliminating the administration's unilateral power to exclude TA's from the bargaining unit.[44] But the law also subjected TAA to the strike ban applying to other state employees.

TA unions at other universities have needed legal protection to win recognition. About 60 percent of the 5,446 TA's and research assistants at the University of Illinois signed union authorization cards in 1996. But the administration refused to recognize the union and opposed a representation election, saying these groups were students, not

employees, and therefore had no protected right to bargain. University officials dismissed a union victory in an April 1997 mock representation election as a publicity stunt.[45] The union had not won recognition as of May 1999; a bill to protect its right to organize stalled in the Illinois Senate after passing in the House.[46]

Yale TA's conducted two conventional strikes and a grade strike in unsuccessful attempts to win union recognition. In January 1996, immediately after the grade strike, the TA union filed an unfair labor practice (ULP) charge against Yale for taking reprisals against grade strike participants. The Yale University administration argued that the TA's were students, but in January 1997 the NLRB general counsel ruled that TA's were employees for NLRA purposes and issued a ULP complaint. An administrative law judge dismissed the complaint in August 1997, saying that NLRA did not protect grade strikes or other partial strikes. But the judge did not decide whether NLRA covered the TA's.[47] In November 1999, a three-member panel of the NLRB remanded the case to the administrative law judge, directing him to determine whether TA's were employees for purposes of federal labor law.[48] Unionization of TA's at Yale and other private universities might follow a ruling that TA's are statutory employees, even if withholding grades goes unprotected.

Union victories in 1999 at the University of California (UC) came 16 years after the TA union first sought recognition at Berkeley and 11 years after the union sought recognition at the other UC campuses.[49] The wording of the California Higher Education Employer-Employee Relations Act hindered TA organizing efforts at UC. The Act stated that the Public Employment Relations Board (PERB) "may find student employees whose employment is contingent on their status as students are employees only if the services they provide are unrelated to their educational objectives, or, that those educational objectives are subordinate to the services they perform."[50]

PERB, responding to a 1984 Berkeley TA union ULP charge, ruled that Berkeley TA's were not employees under the act; the California Court of Appeals agreed in 1992.[51] But in September 1996, a PERB administrative law judge ruled that UCLA's TA's were employees with collective bargaining rights. The university appealed the decision to PERB, and TA's at UCLA, Berkeley, and UC-San Diego then struck for recognition. Berkeley TA's struck again in April and May 1997.[52] A one-week TA strike at eight UC campuses in December 1998 ended when the state assembly speaker—a former Service Employees International Union organizer—and the state senate president proposed a 45-day cooling off period.[53] Five days later, PERB upheld the September 1996 UCLA ruling.[54] In February 1999, PERB refused a UC administration request for permission to appeal the decision to the courts. Instead PERB scheduled the UCLA representation election for March, and subsequently set elections at Berkeley for April and at Davis, Irvine, Riverside, San Diego, Santa Barbara, and Santa Cruz for May.[55]

The UC administration could have sought court review of the December 1998 PERB ruling, first, by refusing to bargain, and, then, by appealing a probable PERB finding that the refusal was a ULP. Instead the UC system president pledged to recognize the TA union if the UCLA TA's voted to unionize. "If the choice is union representation," he said in March 1999, "I want to assure our students and the UAW that the University will make every effort to cooperate fully and bargain in good faith at UCLA."[56] The TA unions won all eight elections, and the long battle over TA unionization at UC ended with a major union victory.

Repeated TA strikes for union recognition, the Yale and UC experiences show, are not sufficient to overcome opposition by a research university administration. The probable reason: TA strikes primarily affect undergraduate education, which may have a lower priority at research universities than publications and grants. Laws requiring administrators to bargain with unions are a prerequisite for organizing TA's, though strikes may help TA unions win better contracts.

APPROPRIATE BARGAINING UNITS

Who gets to vote in a union representation election? Who is covered by the union contract if the union wins? The answers depend on who's in the bargaining unit. A unit could include full-time and part-time faculty, only full-timers, or only part-timers. Typically, the NLRB and state public-sector labor boards decide if a unit requested by a union in a repre-

sentation petition is *an* appropriate unit—not *the most* appropriate unit. Boards decide if the employees in the proposed unit have a *community of interest*—similar employment conditions and common personnel rules—if the employer or a rival union contests the composition of the unit.

The NLRB excluded TA's and graduate research assistants from a unit of full-time and regular part-time faculty in the 1972 *Adelphi University* case. These two groups, the NLRB noted,

> do not have faculty rank, are not listed in the University's catalogues as faculty members, have no vote at faculty meetings, are not eligible for promotion or tenure, are not covered by the University personnel plan, have no standing before the University's grievance committee, and, except for health insurance, do not participate in any of the fringe benefits available to faculty members... [A]lthough performing some faculty-related functions, [they] are primarily students and do not share a sufficient community of interest with the regular faculty to warrant their inclusion in the unit.[57]

State labor boards and legislatures, adopting similar reasoning, established separate TA units at UC, the Florida State University System, the University of Iowa, the University of Kansas, the University of Massachusetts, the University of Michigan, the State University of New York (SUNY), the University of Oregon, the University of Wisconsin, and Wayne State University. But boards included TA's in larger faculty units at the City University of New York (CUNY) and at Rutgers.[58]

Sometimes, unions make a tactical decision on unit composition. Take the unit established at Southern Illinois University, where NEA won a November 1996 representation election. NEA solicited signatures from full-time and part-time faculty when it began to circulate union authorization cards in February, 1996. But, by May, organizers decided to seek a unit of full-timers, since it could secure the signatures needed for a representation election—30 percent of the proposed unit—only for a full-time unit.[59]

The NLRB, in its first faculty bargaining unit decisions in the early 1970s, included regular part-time faculty members in units with full-time faculty if any party sought their inclusion. But the board reversed itself in the 1973 *New York University* case, ruling that part-timers and full-timers did not share a community of interest and therefore belonged in separate units.[60] The NLRB cited differences in compensation, participation in university governance, eligibility for tenure, and job duties. Full-timers, for example, were required to conduct research and counsel students.

The NLRB and the federal courts subsequently accepted some combined units, despite the *New York University* precedent. In 1978, the U.S. Court of Appeals upheld the NLRB's *Kendall College* ruling for a unit that included full-timers and part-timers with prorated full-time contracts, but that excluded part-timers with per-course contracts.[61] In 1989, the U.S. Court of Appeals upheld an NLRB ruling that put full-time and part-time faculty in the same unit at Kendall School of Design.[62] The Kendall College administration argued for including part-timers with per-course contracts, but the Kendall School of Design administration argued against including part-timers. Management, too, this contrast suggests, seeks whatever unit will lead to the election outcome it favors.

The NLRB, in the 1997 *University of Great Falls* case, accepted a unit that included full-time faculty and part-time *associate* faculty, but not part-time *adjunct* faculty. In *Great Falls*, as in *Kendall School of Design*, the NLRB first ruled that *Yeshiva* did not apply to full-time faculty members, since they were not managerial employees. The composition of the bargaining unit then became relevant. At Great Falls, both sides stipulated that part-time associate faculty and full-time faculty shared a community of interest, but that part-time adjunct faculty did not.[63]

Part-time faculty members may form a separate bargaining unit in private colleges or universities if the NLRB deems full-time faculty to be managers. Part-time faculty at Goddard College, the NLRB ruled in 1975, lacked sufficient community of interest to form an appropriate bargaining unit, but the NLRB accepted a part-time faculty unit at USF in 1982.[64] In 1986, the U.S. Circuit Court of Appeals upheld a 1984 NLRB ruling that accepted a part-time faculty unit at the Parsons School of Design in New York City.[65]

Part-time or adjunct faculty can occasionally establish separate bargaining units at public institutions where tenure-track faculty are not unionized. One example: the unit of lecturers—some full-time, some part-time—at the University of California system, established by a 1984 representation election.[66] But these units are unusual, perhaps because "Any part-timer who comes out and advertises that he or she is willing to take this [union activism] on stands a good chance of not being around next semester."[67] Low wage scales—unions need sufficient dues revenue to cover the costs of contract negotiation and grievance handling—and high turnover also help to explain the low incidence of part-time units on campuses where the full-timers are not organized. But support of tenured colleagues may reduce the risk of reprisals and increase the chances of successful organization of part-timers.

The inconsistent decisions made by state labor boards on including part-timers and full-timers in the same bargaining unit reflect differences between and within states.[68] In 1968, for example, the New York State Public Employment Relations Board (PERB) established separate units for part-time and full-time faculty at CUNY. But, in 1969, PERB established a single bargaining unit for all 16,000 professional employees at the SUNY, including 2,000 part-time faculty members. In 1972, PERB had CUNY faculty vote on combining the full-time and part-time faculty into a single unit; the faculty voted to combine.

Full-time faculty established a bargaining unit at the Vermont State Colleges in 1973. The Vermont Labor Relations Board later added adjunct faculty to the unit, if they were in their third or subsequent semester of teaching with a six credit hour minimum per academic year. These adjuncts, ruled the board, had a sufficient expectation of continued employment to qualify as "state employees" covered under the State Employees Labor Relations Act. In 1989, the Vermont Supreme Court upheld the ruling on qualifications, but overturned the decision to include adjuncts and full-timers in the same bargaining unit.[69] The Vermont State Colleges then argued that the same local union "could not represent both full-time and adjunct faculty because of a potential conflict of interest that would jeopardize the bargaining process."[70] The Vermont Supreme Court rejected the argument, allowing one union to represent both groups in separate units.

A 1993 Illinois Educational Labor Relations Board (IELRB) decision, upheld by the Illinois Appellate Court in 1996, included "regular" part-time faculty in an existing bargaining unit of full-time faculty at a community college.[71] In assessing community of interest, IELRB "determined that the primary differences between the full-time and part-time faculty arose out of the provisions of the collective bargaining agreement and were not inherent in the positions themselves."[72] IELRB "stated that if the part-time faculty were organized into a separate unit, the full-time and part-time faculty would still have clashing interests; it would only require the College, rather than the Union to resolve those clashes."[73]

The experience at York University in Canada confirms this observation. York has separate bargaining units for full-time and part-time faculty, and the part-timers have twice gone on strike. "The role of 'management' in negotiations has become one of mediating between the interests of two separate and competing faculty sectors," notes one study. "The university, for example, could not remain fiscally viable if part-timers achieved parity with full-time faculty. Nor could full-time faculty be supported without a large part-time-work force."[74]

Is substantial improvement in conditions for part-timers "fiscally viable" for full-timers? In other economic sectors, unionization of the "secondary labor market" transformed jobs by raising pay and increasing employment security for employees at most or all firms competing in the same product market. Faculty union leaders in higher education may attain similar outcomes by bargaining for improved compensation and employment security for part-timers. Unions must meanwhile resolve tensions within combined units, if full-time and part-time faculty have different priorities in labor negotiations, and if they compete directly for jobs and resources.

COMBINED BARGAINING UNITS AND THE DUTY OF FAIR REPRESENTATION

Local union leaders must attend to the duty of fair representation in a combined bargaining unit. This duty, established by the U.S.

Supreme Court in 1944, prohibits unions from discriminating against any members of the bargaining unit when negotiating contracts or processing grievances.[75] A union dominated by either full-time or part-time faculty would breach this duty if it ignored the interests of the other group.

Part-timers are often more numerous than full-timers, particularly in community colleges, and could outvote the full-time faculty in a combined unit.[76] But part-timer inactivity often reduces their influence. In 1998, CUNY adjuncts established Adjuncts Unite to address concerns neglected by the faculty union.[77] Combined units may designate slots for part-time faculty on the executive board and the bargaining team to ensure adequate consideration of their interests.[78]

Would courts consider large differences in compensation and employment security to be sufficiently arbitrary to violate the union's duty of fair representation in a combined unit? We have few precedents in higher education, but cases in other sectors may be instructive. In a New York City public school case, for example, the union negotiated increased wages and benefits for teachers who taught severely handicapped students.[79] Teachers who taught mildly or moderately handicapped students sued, alleging the union acted arbitrarily by failing to secure the same pay increase for them. But the New York Supreme Court ruled the union did not violate its duty of fair representation, since the court found a rational basis for the compensation distinction.

A case involving *New York Times* printing pressmen addressed the issue of hiring priority for jobs filled on short notice.[80] The *Times* relied on a union hiring hall to meet short-term staffing needs on days when the paper had many pages or when many regular pressmen were absent. Under the labor agreement, the *Times* gave first priority to "junior pressmen"—members of the union and the bargaining unit who were available to work as extras. If the *Times* needed additional workers for a shift, it could hire "casuals" who were neither union nor bargaining unit members.

In 1997, the union negotiated an agreement that transferred 15 apprentices who worked for other publishers to the *New York Times* junior pressman hiring list. Some casuals who worked for the *Times* sued, arguing the union breached its duty of fair representation since the transfer decreased employment opportunities for casuals. The union, the casuals alleged, also breached this duty by placing a Navy veteran at the top of the casual list. The judge dismissed the case, saying that "a union's duty of fair representation does not extend to persons who are not employees in the bargaining unit."[81]

A recent case involved a part-time instructor in aviation maintenance at Lansing Community College (LCC) in Michigan, who was notified in February 1997 that his paid hours were reduced.[82] The faculty member first complained to the LCC administration. When LCC did not satisfactorily address his concerns, he contacted the Federal Aviation Administration (FAA), alleging that an LCC helicopter did not meet federal safety standards. LCC reprimanded him, stating that the alleged shortcomings "were false and/or overly technical and did not in fact render the helicopter unairworthy."[83] The FAA soon informed LCC that the safety complaints were unfounded. In April, LCC informed the faculty member that, due to falling enrollments, he would not have a teaching assignment for summer or fall, 1997. The faculty member then complained to his union, but the union representative found no basis for a grievance since enrollments *had* declined substantially and since LCC *had* complied with the collective bargaining agreement by assigning classes first to full-time faculty members.

The faculty member sued the union on several grounds, including breach of its duty of fair representation by failing to contest LCC's decision. The judge summarily dismissed this aspect of the suit, noting that he had not exhausted his contractual remedies by filing a grievance against LCC. The suit did *not* allege that the union violated its duty of fair representation by negotiating contract language giving part-timers less layoff protection than full-timers.[84]

Faculty unions, these cases suggest, do not automatically violate their duty of fair representation if they allow full-time–part-time differences in compensation and employment security to persist. Yet even if there is no compelling legal reason for change, there may be a compelling economic reason.

THE STAKES FOR FULL-TIME FACULTY

Why should full-time faculty members care about employment conditions for part-time faculty or TA's? Compassion may motivate some; more important, full-timers can advance their own interest by supporting unionization of part-time faculty and TA's.

U.S. Supreme Court Justice Louis Brandeis explained those interests in his dissent in the *Duplex Printing Press Company v. Deering* case (1921).[85] Duplex was one of four U.S. manufacturers of newspaper printing presses. These manufacturers, Brandeis noted:

> ... are in active competition. Between 1909 and 1913 the machinists' union induced three of them to recognize and deal with the union, to grant the eight-hour day, to establish a minimum wage scale and to comply with other union requirements. The fourth, the Duplex company, refused to recognize the union; insisted upon conducting its factory on the open shop principle; refused to introduce the eight-hour day and operated for the most part, ten hours a day; refused to establish a minimum wage scale; and disregarded other union standards. Thereupon two of the three manufacturers who had assented to union conditions, notified the union that they should be obliged to terminate their agreements with it unless their competitor, the Duplex Company, also entered into the agreement with the union, which, in giving more favorable terms to labor, imposed correspondingly greater burdens upon the employer. Because the Duplex Company refused to enter into such an agreement and in order to induce it to do so, the machinists' union declared a strike at its factory, and in aid of that strike instructed its members and the members of affiliated unions not to work on the installation of presses which plaintiff had delivered in New York.[86]

The Court majority declared the union's secondary boycott—the refusal to install Duplex presses at the plants of New York customers—illegal since only Duplex employees had a vital stake in employment conditions at the company. Brandeis disagreed:

> Defendants' [the union's] justification is that of self-interest...[T]he Duplex Company's refusal to deal with the machinists' union and to observe its standards threatened the interest not only of such union members as were its factory employees, but even more of all members of the several affiliated unions employed by plaintiff's [the Duplex Company's] competitors and by others whose more advanced standards the plaintiff was, in reality, attacking.[87]

Competition from nonunion workers with low wages and long hours threatened the gains made by workers at other companies through union activity. "Self-defense," not malice, said Brandeis, led the union to injure the Duplex Company with a secondary boycott; the union's actions were lawful.

The Brandeis dissent provides an economic rationale for labor solidarity. Competition undermines large differentials in labor standards. Full-time faculty compete in the labor market with part-time or nontenure-track faculty and TA's; administrators can substitute one type of instructional labor for another. Colleges and universities also compete in the market for educational services. The for-profit University of Phoenix can charge lower tuition by relying on low-wage, part-time faculty. Distance learning may further increase competition for educational services and undermine differentials in labor standards.

To maintain their standard of living, unionized full-time faculty members must help to organize part-time and nontenure-track faculty and TA's and help them win pay increases, reduced hours, and job security.

NOTES

Thanks to Rachel Hendrickson, Con Lehane, and Christine Maitland of NEA, and Perry Robinson of AFT for helpful suggestions in the early stages of research for this chapter. Thanks also to Bernard Saltzman for comments on a preliminary draft.

[1] Leslie, 1998, 26.

[2] Employing part-time or contingent employees is not always controversial. Here are some examples: hiring full-time temporary faculty to replace regular faculty who are on leave; hiring part-time faculty who prefer to spend time at home with young children; hiring professionals with full-time nonaca-

demic jobs and with special expertise to work part time as clinical supervisors or instructors for evening courses; allowing older, tenured faculty members to switch to teaching part-time as part of a phased retirement program; and hiring doctoral students as teaching assistants for several semesters to provide teaching experience needed to obtain a tenure-track job.

[3] See, for example, Ludlow, 1998 or Schneer, 1998. An adjunct with eleven years of experience put it, "Working as an adjunct is like becoming a Black. You cannot become White again" (Quoted in Barker, 1998, 203).

[4] Leatherman, February 13, 1998.

[5] Leatherman, February 27, 1998.

[6] "U of Iowa Graduate Students Vote to Unionize." *Chronicle of Higher Education* (May 3, 1996), A6.

[7] "Wayne State U. Graduate-Student Workers Demand Wider Recognition." *Chronicle of Higher Education* (March 26, 1999), A12.

[8] *Government Employee Relations Report* (hereafter *GERR*) 37, No. 1813 (May 17, 1999), 566-567. See also "Teaching Assistants at U. of Minnesota Reject Union." *Chronicle of Higher Education* (May 21, 1999), A12.

[9] *GERR* 36, No. 1791 (December 7, 1998), 1341-1342; *GERR* 37, No. 1806 (March 29, 1999), 360; *GERR* 37, No. 1813 (May 17, 1999), 565-566; "Teaching Assistants at U. of California Vote to Unionize." *Chronicle of Higher Education* (July 2, 1999), A12.

[10] *GERR* 37, No. 1812 (May 10, 1999), 353-536.

[11] *Yale University and Graduate Employees and Students Organization*, 1997 NLRB Lexis 619.

[12] Many rules that govern full-time college and university employees also cover part-time or nontenure-track faculty and TA's who have the right to organize and bargain. See Saltzman, 1998.

[13] Gappa and Leslie, 1993, 2.

[14] Schuster, 1998.

[15] "Statement from the Conference on the Growing Use of Part-Time and Adjunct Faculty," 1998, 54-55; Palmer, 1999, 45.

[16] Leslie, 1998, 3.

[17] Carney, 1999.

[18] Wilson, 1999. The Graduate Employees and Students Organization (GESO) compiled these statistics.

[19] *Ibid*. Yale's Provost questioned these figures. She noted that GESO would list TA's as doing 80 percent of the teaching in a course with two hours of lecture per week by a faculty member and eight discussion sections taught by TA's, even though each undergraduate attends only one discussion section. "Letter to members of the Faculty of Arts and Sciences, and Students in the Graduate School and Yale College from Provost Alison Richard," available at http://www.yale.edu/opa/gradschool/fs_letter.html

[20] Mishel, *et al.*, 1999, 247.

[21] *Ibid.*, Table 4.15, 245.

[22] Gappa and Leslie, 1997, 15. One complicating factor: full-time faculty are more likely than part-timers to hold doctorates or advanced professional degrees: 75 percent vs. 36 percent at four-year institutions; 19 percent vs. 13 percent, at two-year schools (Benjamin, 1998, Table 5.2). The wage gap would shrink when adjusted for credentials but probably would not disappear.

[23] Gappa and Leslie, 1997, 18.

[24] See, for example, Haeger, 1998, 84-85.

[25] Again, the compensation gap narrows when adjusted for differences in education and experience.

[26] Saltzman, 1985.

[27] *GERR*, No. 169 (December 5, 1966), B5-B6 and No. 194 (May 29, 1967), B4.

[28] Schneider, 1998.

[29] *Goddard College*, 88 LRRM 1228 (NLRB 1975).

[30] Flexner, 1910.

[31] *NLRB v. Yeshiva University.* 444 U.S. 672 (1980).

[32] *University of San Francisco and University of San Francisco Faculty Association*, 112 LRRM 1113 (NLRB 1982).

[33] *In the Matter of the University of Pittsburgh*, Case No. PERA-R-84-53-W, 25 (1987).

[34] *National Public Employment Reporter*, 13 (1991), case PA-21203.

[35] *GERR* 27, No. 1308 (April 3, 1989), 470 and *GERR* 27, No 1316 (May 29, 1989), 725.

[36] Robinson, 1996, 29, 34-35.

[37] That this employer claim was rejected for lack of evidence rather than as irrelevant suggests a double standard that disadvantages contingent faculty. NLRB has certified bargaining units of professional musicians, actors, dock workers, or construction workers, *even when hired for a day at a time*; part-time faculty or adjuncts are typically hired for terms of at least 10 weeks. Also, Section 8(f) of NLRA protects construction unions representing casual or temporary employees by authorizing prehire agreements, under which a contractor agrees to recognize a union before the employer hires its workers. The union then typically refers qualified workers through a hiring hall.

[38] *Eastern Michigan University and Michigan Federation of Teachers*, 1997 MERC Lab Op 312 (1997). As this chapter was being written, a decision was pending in a subsequent representation petition involving a smaller number of Eastern Michigan University lecturers who worked virtually full time [telephone interview with James Kurtz, administrative law judge for the Michigan Employment Relations Commission, August 4, 1999].

[39] *University of Alaska v. United Academic Adjuncts-AAUP/AFT/APEA*, Alaska Superior Court, Third Judicial District (1997), available at http://chronicle.com/che-data/focus.dir/0112.98/alaska.htm

[40] *Carleton College*, 328 NLRB No. 31 (1999), 1999 NLRB Lexis 307.

[41] Feinsinger and Roe, 1971.

[42] As a member of the TAA executive board in the late 1970's, however, I encountered senior members of the union who were bitter over this Chancellor's subsequent resistance to TAA demands for a larger TA role in educational policy. A TAA poster from 1970, for example, read: "Chancellor Ed Young—war maker, strike breaker."

[43] *GERR*, No. 857 (April 14, 1980), 26 and *GERR*, No. 862 (May 19, 1980), 30-31.

[44] *GERR* 23, No. 1149 (February 3, 1986), 140-141.

[45] "Graduate Students on U. of Illinois Campus Vote to Unionize," *Chronicle of Higher Education* (April 25, 1997), A6.

[46] *GERR* 37, No. 1812 (May 10, 1999), 535-536.

[47] *Yale University and Graduate Employees and Students Organization*, 1997 NLRB Lexis 619.

[48] *Yale University*, 330 NLRB, case 28 (1999).

[49] *GERR* 37, No. 1801 (February 22, 1999), 209-210.

[50] California Government Code, Section 3562, subdivision (f).

[51] *Association of Graduate Student Employees v. PERB*, 140 LRRM 2598 (Cal. 1992).

[52] *GERR* 34, No. 1691 (November 25, 1996), 1630-1631; *GERR* 35, No 1709 (April 7, 1997), 461; and *GERR* 35, No. 1713 (May 5, 1997), 586-587.

[53] *GERR* 36, No. 1791 (December 7, 1998), 1341-1342.

[54] *Regents of the University of California and Student Association of Graduate Employees,* Cal. PERB, No. 1301-H (December 11, 1998). See also *GERR* 36, No. 1793 (December 28, 1998), 1409-1410.

[55] *GERR* 37, No. 1801 (February 22, 1999), 209-210; *GERR* 37, No. 1806 (March 29, 1999), 360.

[56] Leatherman, 1999.

[57] *Adelphi University*, 79 LRRM 1545 (NLRB 1972) at 1548.

[58] All of these bargaining units except those at the University of California were listed in Friedlander, 1998.

[59] By May, the organizers secured authorization cards for 17 percent of full-timers, but only six percent of the part-timers. Magney, 1999.

[60] *New York University*, 83 LRRM 1549 (NLRB 1973).

[61] *Kendall College v. NLRB*, 570 F.2d 216 (7th Cir. 1978).

[62] *Kendall School of Design v. NLRB*, 866 F.2d 157 (6th Cir. 1989). The Kendall School of Design, located in Michigan, has no affiliation with Kendall College, in Illinois.

[63] *University of Great Falls and Montana Federation of Teachers*, 157 LRRM 1196 (NLRB 1997).

[64] *Goddard College*, 88 LRRM 1228 (NLRB 1975); *University of San Francisco*, 112 LRRM 1113 (NLRB 1982).

[65] *NLRB v. Parsons School of Design*, 793 F.2d 503 (2nd Cir. 1986).

[66] *GERR* 22, No. 1050 (February 13, 1984), 310.

[67] Robinson, 1996, 16 and 32, quoting a California community college union leader.

[68] Head and Leslie, 1979.

[69] *Vermont State Colleges Faculty Federation v. Vermont State Colleges*, 566 A.2d 955 (Vt. 1989).

[70] *Vermont State Colleges Faculty Federation v. Vermont State Colleges*, 616 A.2d 221 (Vt. 1992) at 222.

[71] *Community College v. IELRB*, 151 LRRM 2661 (Ill. App. 1 Dist. 1996).

[72] *Ibid.* at 2664.

[73] *Ibid.*

[74] Gappa and Leslie, 1993, 142, summarizing Rajagopal and Farr (no date). Farr was then Vice-President for Finance and Administration at York University.

[75] *Steele v. Louisville & Nashville R.R.*, 323 U.S. 192 (1944).

[76] Section 101(a)(1) of the Landrum-Griffin Act, which governs private-sector unions, prohibits weighted voting systems that give part-timers reduced voting power in union elections, even if they pay reduced dues.

[77] Leatherman, February 27, 1998.

[78] This suggestion was made by Diamond, 1986.

[79] *Litman v. Board of Education of the City of New York*, 137 LRRM 2551 (NY 1991).

[80] *Scanz v. New York Times*, 156 LRRM 2781 (S.D. NY 1997).

[81] *Ibid*. at 2784. The judge cited as a precedent the U.S. Supreme Court ruling in *Allied Chemical &*

Alkali Workers, Local Union No. 1 v. Pittsburgh Plate Glass Co., Chemical Division, 404 U.S. 157 (1971) that retirees are not members of the bargaining unit, so that the employer had no duty to bargain over pension benefits for those already retired.

[82] *Kutz v. Lansing Community College*. 1999 U.S. Dist. Lexis 6604 (W.D. Mich. 1999).

[83] *Ibid.* at 5.

[84] But the judge did not summarily dismiss allegations that LCC violated the faculty member's First Amendment rights and the Michigan Whistleblowers' Protection Act; these allegations will go to trial.

[85] *Duplex Printing Press Company v. Deering et al.*, 254 U.S. 443; Brandeis dissent at 479. Justice Oliver Wendell Holmes concurred with the dissent.

[86] *Ibid.*, 479-480.

[87] *Ibid.*, 480-481.

REFERENCES

Barker, K. "Toiling for Piece-Rates and Accumulating Deficits: Contingent Work in Higher Education." In K. Barker and K. Christensen, eds. *Contingent Work: American Employment Relations in Transition*. Ithaca, NY: Cornell University Press, 1998, 195-220.

Benjamin, E. "Variations in the Characteristics of Part-Time Faculty by General Fields of Instruction and Research." In D.W. Leslie, ed. *The Growing Use of Part-Time Faculty: Understanding Causes and Effects. New Directions for Higher Education.* No. 104, Winter 1998, 45-59.

Carney, S. "U-M graduate employees accept tentative agreement." *Ann Arbor News*, March 15, 1999, C1.

Diamond, A. "Bargaining with 'Nontenure Track' Faculty: The Massachusetts Experience." In Douglas, J.M., ed. *The Unionized Professorate: A Discriminating Appraisal*. New York: National Center for the Study of Collective Bargaining in Higher Education and the Professions, 1986: 87-91.

Feinsinger, N.P. and Roe, E.J. "The University of Wisconsin, Madison Campus—TAA Dispute of 1969-70: A Case Study." *Wisconsin Law Review* 1971, No. 1 (1971): 229-274.

Finkin, M.W., Goldstein, R.A., and Osborne, W.B. *A Primer on Collective Bargaining for College & University Faculty.* Washington, DC: AAUP, 1975.

Flexner, A. *Medical Education in the United States and Canada*. Boston: Carnegie Foundation for the Advancement of Teaching, Bulletin No. 4, 1910.

Friedlander, G. "Graduate Student Unions." *Academe* 84, No. 6 (November-December 1998), 48-49.

Gappa , J.M. and Leslie, D.W. *The Invisible Faculty: Improving the Status of Part-Timers in Higher Education.* San Francisco: Jossey-Bass, 1993.

_____. "Two Faculties or One?: The Conundrum of Part-Timers in a Bifurcated Work Force." American Association for Higher Education, Inquiry no. 6, 1997.

Haeger, J.D. "Part-Time Faculty, Quality Programs, and Economic Realities." In D.W. Leslie, ed. *The Growing Use of Part-Time Faculty*, 1998 *op cit.*, 81-88.

Head, R.B. and Leslie, D.W. "Bargaining Unit Status of Part-Time Faculty." *Journal of Law & Education* 8, No. 3 (July 1979), 361-378.

Leatherman, C. "Part-Time Instructors Vote to Unionize at Chicago's Columbia College." *Chronicle of Higher Education* (February 13, 1998), A16.

_____. "Faculty Unions Move to Organize Growing Ranks of Part-Time Professors." *Chronicle of Higher Education* (February 27, 1998), A12.

_____. "U. of California Opens Door to Recognition of Teaching Assistants' Union." *Chronicle of Higher Education* (March 26, 1999), A18.

Leslie, D.W. "Part-Time, Adjunct, and Temporary Faculty: The New Majority?" Report of the Sloan Conference on Part-Time and Adjunct Faculty, May 1998.

Ludlow, J. "Priority and Power: Adjuncts in the Academy." *Thought & Action* 14, No. 2 (Fall 1998), 51-64.

Magney, J.R. "Faculty Union Organizing on the Research Campus." *Thought & Action* 15, No. 1 (Spring 1999): 111-126.

Mishel, L., Bernstein, J., and Schmitt, J. *The State of Working America 1998-99.* Ithaca, NY: Cornell University Press, 1999.

Palmer, J.C. "Part-Time Faculty at Community Colleges: A National Profile." *NEA 1999 Almanac of Higher Education*. Washington: NEA, 1999, 45-53.

Rajagopal, I. and Farr, W.D. "Mediative Roles for Management: Collective Bargaining with Part-Time Faculty." Unpublished manuscript, York University: Toronto, no date.

Robinson, P. *Part-Time Faculty Issues.* Washington, DC: American Federation of Teachers, 1996.

Saltzman, G.M. "Bargaining Laws As a Cause and Consequence of the Growth of Teacher Union-

ism." *Industrial and Labor Relations Review* 38, No. 3 (April 1985), 335-351.

_____. "Legal Regulation of Collective Bargaining in Colleges and Universities." *NEA 1998 Almanac of Higher Education*. Washington: NEA, 1998, 45-63.

Schneer, D.L. "Alice in the Academy: A Farce in Thirteen Scenes." *Thought & Action* 14, No. 2 (Fall 1998), 71-83.

Schneider, A. "Goddard College Allows Faculty to Unionize." *Chronicle of Higher Education* (December 4, 1998), A14.

Schuster, J.H. "Reconfiguring the Professoriate: An Overview." *Academe* 84, No. 1 (January-February 1998), 48-53.

"Statement from the Conference on the Growing Use of Part-Time and Adjunct Faculty," *Academe* 84, No. 1 (January-February 1998), 54-60.

Wilson R. "Yale Relies on TA's and Adjuncts for Teaching, Report Says." *The Chronicle of Higher Education*, April 9, 1999, A15.