

# Journal of Collective Bargaining in the Academy

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Volume 0 NCSCBHEP Proceedings 2009

Article 17

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April 2009

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### Recommended Citation

Benjamin, Ernst (2009) "The Erosion of the Tenure System and Academic Collective Bargaining: An AAUP Perspective," *Journal of Collective Bargaining in the Academy*: Vol. 0 , Article 17.

Available at: <http://thekeep.eiu.edu/jcba/vol0/iss4/17>

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## THE EROSION OF THE TENURE SYSTEM AND ACADEMIC COLLECTIVE BARGAINING: AN AAUP PERSPECTIVE

Ernst Benjamin

The widely endorsed “1940 Statement of Principles on Academic Freedom and Tenure” affirms that “Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability.”<sup>1</sup> The erosion of the tenure system severely threatens both of these objectives and thereby presents a severe challenge both to academic institutions and to academic collective bargaining.

### The Tenure System

The “1940 Statement” specified that: “After a probationary period, teachers or investigators should have permanent or continuous tenure... .”<sup>2</sup> As the AAUP elaborated in 1971, the tenure system required that, “Except for special appointments clearly designated at the outset as involving only a brief association with the institution, *all full-time faculty appointments* are either with continuous tenure or probationary for tenure [emphasis added]”<sup>3</sup> All but a small number of visiting or temporary post-graduate full-time positions were viewed as tenure-eligible by AAUP, as well as by most universities and colleges. Further, AAUP has continued to maintain that, following a probationary period (ordinarily seven years of full-time service), *all* full-time faculty “should be terminated only for adequate cause..., regardless of whether they have been officially appointed to tenured or tenure-track positions.”<sup>4</sup>

Properly speaking, it is this tenure system, not tenure itself, which has suffered severe erosion. That is, there has not been a significant decline in the proportion of universities and colleges that continue to offer tenure. Most of these institutions continue to tenure a substantial proportion of their ranked faculty. Indeed, as Table 1 shows, at institutions with academic ranks, more than 50% of *full-time* faculty hold tenure; professors are 93.7% tenured, associate professors 82.6%.<sup>5</sup> However, as Table 2 shows, when part-time faculty are included, a substantial majority of faculty are ineligible for tenure.

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<sup>1</sup> AAUP, *Policy Documents and Reports*, 10th ed., AAUP: Washington, DC, 2006, 3.

<sup>2</sup> 1940, 4.

<sup>3</sup> AAUP, “Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments,” *Policy*, 16.

<sup>4</sup> 1940, 4.

<sup>5</sup> AAUP, *Academe*, “On the Brink: The Annual Report on the Economic Status of the Profession,” Table 13, March- April 2009.

**Table 1: Tenured Full-Time Faculty by Type of Institution and Rank 2008-2009**

<i>All Institutions by Type</i>	<i>N Faculty</i>	<i>% With Tenure</i>	<i>Institutions with Ranks [by Rank]</i>	<i>N Faculty</i>	<i>% Tenured</i>
<b>Doctoral</b>	198,820	56.6	<b>Professor</b>	121,270	93.7
<b>Master's</b>	116,495	51.8	<b>Associate</b>	100,901	82.6
<b>BA</b>	47,597	51.3	<b>Assistant</b>	103,826	6.7
<b>2-Year w/Ranks</b>	18,438	41.4	<b>Instructor</b>	24,461	1.9
<b>2-Year w/o Ranks</b>	8,567	40.4	<b>Lecturer</b>	24,571	1.7
<b>Combined</b>	389,917	53.4	<b>No Ranks</b>	6,321	2.0
			<b>Combined</b>	381,350	53.7

**Table 2: Trends in Faculty Status, 1975-2007  
All Degree-Granting Institutions: National Totals**

	<b>1975</b>	<b>1989</b>	<b>1995</b>	<b>2007</b>
<b>Full-Time Tenured</b>	36.5	33.1	30.6	21.3
<b>Full-Time Tenure-Track</b>	20.3	13.7	11.8	9.9
<b>Full-Time Non-Tenure-Track</b>	13.0	16.9	16.7	18.5
<b>Part-Time</b>	30.2	36.4	40.9	50.3

In 1975, 57% of all faculty were either tenured or tenure-track. In 2007 less than a third of all faculty (31%) were tenured or tenure-track. More than two-thirds (68.8%) of faculty held contingent positions as part-time faculty (50.3%) or full-time, non-tenure-track faculty (18.5%).<sup>6</sup> Where the tenure system once provided a broad, if not universal, opportunity for those who sought faculty careers, the emerging appointment system, variously termed a bifurcated, two-tier, multi-tiered, or even caste system, is transforming tenure into the privilege of a few that is unavailable to the more than two-thirds of faculty who hold contingent, non-tenure-eligible appointments.<sup>7</sup>

Tenure was never a right. But the opportunity for consideration for tenure, tenure eligibility, was formerly a widely available right. Tenure itself was, and where it persists, is an achieved status conditioned on successful professional performance. Accordingly, AAUP's historical defense of tenure was not, as some critics now perceive it, the defense of the rights of a privileged few but rather the promotion of a broad, and, until the fiscal crisis of the 1970s, expanding opportunity for the vast majority of faculty. Since the 1970s, however, as universities and colleges have increased the proportion of non-tenure eligible part- and full-time appointments, the proportion of faculty enjoying either that right or that opportunity has diminished. This is why tenure is increasingly regarded as a privilege to be enjoyed by a few exceptionally meritorious or simply fortunate applicants. Tenure for these faculty persists, but the tenure system is on life support.

AAUP issued its first report warning against the increasing use of full-time, recurrent non-tenure-track appointments in 1978--finding these appointments "unjust," "inequitable," "a threat to academic freedom" and "unnecessary"—and then repeated the warning and recommended corrective action in further reports issued in 1986, 1993 and 2003.<sup>8</sup> The key admonition, because it is the one most consistent with preserving the tenure system, is the recommendation that faculty should be evaluated on the basis of their specific assigned responsibilities. The 1993 report, in particular, emphasized first that AAUP continues to regard all full-time positions, other than temporary positions of short duration and retiree positions, as tenure-eligible or tenured.

In view of the growing diversity of specialized faculty roles, the report also recommended that: "1. All appointments, including part-time appointments, should have a description of the specific duties required. Complex institutions may require multiple

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<sup>6</sup> Source: U.S. Department of Education, IPEDS Fall Staff Salary Survey. Compiled by American Association of University Professors <http://www.aaup.org/NR/rdonlyres/7D01E0C7-C255-41F1-9F11-E27D0028CB2A/0/TrendsInFacultyStatus2007.pdf>

<sup>7</sup> Ernst Benjamin, "Reappraisal and Implications for Policy and Research," *Exploring the Role of Contingent Instructional Staff in Undergraduate Learning*, Ernst Benjamin ed., New Directions for Higher Education, Number 123/Fall 2003, Jossey-Bass, San Francisco, 104-5.

<sup>8</sup> "On Full-Time Non-Tenure-Track Appointments (1978)," *AAUP Bulletin*, 64:3, September 1978 (267-73); "On Full-Time Non-Tenure-Track Appointments," 1986, *AAUP Policy*, 10<sup>th</sup> ed., 85-92; "The Status of Non-Tenure-Track Faculty," 1993, *AAUP Policy*, 9<sup>th</sup> ed., 77-87. "Contingent Appointments and the Academic Profession," 2003, *AAUP Policy*, 10<sup>th</sup> ed., 98-113.

models of faculty appointments consistent with the diverse contributions appropriate to the institution's needs.”<sup>9</sup> In plainer language, faculty repeatedly reappointed to full-time teaching only or other specialized positions should either be awarded tenure, or non-reappointed, depending on the quality of their teaching or other specified responsibilities and not a universal, generic standard.

AAUP policy regarding part-time faculty appointments has differed from the policy for full-time faculty. AAUP has always accepted the need for some non-tenure-eligible part-time appointments and has never recommended that part-time faculty appointments routinely include an expectation of consideration for tenure. Limited numbers of part-time appointments were understood as necessary in providing institutions some flexibility to accommodate changes in student demand or curricular emphasis. Part-time appointments also enabled universities and colleges to employ the talents and experience of faculty whose extra-university vocations contribute to their teaching or for whose specialty there is insufficient student demand to justify a full-time position. Such limited positions were also attractive to the vast majority of part-time appointees. As recently as 1998 fewer than 25% of part-time faculty reported that they would prefer a full-time position (of the 59% who affirmed that they taught part-time because a full-time position was not available, only 39% said they would prefer a full-time position).<sup>10</sup>

Nonetheless, as early as 1980, AAUP's report on "The Status of Part-time Faculty" noted a 50% rate of increase in part-time faculty between 1972 and 1977, contrasted with a 9% growth in full-time positions; the report also described "a host of problems" involving "the rights, privileges, and economic welfare" of the part-time faculty. Drawing on a 1973 report of the Commission on Academic Tenure, the AAUP report recommended that universities first provide an opportunity to achieve tenure for those part-time appointees "who, as their professional career, share the teaching, research and administrative duties customary for faculty at their institution."<sup>11</sup> The report then went on to recommend increased job security, participation in governance, pay and benefits for those appointees who continued on to hold non-tenure-eligible positions. These proposals have been echoed and amplified in subsequent reports by AAUP and many others.

Few universities or colleges have, however, appointed significant numbers of part-time faculty to tenured positions. Some have offered improvements in other terms and conditions of appointment—often as a result of collective bargaining—but overall, what was at one time a mutually satisfactory exception to the tenure system has become a serious threat not only to that system but to the academy. The growing over-reliance on part-time faculty not only exploits many of these appointees but has been shown, by Jacoby, Ehrenberg and others, to diminish faculty involvement in student learning and to

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<sup>9</sup>Ibid., 86.

<sup>10</sup> Benjamin, "Reappraisal"; based on NCES, "A Profile of Part-time Faculty," Working Paper Series, Fall 1998, Table 5.1, p. 34.

<sup>11</sup> *AAUP Policy*, 10<sup>th</sup> ed., 763-83.

diminish graduation rates in both community colleges and four-year colleges and universities.<sup>12</sup>

### **Collective Bargaining and the Tenure System**

Academic collective bargaining has supported tenure and has not as yet contributed substantially to the erosion of the tenure system, but it may increasingly do so. In previous presentations to these meetings, I have emphasized that academic unions, defying the expectations of critics, did not substitute job security for tenure, and have resisted administration efforts to diminish tenure eligibility and protections.<sup>13</sup> But bargaining policies have been built upon and sometimes reinforce faculty divisions. So those faculty members, full- or part-time, who have been excluded from the tenure system, and whose institutions have generally sought to maximize flexibility and minimize long-term obligations attached to non-tenure-track positions, have understandably sought other forms of job security.

Faculty contracts at four-year colleges and universities generally strengthened tenure for full-time bargaining unit members by incorporating previous tenure policies in the provisions of enforceable agreements. These contracts also crafted a balance between, on the one hand, the rights of faculty peers to participate in influential collegial personnel recommendations at the departmental, college and university levels, and, on the other side, individual due process protections through published standards, access to personnel files and the right to know and test the grounds for adverse decisions. Contractual grievance and arbitration procedures often supplemented and improved upon previous procedures to ensure fair consideration for tenure and protections against arbitrary dismissal.

Moreover, these contractual provisions often included the requirement that each department and college develop a specific statement of expectations, criteria or factors that would provide the basis for evaluation of tenure candidacy. So, even though bargaining sometimes contributed to a centralization of tenure review and heightening of tenure requirements, it also allowed for diverse tenure expectations consistent with the diverse missions and practices of different departments or (less frequently) diverse faculty assignments within departments. Neither the tenure system nor bargaining necessitated the exclusion of primarily teaching or primarily research positions from the tenure system.

Nonetheless, many colleges and universities used the assignment of some faculty to such primarily teaching or primarily research positions as to justify increasing numbers of

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<sup>12</sup> Daniel Jacoby, "Effects of Part-Time Faculty Employment on Community College Graduation Rates," *Journal of Higher Education*, Nov 2006; R.G. Ehrenberg and L. Zhang, "Do Tenured and Tenure-track Faculty Matter? (NBER Working Paper No. W10695), Cambridge, MA, National Bureau of Economic Research.

<sup>13</sup> Benjamin, "Contractual Protection of Academic Freedom: Tenure and Collegial Review," Proceedings of the NCSCBHEP, April 2006 and "How Academic Bargaining Differs and Why the Differences Matter, NCSCBHEP, 2003.

long-term, non-tenure-eligible appointments: sometimes by agreement with the union representing tenure-track faculty and sometimes by exclusion of the non-tenure-track positions from the bargaining unit or incorporation of non-tenure-track positions in a separate unit. Where this occurred, the often informal and *de facto* distinction between non-tenure-eligible and tenure-track faculty acquired formal *de jure* status and tenure eligibility increasingly became the defining characteristic of a privileged subset of faculty rather than the right of all full-time appointees.

Similarly, although a few agreements established a category of tenured part-time appointments consistent with AAUP recommended policy, these appointees constitute a very small proportion of all part-time faculty. Further, although some part-time positions have pay and benefits based on a fraction of a full-time equivalent load, most part-time faculty, regardless of bargaining, are paid by the course or course hour at rates well below the full-time equivalent and without compensation for prep time or office hours, without benefits, and with limited professional support or opportunity for collegial participation in academic governance.

Bargaining has improved these terms and conditions of employment in some instances, but overall, part-time faculty have fared much less well than full-time. So it is not surprising that, despite the substantial majority of part-time faculty who prefer part-time appointments, more than half of part-time faculty in the liberal arts disciplines, where large numbers of applicants compete for a declining proportion of full-time, tenure-track opportunities, report that they would prefer full-time positions.<sup>14</sup> There is considerable debate, despite the very limited research, regarding whether part-time faculty have bargained more successfully when included in full-time units, or in separate units but allied with full-time units, or simply on their own.<sup>15</sup>

Higher education unions generally agree that the basic strategy to correct the exploitation of contingent faculty includes increasing the proportion of faculty who enjoy the opportunity to achieve both full-time and tenure-track positions while simultaneously increasing the protections, compensation and professional opportunities of those faculty who remain in part-time and full-time contingent positions.<sup>16</sup> This dual approach proceeds on the further proposition that, to the extent that the terms and conditions of contingent positions are improved, the incentive for over-reliance on these positions will diminish. However, this dual approach is difficult to implement because the very divisions within the faculty that the dual approach is meant to resolve lead to opposition from both full-time tenure-track faculty and contingent faculty to key elements of the strategy. This opposition often accords with the immediate interests of proponents but, like the erosion of the tenure system, is ultimately harmful to all.

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<sup>14</sup> Benjamin, "Variations in the Characteristics of Part-time Faculty," *The Growing Use of Parttime Faculty*, David W. Leslie, ed., New Directions for Higher Education, Number 104, Winter 1998, San Francisco: Jossey-Bass, 56.

<sup>15</sup> For a summary of the issues see Benjamin, "Contingent Faculty Organizing and Representation," *Academic Collective Bargaining*, ed. Benjamin and M. Mauer, AAUP/MLA, New York 2006, 122-26. The best research is Gary Rhoades, *Managed Professionals: Unionized Faculty and Restructuring Academic Labor*, Albany, SUNY Press, 1998, 138-40.

<sup>16</sup> Benjamin, *ibid.*

For example, specific groups of full-time, tenure-track faculty may protect their salaries or specialized professional opportunities through the exploitation of less-well compensated contingent faculty as instructors or researchers; but the substitution of an increasing proportion of contingent positions in place of tenure-track positions not only diminishes overall median compensation but means that new members of the profession in many fields must compete for a declining proportion of tenure-track positions. This increased competition drives down the salaries, benefits and professional support for even these relatively privileged positions. Full-time faculty may also reasonably protest full participation in academic governance of contingent faculty who lack time for full involvement and are vulnerable to administrative coercion—nonetheless, the division of the faculty further weakens it.

Conversely, some full-time faculty with contingent appointments prefer to avoid the professional and time demands of tenure-track positions, and many part-time faculty seek part-time positions with limited responsibilities to supplement income from other positions. However, as the proportion of academic positions requiring less professional time and achievement increases, the salaries, benefits and professional support for these positions also decline. Contingent faculty appointees who are unwilling or unable to meet the demands of their profession may or may not diminish their moral claim to equal terms and conditions of employment; they certainly diminish their own ability to compete in the academic market and thereby weaken their own market position. It hardly need be added that in our society it is the market, not the claim for equity, which prevails. Moreover, while the faculty work force is necessarily diversified by the differential duties requisite for different types of institutions, disciplines, teaching assignments and research programs, and while these differences should be respected in tenure policies, excessive narrowing of professional assignments—especially to introductory instruction—may diminish the commitment to scholarly teaching on which the profession and the quality of higher education depend.

Collective bargaining has often intensified these conflicts within the faculty, as one or another group seeks its own advantage. Worse, even though the national faculty unions agree on the desirability of converting non-tenure-track to tenure-track positions and part-time to full-time positions, bargaining may inherently institutionalize the divisions and competition between tenure-track and contingent faculty through the establishment of separate bargaining units or organizations, and by legal incorporation of disparate policies in contractual agreements. What can be done to diminish these conflicts and ensure equity, opportunity and professional integrity?

In recent years, universities and four-year colleges have accelerated their reliance on full-time non-tenure-track faculty in part to correct their over-reliance on part-time faculty, but also because they have been unwilling or unable to establish and fund the necessary full-time tenure-track positions. The preferred policy, which unions and administrations have bargained in a few instances (CFA, Rutgers, SUNY), has been to establish some additional tenure-track positions by converting existing full- or part-time positions or funding, or reallocating funding to create new positions. Another desirable but rare option



has been to assimilate non-tenure-track positions back into the tenure system by redefining the expectations in a manner consistent with the responsibilities of the positions.

More frequently, full-time non-tenure track university faculty have established their own bargaining organizations, or lobbied within an established and primarily tenure-track bargaining organization, to increase their prospects for reappointment and longer-term job security, as well as other benefits. These contracts, at their best, establish that, after a specified number of reviews, reappointments or years of appointment, the faculty member may be non-renewed only for demonstrable cause or due to the absence of funding or enrollment. If these contracts place the burden of proof on the administration, they approximate tenure and provide substantial protection for academic freedom and economic security. Too often, however, the administration retains excessive discretion and the burden of proof remains on the faculty member to show that non-renewal was a violation of inadequately protective procedural requirements. In these instances, the contracts simply reinforce the second class status of the contingent appointees and the consequent divisions within the faculty.

Some faculty whose part-time appointments exceed 50% or an established number of reappointments may be included in four-year full-time units. Many more part-time appointees are included in community college full-time units. These faculty may achieve contractual protections such as timely notice of non-reappointment and seniority in consideration for reappointment. Nonetheless, although a small proportion of the four-year appointees may hold tenure, the vast majority of part-time appointees in four-year units, as well as those in two-year, lack adequate notice or assurance of reappointment, or protection against arbitrary non-reappointment.

In community colleges, where some two-thirds of all faculty appointments are part-time, the terms and conditions of a considerable majority lack the protections and professional opportunities, including effective academic freedom, requisite for professional careers and to ensure professional integrity. Many part-time appointees accept this lack of protection in exchange for the opportunity to supplement their earnings from other positions or to enjoy more time for other activities. Nonetheless, especially in community colleges where the assigned responsibilities and the qualifications of full- and part-time faculty are often quite similar, the inferior terms and conditions of these part-time appointments are plainly unfair to the appointees. Moreover, these positions not only lack the support for office hours and adequate involvement with student learning, but also fail to facilitate such important conditions of professional work as professional support, collegial involvement and academic freedom.

In community colleges the problem could be substantially diminished by converting most part-time appointments to full-time or to fractional-time with pro-rata compensation, professional obligations and professional opportunities. This would enable the colleges to continue to draw on the work of those who do not seek full-time appointments while ensuring them fair and professionally appropriate support. Where budgetary and enrollment variations require the flexibility associated with contingent appointments,

after a suitable probationary period and academic evaluation, continuing appointments should be subject to non-reappointment only for good cause including specific and demonstrable budgetary, enrollment or programmatic necessity. The primary obstacle to this approach is expense; this fact simply highlights the fundamentally exploitative nature of the current terms and conditions of community college part-time appointments.

In four-year colleges and universities, which often apply more rigorous search procedures and require greater qualifications for full-time tenure-track than contingent positions, the situation is more difficult to correct. Some full-time and part-time contingent appointees do not wish to meet the professional requirements of tenure-track positions; some academic departments and administrators believe that for some appointments (primarily lower division), demonstrated teaching ability is an adequate qualification for recurrent reappointment to full-time non-tenure-track positions—though not for tenure-track positions. So many non-tenure-track faculty resist the conversion of non-tenure-track to tenure-track positions for which they can not successfully compete; many administrators resist conversion when it would involve recruiting from a pool of better qualified faculty who would demand greater compensation and professional support.

To the extent that teaching-only positions are viewed as academically appropriate, an AAUP report draft recommends that: “the ‘best practice’ for institutions of all sectors of higher education is converting the status of faculty serving contingently to eligibility for tenure with only minor changes in job description.<sup>17</sup> This means that faculty hired contingently with teaching as the major component of workload will become tenure-eligible primarily on the basis of successful teaching.” Of course, such positions may command lower salaries in a market economy than positions calling for greater professional qualification and commitment, regardless of the importance of good teaching. Where these positions actually have less demanding responsibilities, the salary schedule may reasonably reflect this difference and not accord simply with a fraction of full-time tenure-track position.

However, excessively narrowing professional obligations to exclude office hours or other out-of-class involvement with students, adequate teaching preparation time, and collegial participation has substantial academic costs—including the cost of diminishing opportunities to appoint better-qualified candidates. As AAUP President Cary Nelson explains in a forthcoming book: “The downside of this model, at least at research oriented institutions, is clear--the final, decisive installation of a permanent two-tier faculty, with a permanent underclass of faculty who may never really earn a middle-class income and who are ideologically severed from their formally tenured colleagues, not only by compensation but also by fundamentally different notions of what a faculty member does.”

Moreover, there is no justification for the lesser assurance of professional security provided by contingent appointments. All faculty need academic freedom. Community

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<sup>17</sup> The advantages as well as disadvantages of this specialization are assessed by Jack Schuster and Martin Finkelstein in *The American Faculty: The Restructuring of Academic Work and Careers*, Johns Hopkins University Press: Baltimore, 2006.

pressures and constraints, exemplified not only by recent attacks on science but recurrent efforts to censor literary classics and artistic exhibitions, and mundane matters such as resisting pressures to relax grading standards, demonstrate that the academic freedom even of lower-division instructors is very much at risk and very much in need of protection. Whether in community colleges or universities, when budgetary and enrollment variations require the greater flexibility associated with contingent appointments, the institution or contract should provide that, after a suitable probationary period and appropriate academic evaluation, contingent appointments may become continuing appointments subject to discontinuance only in the event of good cause, including specific and demonstrable budgetary, enrollment or programmatic necessity.

Collective bargaining has protected tenure but it has not adequately protected, and may indeed further weaken, the tenure system. Collective bargaining can, however, also provide a means to renew the tenure system if faculty and administrators work together to restore the tenure system with a view to protecting both academic standards and academic freedom.