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# An Analytical Review of Higher Education Unionism Over the Last 40 Plus Years As a Union Staff Person

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# **An Analytical Review of Higher Education Unionism Over the Last 40 Plus Years As a Union Staff Person**

Mark Chaykin<sup>1</sup>

During my 40 plus years working for the union—United Federation of Teachers (UFT), American Federation of Teachers (AFT), and New York State United Teachers (NYSUT)—I have been an observer and participant in the changes that have occurred on the campuses of both public and private (independent) universities and colleges with regard to the unionization of faculty, non-teaching professionals, support staff, and adjuncts.

In the public sector, the 1967 adoption of the Public Employees Fair Employment Act – commonly referred to as the Taylor Law opened a flood gate of tenure-track faculty organizing across New York State. City University of New York, State University of New York, and the majority of the state’s community colleges throughout NY unionized and negotiated collective bargaining agreements covering wages, benefits, and working conditions. At the same time that public sector faculty, professionals, supports staff, and adjuncts were organizing, the private sector faculty in the greater New York City area was organizing under the National Labor Relations Act.

In 1980, the US Supreme Court (USSC) disrupted the ability of tenure-track faculty to organize by finding in *NLRB v. Yeshiva University (444 US 672)* that tenured faculty were part of management and therefore were ineligible to fall under the Act. Though a few faculty units (Cooper Union, LIU – Brooklyn, LIU – CW Post, Dowling College, Pratt College, etc.) in the New York City area were able to overcome the ruling either through the courts or by militancy at the campus level, the future of organizing tenure-track faculty unions at independent universities and colleges screeched to a halt.

In New York State, organizing of independent colleges became limited to non-tenured faculty, non-teaching professionals, support staff, and adjuncts. Organizing of new units in the public sector colleges became limited to the community colleges scattered throughout New York State. Most bargaining units at the community colleges became part of either NYSUT or NEA/NY. A few went independent or stayed unorganized.

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<sup>1</sup> Mark Chaykin is retired Director of Field Services for the New York State United Teachers. Thank you to NYSUT Director of Communications Deb Ward for assisting in editing and formatting.

With the election of President Bill Clinton and the appointment of a National Labor Relations Board with a majority of Democrats, it appeared that it might be time to challenge the *Yeshiva* decision. NYSUT/AAUP petitioned for a faculty unit at Manhattanville College in Westchester County, and NEA/NY did the same for the faculty at the College of St. Rose in Albany. Both cases centered on the fact that the role of faculty had changed in the 25 years since the Supreme Court's *Yeshiva* decision. Faculty no longer had the type of authority that was described in *Yeshiva*. Due to many factors, academic institutions were increasingly being run on a business model. The traditional role of faculty in academia changed from one of involvement via committees and/or the faculty senate, to one of being viewed as a commodity charged with making money for the institutions. Dollars and cents replaced the importance of developing and educating young minds, and faculty and student involvement in the educational program became limited or ceased to exist.

Another decision has had a lasting effect on organizing employees, especially tenure-track faculty, in independent colleges and universities that have held themselves out as "religiously affiliated" institutions. In 1970 the Supreme Court found in "*NLRB v. Catholic Bishop of Chicago*" that the employees at a religious institution are not protected under the NLRB. In other words, the rights to organize, join a union, and bargain for a contract were/are not available to faculty at institutions that claim to be "associated" with a specific religion. The previous test for institutions of being "completely religious" now changed to being "associated" with a religion. Over the past four and half decades, we have seen the federal courts and the NLRB continue to uphold, and expand, the finding of the USSC as decided in *Catholic Bishop*. In fact, the NLRB developed and implemented a "test" to determine if an employer was exempt from the Act. Under the Obama NLRB, the previous test used to determine an employer's status has been reviewed as part of decision rendered in *Pacific Lutheran University & SEIU, Local 925 (361 NLRB, December 2014)*. In this case, the NLRB found that the university was not, under the newly established test, exempt from the NLRB.

For those unions that organize independent colleges in the New York City area, the ramifications of the decision in *Pacific Lutheran* will have an immediate impact at Manhattan College. The NLRB has impounded the ballots cast by a unit of adjunct employees in March of 2011. Currently, the NLRB is reviewing the briefs submitted by the parties in an effort to determine if the college's employees are eligible to unionize under the Act using the guidance established in the *Pacific Lutheran* decision of December, 2014.

If the landscape is altered for organizing at independent colleges with a religious history, the faculty at numerous institutions would be eligible to organize. Institutions such as Fordham University, Manhattan College, Iona College, Marist College, etc. could see tenured faculty,

adjuncts, etc. move to unionize under the Act in an effort to secure the right to bargain for wages, hours, and working conditions.

The roles of faculty and other employees of higher education continue to morph from the traditional “shared governance” that was the normal order of business decades ago. Public sector higher education faculty and other employees have had the benefit of collective bargaining for over 40 years. On the other hand, those that are employed by independent colleges and universities have had to fight, including going on strike, to win the benefits of a union contract.

As stated in the opening paragraph, the last 40 years have seen incredible change in the structure of academia, the role of the faculty and other employees, and how unions have reacted to the change occurring on campus.

- On many campuses the majority of classes are taught by adjuncts and/or graduate teaching assistants. This is especially true in the introductory classes that freshman and sophomores are required to take in their first two years on campus.
- Tenure for faculty is under attack by both the administration and the public at large. Many polls have indicated that the public does not understand faculty should be awarded a “job for life”.
- Faculty senates have become, or are expected to be, an automatic “yes” vote for the administration. Faculty senates that take a vote of “no confidence” may find themselves being dissolved by the president and/or administration of the college or university.
- Faculty committee recommendations are ignored at many institutions. It is not unusual for a faculty promotional committee to make a recommendation granting tenure or a promotion to a colleague, and have the president ignore the recommendation and take action that is contrary to the committee recommendation.
- The number of top administrators continues to grow as the number of full-time faculty decrease. The salaries and benefits for top administrators has increased significantly while faculty and other employees are refused pay raises at the same rate. It is not unusual to see a president of a college or university nearing or exceeding a salary of \$1 million plus a benefit package that far exceeds those of the senior faculty.
- Funding and/or tuition continue to outpace the salary for faculty and other employees. Student loan debt has increased significantly leaving students in debt for decades. Additionally, the rise of “for profit” colleges has grown as an alternative to the traditional college and/or university.

In states with statutory public sector collective bargaining laws, the faculty and other employee units organized under the banner of one or more of the major educational national

unions—the AFT, NEA, or AAUP. Other employee units organized as well with the assistance of major national unions. Regardless of the union affiliation, the public sector units negotiated and enforced contracts that protected wages, benefits, and other working conditions. Over the last few years, we have witnessed attacks against the public sector (e.g. Wisconsin, Michigan, etc.). With the loss of statutory collective bargaining, the number of faculty and other employee unions lost anywhere from 30% - 60% of their members, and in some jurisdictions the ability to bargain collectively for wages, benefits, and working conditions.

In the private sector, the number of faculty units that organized under the NLRB became limited due to *Yeshiva*. However, with the NLRB now reviewing the changes that have altered the administrative operations of colleges and universities using a business model; it is possible that faculty will begin to organize new bargaining units and obtain collective bargaining. Though faculty units have been limited, other employee units continue to organize. Most of the organizing in these units has occurred in the large urban areas with a history and support of strong unions. In the New York City area units consisting of adjuncts, graduate assistants, clerical and administrative, non-teaching professionals, etc. have been successful in their efforts to achieve a negotiated agreement. There are many thousands of unionized employees in these units in the New York City metro area that currently enjoy working under a negotiated contract.

In conclusion, I am very confident that all of us who have been involved in employee/employer higher education issues over the past 40 years have all experienced the change from the “academic” to “business” model that is currently the norm for institutions of higher education as summarized above. I am sure that whether the change is a positive or a negative for faculty it will be analyzed for decades by faculty that will write and lecture on the topic.