COLLECTIVE BARGAINING IN HIGHER EDUCATION

BEST PRACTICES FOR PROMOTING COLLABORATION, EQUITY, AND MEASURABLE OUTCOMES

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ROUTLEDGE

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Collective Bargaining in Higher Education: Debunking the Myth of Academic Exceptionalism

A well-known outcome of union certification is the sudden re-set of the existing employer–employee relationship. All at once, the paradigm of the "master and servant" relationship is replaced with—at least, in theory—an "equal parties" paradigm, where the terms and conditions of employment are negotiated from positions of relative equality. Through this process, Union representatives engage with the Employer on behalf of the collective, obviating the need for employees to plead their cases individually. Equality, collectivity, and representation, are the core values of unionism.

Equality, collectivity, and representation, are also key principles engrained within academia. Faculty seldom think of themselves as subordinate workers, but rather, as partners within their academic institutions. Principles of academic freedom provide additional independence from the traditional employer–employee relationship, while collegial governance typically means Faculty have a literal seat at the table.

Despite these common values, the parties to bargaining in higher education often consider themselves to be operating in an environment that is distinct from the typical unionized workplace. The word "association" is deemed by many Faculty to be preferable to "union." Many professionals who teach at Universities and Colleges, such as lawyers, engineers, and doctors, are excluded from labour relations statutes in their professional capacities and bring this experience with them when they become instructors.

At the same time, the Employer typically views unionism as separate from, and often at odds with, collegial governance. After all, issues of promotions and tenure are reviewed by independent peers, as are decisions impacting different departments, through Senates and other governing bodies. The notion of unionism in an academic setting is sometimes deemed offensive, changing the dynamic from collegial governance to something more base and less collaborative. A common fear is that Faculty, through their associations, will put their interests above those of the institution.

The Academic Workplace

In reality, the main concerns of academic workers more-often-than-not match the concerns of workers in other unionized work environments: namely, compensation and working conditions. In academic workplaces, in particular, working conditions, in the form of workplace standards and expectations, are often the priority for both sides when negotiating.

For example, Faculty Associations often seek to have University policies included in the collective agreement. The aim is to create greater predictability

and certainty by removing the Employer's discretion to administer its affairs by amending its policies without consent. Likewise, the processes for reviewing performance, employment equity, and workload, are all issues that Faculty Associations have an interest in codifying.

From the Employer's point of view, relinquishing total control over such matters impacts its ability to provide the best delivery of services. These limitations can affect its standing, and jeopardize its reputation, a scenario—according to the Employer—that would be equally detrimental to Faculty. There is nothing new about these arguments. They mirror the arguments of industrial employers about the disadvantages of labour and employment regulations and human rights statutes.

We Are Not So Different After All: Unionization at the University of Ottawa

Is collective bargaining in higher education truly exceptional? What follows is the story of how the part-time law professors at the University of Ottawa successfully unionized. What is remarkable about this tale is not what makes is exceptional, but what makes it so familiar.

When the Association of Part-Time Professors of the University of Ottawa ("the Association") was founded in the 1980s, it organized all part-time professors at the University of Ottawa, save and except professionals who were excluded from the *Labour Relations Act* ("the *Act*"). In Ontario, lawyers are excluded from collective bargaining under the *Act*. However, over the years, a number of decisions by labour boards found that professors, who happened to be lawyers, were not excluded from academic bargaining units across the province.

As of January 2018, all full-time professors at the University of Ottawa, including law professors, were unionized. All part-time professors were also unionized: save and except law professors. The situation was untenable for several reasons. Most significantly, there was a 91% wage gap between unionized and non-unionized part-time professors. Pension benefits, grievance rights, health plans, and liability insurance, to name a few, were only available to unionized professors.

At the start of its organizing drive, the Association sought voluntary recognition from the University. The request was denied. In denying the Association's request, the University asserted its belief that the Association did not have majority support among the part-time law Faculty.

The University's opposition led to a card collecting drive. This was carried out by volunteers who scoured the University of Ottawa's online class schedule and communicated with each Faculty member individually. Once the Association was able to collect sufficient cards, it was able to apply to the Labour Relations Board for a full list of prospective bargaining unit members.

Obtaining a full list of prospective members might have posed a real challenge for the Association. In a University setting, it is never quite clear whether the listed employees are those teaching at the time of the organizing drive, during the semester, or during the academic year. For a brief period, the Ontario Liberal government had amended the *Act* to make it easier for unions to obtain employee lists. This legislative window of opportunity allowed the Association to obtain the employee list before the newly elected Ontario Conservative government revoked the amendment.

Once the Association was provided with the employee list, it still had to overcome the reluctance many part-time law professors expressed about upsetting the apple cart. Again, the Association was faced with the argument that part-time law professors were somehow "unique". Many professors claimed they were teaching for their community, or for prestige, and not for compensation. Other professors felt uncomfortable belonging to a union while representing employers in their private legal practices. Some were concerned about being outed as union supporters.

These feelings of exceptionalism, however, were overborne by feelings of disrespect when part-time law professors were shown the 91% discrepancy in compensation between themselves and their counterparts across the University.

In the end, the path to unionization was forged in the same way it has always been forged: it came down to basic fairness.

For its part, the Employer also followed a familiar path when it pleaded with its employees to think twice about unionizing. After the certification application was filed, the University issued the following communication:

> Only the vote of those who cast a ballot will matter.If you choose not to vote, this does not count as a "no" vote.
> [...]
> If 50% plus one of the part-time Professors who cast a ballot on Thursday vote in favour of APTPUO, the APTPUO will become the certified representative for all part-time Professors of the Law Faculty. Negotiation of a collective agreement will follow.
> [...]
> While the union may promise many benefits, it can only guarantee (1) the obligation to pay union dues; and (2) the presence of a third party into your relationship with the Faculty of Law. A union cannot guarantee, for example, better wages, benefits, tuition fee credits or limits to class sizes. As you know, all union demands will be subject to collective bargaining.
> The presence of a union therefore represents an important change in our relationship with you.
> Part-time Law Professors have a storied and long-standing relationship with the Faculty of Law. Most of you are practitioners and we rely on you for the special expertise you bring to the field of law. As you know, a union is

a collective organization, where the agenda that is set may or may not be one you agree with. Ask yourself whether you want the APTPUO to speak on your behalf.

In this case, the Employer argued exceptionalism to justify its opposition to unionization. In reality, there was nothing exceptional about these arguments. The University's communication resembled communications from industrial employers facing unionization in the past. For example, in a well-known decision from the Ontario Labour Relations Board, a pamphlet distributed by Wal-Mart was reproduced. That pamphlet included the following:

Q: "The union are telling people that have only 1 or 2 shifts a week that they can guarantee them more hours?"A: Don't be misled by false and misleading statements made by the union and/or rumours. Nobody can guarantee more hours since the number of hours available to associates is directly related to the store's financial performance.

Q: "If you sign the card and don't go to the meeting do they count that signature as a yes vote."

A: No. What does matter is if you vote and how you vote when the vote is held. The store will only be unionized if 50% plus one person of the total number of people who actually vote in person, choose to vote for the union.

Q: "Can a union really help this store? How? Or why not?"

A: We don't believe that it would. Your Company prides itself on being able to listen and respond to its associates directly without the need for third party intervention. Our Open Door policy allows each associate the freedom to express his or her opinion or challenge decisions he or she feels are unfair or not in your Company's best interest, without fear of retaliation. Wal-Mart is pro-associate. We consider associates to be partners in our Company's future, and believe that relationship flourishes without the need for third party intervention.

Simply put, the same tried and true tactics of dissuasion were used by the Employers in both cases.

In regards to the part-time law professors, after the application was presented at the Labour Relations Board, an electronic vote was held and 82% of voters supported unionization.

At bargaining, the three major areas of dispute between the parties were the scope of the bargaining unit, the hiring process, and compensation. These issues were referred to interest arbitration, as neither side was prepared to enact job action.

The University fought strongest on control over staffing, rather than compensation. The outcome followed suit. Professors received a 91% salary increase, whereas the University received additional discretion for its hiring practices.

Since the collective agreement was finalized, there has been industrial peace between the parties.

This story of unionization in higher education is anecdotal, but illustrative. Unions and academic institutions share core values of collaboration, equality, and representation. And yet, employers and employees in higher education settings commonly view their relationship as exceptional. However, notwithstanding how different academia considers itself from more traditional workplaces, the instincts of its main players are often the same.

More often than not, the process of collective bargaining in higher education is unique in theory, but familiar in practice. This reality should be heartening to all parties, who should feel confident that the lessons contained in Canada's rich history of industrial relations are both relevant and applicable to collective bargaining in higher education.