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GOODBYE TO COLLECTIVE BARGAINING IN HIGHER EDUCATION¹

Ray Hogler



Labor union organizing and bargaining in the United States proceed under two different regulatory regimes. In the 1935 National Labor Relations (Wagner) Act (NLRA), Senator Robert Wagner excluded government workers from the coverage of his bill and limited its application to the private sector. Accordingly, the NLRA covers private sector institutions of higher education, such as Yale, Harvard, and the University of Denver. The National Labor Relations Board (NLRB) exercises authority over this sector of the economy.

Public sector academic workers, in contrast, bargain under state laws protecting unionization, such as the statutes in Pennsylvania and Ohio. Because collective bargaining is subject to state legislation, lawmakers can

*A longer version of this comment appears in the current issue of *Academic Labor: Research and Artistry*, published by the Center for the Study of Academic Labor at Colorado State - <http://digitalcommons.humboldt.edu/alra/about.html>

enact, modify, or repeal protections for union activity that affects unions' ability to organize. In Wisconsin, for example, union membership declined by some 40 percent after lawmakers passed Act 10 eliminating public workers' rights to unionize.

According to the Bureau of Labor Statistics, total union membership density in the US fell from over 20 percent in 1983 to 10.7 percent in 2016. In the private sector, membership fell from a peak of over 35 percent of the non-managerial work force to just over 6 percent in 2016. In the public sector, density declined from a peak of 37 percent in 1970 to 34.4 percent in 2016. Many studies confirm that as union bargaining power erodes, economic inequality increases.

With the election of President Donald Trump, those trends will accelerate. Trump's appointment of Neil Gorsuch to Supreme Court will tilt the playing field against public sector unions through adverse constitutional decisions regarding payment of union dues, and his appointments to the NLRB will ensure that administrative rulings favorable to unions are reversed.

The Board membership in May 2017 consisted of Chairman Philip A. Miscimarra, a Republican appointed by former president Obama, and Democrats Lauren McFerran and Mark Gaston Pearce whose terms end in 2018 and 2019, respectively. Trump recently appointed two additional Board members, Marvin Kaplan and William Emmanuel, giving Republicans a majority vote on issues coming before the Board. As one commentator noted, "The NLRB is widely expected to use that majority to reconsider big ticket labor issues, including rulings that expanded joint employer liability and recognized 'micro-units' for collective bargaining purposes."

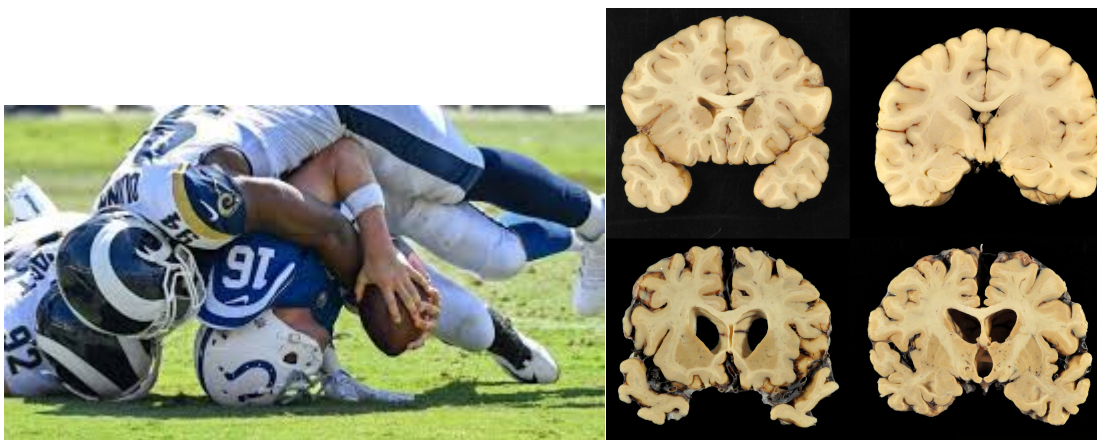
One immediate case before the Board involves graduate students at Yale University, who organized a hunger strike in June 2017 to protest Yale's refusal to recognize their demands for union recognition. Yale officially criticized the work action in the *YaleNews* claiming that the "actions this week by members of Local 33 raise concerns about the safety and well-being of the demonstrators and about their apparent disregard for longstanding university policies and principles regarding the appropriate time, place and manner for exercising freedom of expression." Yale retained a well-known labor law firm to defend its interests before the National Labor Relations Board (NLRB) by challenging the "micro unit" approach adopted by the union and approved by the regional office of the NLRB, which fragmented the class of graduate teaching assistants along departmental lines.

If a new Board rejects the Yale decision and related precedent, graduate student unions will disappear. Even more damaging, the Board might use its rulemaking power to overturn regulations of the Obama Board that favor union organizing. One of the most contentious areas of rulemaking involves streamlining the elections process toward the goal of faster elections and certification. Employers dubbed the new procedures as the "quickie election" rule and argued that it disadvantaged employers who had little opportunity to inform employees of their views of unionization and imposed intrusive rules that violated employee rights of privacy. With two new members, the Board could quickly overturn the election rule and reinstate the previous election procedures, under which employers gained an advantage by stalling elections. A similar process of decay is taking place in public unionism.

In January 2016, the Supreme Court heard oral arguments in the case of *Friedrichs v. California Teachers Association*, which involved the compulsory payment of union dues by teachers covered under a collective bargaining agreement. The controlling precedent in the litigation, *Abood v. Detroit Bd. of Educ.* (1977), upheld the constitutionality of public sector union security and announced the standard applicable to the issue of union dues. The Ninth Circuit Court of Appeals (*Friedrichs v. California Teachers Association*, n.d.) followed the precedent of *Abood* and declared, "Upon review, the court finds that the questions presented in this appeal are so insubstantial as not to require further argument, because they are governed by controlling Supreme Court and Ninth Circuit precedent." In short, compulsory dues were an accepted dimension of public sector bargaining and were not constitutionally suspect. That doctrine is now under attack.

In *Janus v. American Federation of State, County, and Municipal Employees*, two public employees sued the union representing them claiming that the compelled payment of union dues violated their constitutional rights of free speech. The Seventh Circuit Court of Appeals dismissed the case, and the plaintiffs are now litigating the case before the Supreme Court. Gorsuch, an admirer of Justice Scalia and an acolyte of Justice Kennedy, will dutifully follow the lead of his doctrinal progenitors, making a fifth vote against union security. The outcome will be that future public employment unionism is subject to a “right to work” rule where free riders have the right to enjoy contractual benefits without the burden of paying dues.

Summing up, the election of Donald Trump will have detrimental consequences for the American labor movement in significant ways. His appointments to the National Labor Relations Board will reverse decisions of the Obama Board that facilitated union organizing and empowered employees by strengthening their rights to unionize. With the appointment of Neil Gorsuch to the Supreme Court, Trump ensures a continuing tilt toward the politicized views of Thomas, Alito, Kennedy, and Roberts on labor issues. The Court’s future decisions will degrade workers’ opportunities for collective action and enhance managerial power in the workplace, especially in public sector employment. As the conflictual political division in our system ossifies into ongoing stalemate, Trump comes to represent the apogee of ineptitude. White working class voters brought him to power, but his allegiance is to his rich and glamorous friends.



WILL FOOTBALL GO THE WAY OF BOXING?

Mary Meyer

Boxing was a popular NCAA sport from the 1930s to 1960. Over 10,000 spectators at the University of Wisconsin Field House watched student athlete Charlie Mohr collapse after a hard punch to the head. When Mohr died eight days later, the UW faculty voted to abolish boxing, and the NCAA discontinued the sport soon after.

Today, it has been scientifically established beyond a reasonable doubt that playing football is likely to cause permanent brain damage. The damage is cumulative rather than immediate and dramatic as in boxing. If

football were a new sport, however, and if universities like CSU had not invested so many hundreds of millions of dollars in football, the sport would be banished for the simple moral reason that universities should not support brain-injuring activities.

The culture of football is so entrenched in the imaginations of many fans that otherwise compassionate people can still enjoy the game by suppressing the knowledge of its irreparable harm to the players. However, the evidence is mounting that the cumulative damage starts early, since the landmark discovery in 2005 of chronic traumatic encephalopathy (CTE) in mentally and emotionally harmed NFL players. More fans are asking whether continuing to support the game is ethical, and the fact that most college football players are black while the spectators are overwhelmingly white makes the situation more troubling.

Last year, the Clinical Journal of Sports Medicine reported that “MRI scans of 11 former collegiate football players showed evidence of significantly lower cortical thickness within portions of both the frontal and temporal cortex of the brain, versus a similar group of track-and-field athletes.” Last July, the Journal of the American Medical Society reported that “In a convenience sample of deceased players of American football, a high proportion showed pathological evidence of CTE,” even among those who played football only through college and not professionally. According to the article, early signs of CTE are “impulsive, explosive and sometimes violent behavior; depression; and a tendency toward suicidality [is associated with] younger age and an earlier stage of CTE pathology.”

The right thing to do for CSU and other colleges is to suspend football, at least until it can be played with reasonable guarantees of safety for our student athletes. The mission and values of CSU dictate that we protect our students and develop their intellects, not put them at risk for brain injuries that cause cognitive and emotional dysfunction. Let’s set a good example (as UW did with boxing) and shut down the football program.

References and more information:

http://host.madison.com/wsj/news/local/doug_moe/doug-moe-years-ago-uw-athlete-s-death-ended-college/article_4a56a5e8-012c-580d-bde9-21361d66b3a4.html

<https://www.theguardian.com/sport/2017/nov/25/college-football-cte-ncaa-lawsuit-zack-langston>

<https://www.sciencedaily.com/releases/2016/11/161130144010.htm>

<https://sportslawinsider.com/category/ncaa/>

<http://thesportsquotient.com/nfl/2014/10/4/is-football-a-modern-gladiator-game>

<https://www.insidehighered.com/blogs/just-visiting/college-footballs-inevitable-end>

https://www.insidehighered.com/news/2017/12/01/avalanche-football-related-concussion-lawsuits-against-ncaa-and-conferences-could?utm_source=Inside+Higher+Ed&utm_campaign=b5ef334b09-DNU20171201&utm_medium=email&utm_term=0_1fcbc04421-b5ef334b09-225816333&mc_cid=b5ef334b09&mc_eid=5845ae5af1

RESPONDING TO INCIDENTS OF VIOLENCE AND HATE: LESSONS FROM OTHER CAMPUSES

William M. Timpson

In the November-December edition of the AAUP's *Academe* is an article by Associate Professor Amy Hagopian (Public Health) and Associate Professor Eva Cherniavsky (English) about a hate crime at the University of Washington and what faculty can do—and are doing—in response. While I appreciate the quick responses of CSU President Tony Frank to the recent incidents at CSU—the noose and anti-Semitic writings in the residence halls, in particular—I still believe that there are lessons here for faculty across the disciplines to take notice, support inquiries, hold conversations with colleagues and students, both in and out of class, join in actions of solidarity against hate, and be allies for those who are targeted. Students in my own class, for example, have developed ideas for a residence hall that would emphasize improved communication and conflict resolution skills or another hall that would be organized around a commitment to service learning and help address problem areas on campus and in the community. Hagopian and Cherniavsky write:

Eighteen –year old Nasro Hassan a new first-year student at the University of Washington, walked out of her class at Mary Gates Hall at 5:45 p.m. on November 15, 2016. It was dark and, this being Seattle in the fall, raining. It was also a week after the startling US presidential election. Like lots of people on American campuses, Hassan was looking down at her phone as she walked to the light-rail station. Unlike many others, however, she was wearing a hijab. As she walked a man in a black hooded sweatshirt and dark jeans ran up to her with what might have been a glass bottle and slammed the object into the right side of her face, near her eye. He laughed as he ran off.

Police were called. Medics arrived, but Hassan preferred to go home with her brother, who had come to help. Later, she realized that she was experiencing head trauma; her brother took her to the hospital, where she was diagnosed with a concussion...

The Southern Poverty Law Center has reported hundreds of incidents of hateful intimidation, harassment, and violence in the wake of the election of Donald Trump. Richard Collins III was stabbed to death on the eve of his graduation from Bowie State University by an admitted white supremacist while visiting the University of Maryland campus in May. The campus of Evergreen State College was closed and evacuated during the last week of classes in response to a threat from a man who called 911 to say, “Yes, I’m on my way to Evergreen State University now with a .44 Magnum . . . I’m going to murder as many people on campus as I can.” A recent graduate of Oregon’s Reed College, Taliesin Namkai-Meche, was stabbed to death in downtown Portland on May 26—along with another man—for standing up to Jeremy Joseph Christian, who was yelling hate speech at two young Muslim women on the light-rail train.

As white supremacists and other far-right agitators have become emboldened to act out in public spaces, campuses have become a particular target. Colleges and universities are perceived as incubators for progressive ideas, places where young activists are nurtured by sympathetic faculty.

Indeed, such organizations as Scholars for Peace in the Middle East (SPME) and the Professor Watchlist have been encouraging students and others to “expose and document” professors. While SPME seeks to expose faculty who support Palestinian resistance to the Israeli occupation, the Professor Watchlist seeks more broadly to name faculty who “advance leftist propaganda in the classroom.”

The authors, Hagopian and Cherniavsky, ask what we as faculty can do?

We can watch for, notice, track, and respond to incidents of harassment and violence as they occur on our campuses. While individual students and their associations have some power to get the attention of administrators and outside authorities, their voices are amplified if we join them (15-17).

For those of us who teach at CSU, we can remember the close relationship between student morale, motivation and their learning (McKeachie, 2012; Davis, 2009; Timpson & Doe, 2008). After a troubling incident occurs, we can check in on feelings and reactions, both in and outside of class, knowing that our relationship with students helps to support their learning (Lowman, 2000).



TAKING A STAND AGAINST HARASSMENT, PART OF THE BROADER THREAT TO HIGHER EDUCATION

AAUP and American Federation of Teachers (AFT)

(September 7, 2017)

In recent months a disturbing trend has emerged in American higher education. At a variety of institutions—public and private, large and small—individual members of the faculty have been singled out for campaigns of harassment in response to remarks they have made, or are alleged to have made, in public speeches, on social media, or in the classroom. Vicious threats of violence and even death have been directed against individual faculty members and their families, including their children. A large number of those threatened have been African American.

The threats are often accompanied by calls for college and university administrators to summarily dismiss or otherwise discipline the offending faculty member. Sometimes the threats are also directed at those administrators or the institutions themselves. In some cases the comments made by the faculty member were highly provocative or easily misconstrued, but in other cases the allegedly offensive remarks were misattributed or not even made at all.

In all cases, however, these campaigns of harassment endanger more than the faculty member concerned. They pose a profound and ominous challenge to higher education's most fundamental values. The right of faculty members to speak or write as citizens, free from institutional censorship or discipline, has long been recognized as a core principle of academic freedom. While colleges and universities must make efforts to provide learning environments that are welcoming, diverse, and safe for all members of the university community and their guests, these efforts cannot and need not come at the expense of the right to free expression of all on campus and the academic freedom of the faculty.

We therefore call on college and university leaders and members of governing boards to reject outside pressures to remove or discipline faculty members whose ideas or commentary may be provocative or controversial and to denounce in forceful terms these campaigns of harassment. Some have already taken such a stance. The response of Syracuse University chancellor Kent Syverud to calls for the denunciation or dismissal of a professor who posted a controversial tweet is exemplary. "No," he said. "We are and will remain a university. Free speech is and will remain one of our key values. I can't imagine academic freedom or the genuine search for truth thriving here without free speech. Our faculty must be able to say and write things—including things that provoke some or make others uncomfortable—up to the very limits of the law."

Unfortunately, other administrations have been more equivocal in their responses, in a few cases disciplining the faculty member concerned while remaining silent about the terrifying harassment to which that faculty member has been subjected. Some offer hollow homilies in support of the free speech rights of outside speakers while failing to defend the rights of harassed faculty. Often administrators justify their response by appealing to legitimate concerns for the safety of the community. However, anything short of a vigorous defense of academic freedom will only further imperil safety. Concessions to the harassers send the message that such odious tactics are effective. They have a chilling effect on the entire academic community. Academic leaders are therefore obligated to recognize that attacks on the academic freedom of individual instructors pose a risk to the institution as a whole and to the very project of higher education as a public good. As the AAUP's *Statement on Government of Colleges and Universities* stressed, the protection the college or university "offers to an individual or a group is, in fact, a fundamental defense of the vested interests of society in the educational institution."

We call upon college and university presidents, members of governing boards, and other academic leaders to resist this campaign of harassment by endorsing this statement and making clear to all in their respective institutions that threats to individual members of the academic community, to academic freedom, and to freedom of expression on campus will not be tolerated.

AAUP COLORADO CONFERENCE NEWS

AAUP Colorado Conference Annual Meeting. The Colorado Conference was pleased to host Dr. Julie Schmid, AAUP Executive Secretary, at its annual conference held this year on the University of Colorado Colorado Springs campus in Colorado Springs. Schmid's talk, entitled "The AAUP in the Age of Trump," is profiled in the latest issue of the Colorado Conference newsletter, AAUP ALERT (see www.aaupcolorado.org).

Gulliford fends off Fort Lewis College charges. Dr. Andrew Gulliford, Professor of History at Fort Lewis College, has prevailed over Fort Lewis College's spurious accusation of plagiarism and threat of dismissal on the basis of alleged professional misconduct. In its letter to FLC administrators, the Colorado Conference accused FLC administrators of prejudging the facts, improperly structuring the hearing, and electing the most severe sanction possible (dismissal) in advance of any determination by the hearing officer. AAUP Co-President and CSU-P historian, Jonathan Rees, testified at the hearing that the charges against Gulliford were utterly without merit. The hearing officer agreed and FLC President Dene Thomas agreed that "neither dismissal nor any other disciplinary action was warranted . . ."

Adjunct Coloring Book gets 2nd printing. The Adjunct Coloring Book, written and published by the AAUP Colorado's Community College Project, is now in its second printing due to popular demand. Interested faculty can purchase a copy for \$10.00+\$2.00 shipping at this link: <https://sites.google.com/site/coloroadadjunctswiki/the-adjunct-coloring-book>

McGettigan wins academic freedom/First Amendment case. Dr. Tim McGettigan, Professor of Sociology, Colorado State University at Pueblo, prevailed in settling his longstanding suit against CSU-Pueblo, which in 2013 denied McGettigan email access based on a statement he had made comparing proposed faculty cuts to the Ludlow Massacre for their adverse impact on marginalized communities and educational access in the Pueblo region. AAUP and the Foundation for Individual Rights in Education (FIRE) challenged CSU-P's decision as a violation of his academic freedom and first amendment rights. In the settlement, McGettigan was unspecified damages and full restoration of his email privileges at CSU-P. See McGettigan's statement published in Academe Blog at this link: <https://academeblog.org/2017/09/29/the-children-of-ludlow-fighting-for-free-speech-on-campus/>

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