To: The Faculty of the University of Cincinnati

Re: Some of the factors involved in collective bargaining

This report on some of the matters to be considered in making a decision about collective bargaining is being sent to the faculty for its information. The national and state councils of AAUP have authorized local consideration of the use of collective bargaining, but the UC chapter has made no decision on the matter. The local Committee N charged with investigating collective bargaining and the climate for it at UC has not reached a consensus but has gathered the following material. The AAUP intends to provide opportunities for speakers and discussion of the questions involved. The plan to distribute such material has also been approved by a meeting of the Junior Faculty Association.

Although collective bargaining by and for college faculty members is a relatively new development, it is now found in about 150 colleges and covers between 10 and 15% of college teachers (TIAA, 1971 Annual Report, p. 1). Greatest acceptance has been in two-year and community colleges, but about 40 four-year colleges and universities including Rutgers, St. John's, City University of New York, State University of New York, University of Rhode Island, and Wayne State (Mich.) have gone this route. Youngstown (Ohio) is in the process of making a decision.

The following paragraphs deal with the legal status of collective bargaining for faculties in Ohio, the matters usually dealt with in typical contracts, some of the claims by those favoring and those opposing collective bargaining, some of the problems as they occur to an experienced arbitrator, and some of the advantages as seen by a professor who favors collective bargaining.

You are urged to discuss this matter with other colleagues and to make your opinions known to officers of the AAUP and the Junior Faculty Association, and/or to the members of Committee N of AAUP who are professors Elizabeth R. Bettman, William H. Bocklage, Beatrice R. Brooks, Sanford Golding, George E. Hartman, Kenneth R. Libbey, Thomas E. Murphy, Herbert Shapiro, Freeman F. Suagee, John S. Thayer, Austin M. Wright, Byron A. Zude, and George R. Engberg, Chmn.
LEGAL STATUS

The legal status of collective bargaining in Ohio by institutions of higher education is uncertain. That is to say there are no statutes or institutions, such as are found in New York or Michigan, that enhance and facilitate the collective bargaining process. Thus, one can say that at the present the State of Ohio has no statutes which can help us in collective bargaining. Therefore, even though we might establish a collective bargaining unit at the University of Cincinnati, it is completely within the discretion of the Administration and Board of the University whether they would choose to recognize, bargain or contract with the unit.

On the other hand, one important option, indeed, the ultimate option is denied to the collective bargaining unit. Under Ohio Revised Code Sections 4117.01 through 4117.05 (Ferguson Act), strikes by public employees (such as teachers in institutions of higher education) are illegal. The Code provides for rather severe punitive action against those who violate the Ferguson Act. The Ferguson Act has been held to be constitutional by the Franklin County and Hamilton County Courts of Appeals but has not been ruled on by the Ohio Supreme Court.

CONTENTS OF SOME TYPICAL EXISTING CONTRACTS

1. Statement on Academic Freedom: All institutions studied have accepted the AAUP Statement on Academic Freedom.

2. Status of Bargaining Agency
   a) Exclusivity: all contracts agreed that the faculty agent was the exclusive agent.
   b) Membership: persons included in the agreement were spelled out. In general, all administrators were excluded. Certain marginal categories varied from one institution to another. Departmental chairmen were included, usually by specific statement.
   c) Shop Clause: four-year institution agreements do not have any "union" or "agency" shop clauses, though CUNY agreement leaves this open for possible later negotiation. A couple of smaller institutions do have it. Because of the conflict between such a clause and the tenure system, this point would have to be thought out carefully.
   d) Facilities: all agreements arrange for the bargaining agent to use campus facilities and have a dues check-off system for members. Also released time for faculty leaders of agent.
   e) Meeting: some of the agreements arrange for regular meetings between agent and campus administration (not including grievances).

3. Salaries and Fringe Benefits
   a) Salaries: all agreements set up fairly rigorous salary scales, usually providing for increases. Such scales have both the advantages and the disadvantages of inflexibility.
b) Insurance: all agreements provide for group insurance plans for members, both life and health. At Central Michigan University a choice was offered between the state retirement plan and TIAA. Any UC agreement might include an option for faculty to continue TIAA.

c) Leave: sabbatical leave was provided for at all institutions studied. Sick leave and maternity leave (both without pay, except at CUNY) also provided for. CMU also provided for leave for military or court service and for certain other specified reasons.

3. Working Conditions

a) Workload: all agreements specified that faculty should not be called on to carry "excessive" workloads. Some agreements at smaller institutions spelled out working hours in more detail.

b) Facilities: agreement on specific facilities varied from campus to campus, though parking was usually mentioned. Some specified that faculty were to have offices (details spelled out) and ancillary items.

c) Grievances: all agreements had elaborate grievance procedures set up. In several cases the AAUP statement on Procedural Standards was adopted. Tenure decisions were not usually included under such procedures, except in unusual circumstances.

d) Promotions: criteria for promotion and tenure were usually left in the hands of the various departments. The deadlines for final decision were usually less than one year before the expiration of prior term (at CMU it was as late as April 101). Also, there was usually specified that each non-tenured faculty member receive a regular (either annual or semi-annual) evaluation by his department, and a conference.

4. Faculty Governance

The agreements were usually vague about faculty self-governance and control over curricular and academic matters. Presumably any bodies already extant at the time of the agreement carried over. Agreements at four-year institutions usually had disciplinary procedures, but these covered action of the administration against faculty personnel. An agreement at UC might arrange specifically for faculty self-governance and also set up some system for faculty self-discipline.

5. Other: All contracts specified the duration of the agreement, had reopening clauses, and agreed not to call or support any work stoppage.
SOME ARGUMENTS ABOUT COLLECTIVE BARGAINING (CB) offered by those who are--

**Pro**
- Will provide faculty with more significant share in university governance
- Faculties must protect themselves in a society where many other employment groups are organized
- CB is only way to insure that needs of faculty are given adequate consideration as against those of capital expenditures, athletics, administrative costs and other competitors for campus money
- CB is only means of effectively protecting tenure, academic freedom, sabbatical leaves, & other important aspects of academic life
- Thru CB the faculty can help administration get funds & other help it needs from public sources
- Only by CB clout can faculties keep up with inflation
- CB is such a strong trend that if faculty does not enter, it will be imposed in some way or another
- Legal barriers are being removed
- Will provide greater security and stability for faculty which is necessary to most productive professional work
- CB is a democratic process
- CB will promote increased rapport w/public school teachers, members of organized labor & others who have interests similar to those of faculty
- CB will charge some individual &/or group with specific responsibility for concern with faculty interests

**Con**
- By creating adversary relationship with administration will reduce faculty share in governance
- CB is not appropriate to professionals, especially if they wish to share in broad decision making
- By hardening the line between faculty and administration, CB will prevent faculty from getting friendly consideration in added expenditures
- Protection of what is important in academic life depends on goodwill between faculty, administration, & students and not on power
- Resort to CB will alienate many who might otherwise be friendly or neutral--voters, legislators, newspapers, employers, persons with money to give or bequeath
- CB will not produce money where there is none available
- CB is expensive in dollars, time, & effort ($70 to $125 annually per member)
- CB is likely to reward seniority rather than merit and to strengthen lower echelons and weaker branches at expense of others
- CB will increase faculty involvement in politics
- CB by faculty will encourage unionization of students with unfortunate consequences for higher education
- Inevitable fight over what organization shall be the collective bargaining agent and what the unit of representation shall be, will embitter and factionalize the faculty
Pro

CB is best alternative to bureaucratic manipulation

CB will increase faculty self-respect

Only with CB can faculty rights be protected from unilateral action by unfriendly boards and/or administrations

If university faculties do not engage in CB, available funds will go to two-year colleges whose faculties are more favorably inclined toward CB

With a tight job market, professors must stay and fight for rights rather than fleeing to other campuses

CB will reduce discrimination based on sex, race, or other non-professional factors by establishing uniform standards, especially for pay

AAUP must share in CB if it is to survive and promote its concern with bread issues of higher education

SOME PROBLEMS OF COLLECTIVE BARGAINING

In the absence of enabling legislation, for the Faculty of the University of Cincinnati to be represented in a collective bargaining relationship, the Administration would have to agree voluntarily to the process. A strike to force recognition could be an alternative. The Administration would want to be sure the Faculty really wanted collective bargaining before the Administration would even agree voluntarily to an election. Faculty interest in collective bargaining will have to be determined.

If the Faculty express a substantial interest in collective bargaining, regardless of the status of the AAUP, representatives of other organizations such as the American Federation of Teachers, the Ohio Education Association or its local affiliate, and other organizations such as the American Federation of State, County and Municipal Employees, etc., will converge on this campus in an effort to influence the Faculty in voting.
Prior to the voting the bargaining unit will have to be determined. In the absence of legislative procedures, the Faculty and the Administration will have difficulty in agreeing upon the unit. The principal question is who is to be included in the unit and who is to be excluded. Determining the bargaining unit means determining who is eligible to vote in any election that might be scheduled. Examples of the problems to be encountered are: should the unit be only the main campus, should the Law School, the Medical College and/or the Evening College be included or excluded; should the unit encompass the University College as well as the two-year branches; should department heads, directors of bureaus or institutes, part-time faculty, graduate teaching assistants, research professors and assistant; and other non-teaching professional personnel such as librarians, be included or excluded? Agreement on the bargaining unit can be a major serious problem.

Who would be the bargaining agent for the Faculty? During the period preceding the election (assuming there is one) Faculty will be taking sides, for or against representation, and for or against competing organizations. This may be an emotional matter, and polarization or divisiveness may be inevitable and will carry over after the election regardless of the outcome. It will be worse if a majority of the Faculty vote to be represented.

If an organization is voted in to represent Faculty, who will be the officers? Who will be the negotiator, or the negotiating committee? Who will handle grievances at the first stage, i.e., who will act as "stewards"? Election of officers will be a political proposition, pure and simple, and the divisiveness may continue to grow.

What will be bargained about? In the absence of legislative requirements that the employer recognize and bargain in good faith about conditions of employment, etc., the parties will have to agree mutually on what they will negotiate. On the Faculty side, the bargaining demands to be raised will require resolving internal conflicts over issues. Some Faculty members will be more interested in other areas. After resolving the conflicts, bargaining demands will have to be arranged in order of priority to the Faculty. The Administration will be doing the same thing, and their priorities won't be the same as the Faculty's. A major point to keep in mind: just because there is collective bargaining in good faith between Faculty and Administration does not mean that salaries or other monetary benefits will come automatically. The reallocation of the budget (e.g., from the athletic programs to the academic) may be raised by the Faculty as an argument but the allocation of available funds to the various programs is not likely to be negotiable.

What happens if negotiations deadlock? The traditional weapon of unionized employees elsewhere is the strike. A strike has serious consequences. A strike by the Faculty would be illegal under the present law in Ohio. Other groups of public employees in Ohio have struck without serious consequence. There are other procedures available for use in the effort to break the deadlock: fact-finding, mediation, and arbitration, either advisory or final and binding. The Faculty and the Administration would have to agree on the use of
any such procedures. If a strike is the means utilized to attempt to break the deadlock, Faculty sentiment will be split and divisiveness and animosity may result as was the case in the strike at San Francisco State a few years ago.

Under collective bargaining, decision-making is different from the traditional form of institutional decision-making. Regardless of what one may hear, collective bargaining is an adversary proceeding; the decisional results are the product of coercion in one form or another. Consequently, the present nature and form of Faculty participation in University governance will be subject to change. The degree of change depends upon which organization represents the Faculty, the attitude of a university's Administration, and the legislature. In this context, what needs to be considered by the Faculty is the function of the Faculty Senate, the University Senate, and representation on a variety of committees and on the Board. Will these be changed by a bargaining relationship? Will more effective Faculty representation flow from a bargaining relationship?

It is altogether possible that not only will the Faculty have to meet certain standards under a bargaining relationship but also that standardized conditions for the Faculty will come with collective bargaining. For example, a teaching load of a specified number of hours; salary ranges with incremental advances based on length of service and/or some sort of merit rating system; the service of the Faculty on the normal university committees as well as such activities as advising, counseling, meeting with parents, service to the community, etc. Various arrangements are possible; it all depends upon the Faculty and the Administration mutually agreeing to arrangements in negotiations.

If collective bargaining comes in, there will normally be no individual bargaining by Faculty members with the Administration. Exceptions to this could be provided if the negotiating parties agree. As an example, the Faculty and the Administration could agree that if a Faculty member, whom the Administration and the Department involved want to keep, receives an attractive offer from another institution and makes this known to his Department, the University would meet the terms of the offer. Given the current budgetary condition of the University, it is most likely that the fortunate Faculty member would be given Godspeed, and asked if he would take another Faculty member with him.

THE CASE FOR COLLECTIVE BARGAINING

Collective bargaining has become a serious issue for faculty in recent years because of the decline in prosperity of higher education and the challenge that has arisen to features of university life which faculty consider essential to quality education. Sabbatical leaves, teaching loads commensurate with the variety of demands made on faculty, tenure, and other things which faculty have taken for granted are coming under increasing attack. Collective bargaining may be the only way that faculty members can overcome their vulnerability to hostile legislatures and arbitrary administrations.
Developments in the social environment have also prompted faculty concern. Public employees are organizing everywhere, and are making gains which are not being matched by university faculty members. With the persistent rise in the cost of living, groups which are unorganized or weakly organized are unable to maintain their previous level of buying power. Organized groups are more effective in pressing their interests in the political system, while others are losing out.

The primary consideration which leads one to believe that faculty organization for collective bargaining is called for at the University of Cincinnati is a growing conviction that the impact of the faculty on the budgeting process is inadequate in comparison with other constituencies. It is of concern that these other constituencies are pre-empting too great a proportion of the University's scarce resource for purposes which do not improve the quality of education and research which should be the basic functions of the University. Only through organized pressure can the faculty hope to divert more of these resources to improving the quality of the faculty, reducing the faculty-student ratio in impacted areas, supporting research, improving the library, and providing more backup services for faculty in the performance of their duties. While these goals might well be lost sight of in the collective bargaining process, they are certainly not being adequately realized now. It is the responsibility of faculty leaders to assure that such goals receive constant attention so that collective bargaining, rather than jeopardizing the academic integrity of the University, acts instead as a positive force for the improvement of the University.

The above argument is valid during normal times at the University. But we are now in a period of financial crisis, which may be more than short-term. Unless the faculty develops a stronger impact on the budgetary process, we will continue to see the University's deficit inflated by the football team, the student activities budget, the administrative bureaucracy, and an assortment of special programs and institutes while cutbacks are made in already lean departmental budgets and faculty members are asked to go without even cost-of-living raises.

In terms of the working conditions of the faculty, it appears that we have entered a period when many of the things we have taken for granted, such as sabbatical leaves and teaching loads commensurate with the demands of preparation, grading, counselling and research are going to be jeopardized. Collective bargaining may not achieve complete satisfaction for the faculty on these matters, but it will give us greater means for protection than we currently have. Finally, the inadequacy of fringe benefits at U.C. is a concrete reason for turning to collective bargaining. Specifically, the absence of a University contribution to our hospitalization insurance, the weakness of our major medical plan, and the non-utilization of medical-center facilities for faculty services are shortcomings to be remedied. Considerable tax savings accompany improved University contributions in these areas.

Finally, it should be kept in mind that collective bargaining cannot succeed if goals are set which are unrealistic or unacceptable to much of the faculty. We cannot expect large salary increases in a time of financial scarcity. Nor would a standardization of salaries across colleges or a neglect of merit considerations be sensible. The objectives must be appropriate for a university faculty if the process is going to work.

May, 1972