

Bargaining on at U. Mass.

Despite 6 years of unionization, an awkward question persists concerning faculty who are unwilling to pay up as contract requires

Unionization in academia made a major advance last year when a coalition of unions was declared bargaining agent for the 18,000 faculty of the California State University system. An alliance made up of National Education Association, American Association of University Professors (AAUP), and California State Employees Association won out over the American Federation of Teachers in a hotly contested campaign that took two runoff elections to settle. But experience on campuses that became unionized in the 1970's suggests that certification of an election will not end divisions among faculty members. What is happening at the University of Massachusetts, for example, indicates that tensions take new forms.

Amherst, Mass. In January 1982, the faculty union of the University of Massachusetts demanded that the university administration proceed with the termination of 37 faculty members, most of them tenured. The union noted that the group, later whittled down to 11, had violated the union contract by refusing to pay union dues (\$246 a year) or an equivalent sum called an agency fee required of nonmembers. Nobody has been fired at U. Mass., but four of the most resolute of the holdouts were recently subjected to a week's suspension without pay. The dissenters argue that the agency fee provision conflicts with their tenure rights and the principles of academic freedom. Union leaders regard the dissenters' stand as defiance of the contract that poses a threat to union security.

The issue is unresolved. The Administration and the union, which is affiliated with the National Education Association, are now in the process of negotiating a new contract to take effect when the current 3-year contract expires at the end of June. It is obvious that neither the administration nor the union leadership wants to see the issue of nonpayment forced to the point where tenured faculty would be fired. Negotiators are said to be discussing provision in the new contract of a penalty short of termination for nonpayers, a compromise unlikely to satisfy the dissenters.

While the self-styled "Amherst 11" were refusing to pay an agency fee, a larger group of U. Mass. faculty who

have declined to join the union have been seeking to establish their claim that they should pay the union only the costs of collective bargaining on the contract which covers them. The matter is now being considered by the Massachusetts Labor Relations Commission (MLRC) and agency fee provisions are the subject of litigation in other states (see box).

At U. Mass., however, the dispute over the Amherst 11's refusal to ante up



U. Mass. president David C. Knapp

Sought penalty short of termination

has been more intense and potentially more divisive. The conflict dates back to the time when the first union contract was installed in 1977, but it has attracted more attention on the Amherst campus since the union ultimatum.

What led directly to the suspensions was a letter on 10 March from university president David C. Knapp offering the nonpayers three options. These were to join those petitioning the MLRC, to take their case to court, or to pay the agency fee. Knapp wrote that unless they pursued one of these alternatives he would have "no option" but to suspend them without pay during the spring break.

Seven of the 11 chose one of the alternatives. The four who did not and were suspended were Hugh Davis, environmental science; Edward R. Harrison and Douglas Jensen, both physics and astronomy and Alan Marra, wood science and technology. Harrison has been among the most active in protesting that the university's enforcement of the contract is a violation of tenure and academic freedom. British born and educated,

Harrison joined the U. Mass. faculty in the mid-1960's when the university was expanding rapidly and seeking to upgrade its science faculty. Harrison is a respected member of his department and like most of the other 11 dissenters is regarded as an academic heavyweight.

Harrison sees the present situation as a clash between two traditions. "The union tradition requires a sharp distinction between management and labor," he says. The academic tradition stresses "collegiality." Harrison adds that "part of the union tradition is a closed shop policy. When brought into the university it conflicts with academic freedom" and undermines tenure.

A theme struck by some of the dissenters is that the union is compelled to follow policies favorable to the majority of its members in salary and other matters and that this cultivates mediocrity. Zoology professor John D. Palmer, another of the dissenters, contends in a letter published in the local *Hampshire Gazette* that "The quality of any school is determined mainly by the quality of its faculty. Truly fine scholars and teachers are rare, and the competition among universities for the best ones is fierce. Unions for their survival must provide equal benefits to all their members. Thus real merit recognition is not possible. As a result, the best of the country's professors cannot be tempted to join our ranks: they fully recognize that their special abilities and efforts will be better rewarded in a nonunion atmosphere."

Union leaders dispute the critics on virtually all points. In an interview, current union local president George Sulzner, a political scientist, and immediate past president Bruce Laurie, an historian, denied, for example, that the union is a force for mediocrity. As evidence to the contrary they cited a recently published guide for prospective college students that gave U. Mass. a favorable report and the new National Academy of Sciences rating of university graduate programs, which they said affirmed the university's solid-standing as a research institution.

On the score of a conflict between academic freedom and the union contract they noted that continuing criticism by the dissenters proved that free speech had not been abridged on campus. They

said that principles of academic freedom were reinforced by inclusion of specific protections of academic freedom written into the contract. And contract procedures for personnel actions—affecting promotion, pay and tenure—were said to insulate such matters from the “capriciousness” which sometimes affected them in the past. Laurie suggested that some of those who ignored the practical benefits of the contract “live in a world of moral abstractions.”

In fact, the question of whether tenure takes legal precedence over contract provisions as a condition of employment has received no clear answer in court, say lawyers for both unions and the National Right to Work Legal Defense Foundation, which has been active in behalf of many faculty challenging the agency fee. Tenure has some legal points in its favor, but the agency fee principle is backed by a stronger body of case law, and Right to Work organization lawyers say the outcome of such a test would be very uncertain.

The U. Mass. contract does provide a limited safety valve through its conscientious objector clause. Dissenters object that criteria for CO status are not clear, that waivers are decided on by a union committee, and that the union also decides on appeals. Laurie says that about 90 applications for CO status have been filed and about two-thirds granted.

The union's demand that the administration enforce the contract was made, according to Laurie, because the dissenters “were becoming bolder” and union members were asking in increasing numbers, “Why should we pay when you're letting them get away with it?” The union felt it had to take action after 2 or 3 years of restraint.

The union's demand for termination last year came at about the time a Massachusetts court had issued a decision upholding the agency fee but faulting union procedures for giving rebates for noncollective bargaining activities. U. Mass. president Knapp decided against moving on the terminations while the agency fee issue was in dispute. Nearly two-thirds of the 37 faculty members who had been cited by the union filed charges with the MLRC and put their agency fee payments into escrow.

Attention then turned to the 11 faculty on the Amherst campus who still held out. Late last year, the union filed a grievance which, in effect, imposed a deadline for action on the administration. Knapp says that his office sought a remedy short of termination. A precedent was discovered in a Michigan case where suspension was deemed sufficient

to uphold a contract; an agreement signed by Knapp and a union representative led to the four suspensions.

The suspensions do not appear to have polarized faculty opinion. The union seems to command the same sort of restrained support from the majority that it received at the time of the successful organizing campaign in the mid-1970's. Union members and dissenters agree on the major factors that influenced that victory—dissatisfaction over leadership and resources.

A move of the university president's office to Boston had brought a shift of power away from the main Amherst campus; a series of actions by then president Robert Wood were interpreted by

the faculty as diminishing their role in governance. At Amherst, academic leadership was perceived as faltering as provosts came and went in rapid succession.

During the period, state finances were at low ebb. Faculty received no pay raises for several years and the university budget was squeezed in other ways. In politically liberal, prounion Massachusetts, the university's nonunion faculty saw unionized state employees fare better economically than they did. When state legislators and the incumbent governor Michael Dukakis signaled that faculty could expect more favorable treatment if they bargained collectively, it is hardly surprising that they voted to organize. The choice of union was the Na-

Light at the End of Litigation

After more than two decades of inconclusive litigation, definitive word in the dispute over so-called agency fees seems to be in prospect. At issue is the extent to which funds from such fees paid by nonmembers may be used by unions for lobbying and other political and ideological activities. The question currently is a major legal issue for unionized public employees including those in higher education.

Now regarded as a legal watershed in the controversy was a U.S. Supreme Court decision in the case of *Abood v. Detroit Board of Education* in the middle 1970's. A group of teachers and counselors in the Detroit public schools challenged the constitutionality of the agency shop agreement as a condition of employment in Detroit's public schools. The Supreme Court vacated a judgment by the Michigan Court of Appeals permitting use of the agency fee for ideological activities as well as for expenses of collective bargaining. The effect of the *Abood* decision was to leave remedies to the lower courts.

In many instances, faculty members challenging the unions have been represented by the National Right to Work Legal Defense Foundation. Observers say that because of the time and money required, assistance from the foundation has probably encouraged many faculty to pursue the matter. A lawyer for the foundation says that the organization is involved in 250 active cases on the agency fee.

Court decisions have uniformly upheld the legality of the use of agency fee funds for collective bargaining expenses. Still unclear, however, is what activities cannot be paid for with such funds. A Supreme Court decision next year in a case on the subject—*Ellis/Fails v. Brotherhood of Railway, Airline & Steamship Clerks*—is expected to give clearer guidance on where to draw the line.

Disputes over the agency fee seem currently to be most frequent in the Northeast. A regional divergence from a national pattern may help to account for this. Nationally, unions have been most successful in organizing 2-year and 4-year institutions. U. Mass. is one of relatively few large universities with significant research programs to have faculty unions. Like U. Mass., however, state universities have unionized in Connecticut, Delaware, Maine, New Jersey, New York and Rhode Island, all states that permit public employees to bargain collectively.

According to Joel Douglas, director of the National Center for the Study of Collective Bargaining in Higher Education and the Professions at Baruch College in New York, 26 states have laws permitting collective bargaining by public employees, and the number of states where bargaining is conducted in the absence of such laws brings the total to about 34.

—JOHN WALSH

tional Education Association whose state affiliate, the Massachusetts Teachers Association, had a reputation for fierce and effective lobbying in the state legislature.

The victory margin was a modest one, however, and critics of the union complained that the cards had been stacked by the exclusion from the bargaining unit of the faculty of the university's medical

school at Worcester and the inclusion of staff librarians and the faculty of the university's Boston campus, which is largely a commuter school with a relatively high proportion of part-time faculty whose status made them find the protection provided by union membership inviting.

According to leaders of the Amherst local, the current breakdown for the bargaining unit is 960 union members, 240 agency fee payers, 55 conscientious objectors, and about 30 who are appealing to the MLRC or still declining to pay.

There is some indication of a division on disciplinary, two-culture lines. Ten of the Amherst 11 hail from the basic or applied sciences—the other is a professor of philosophy. Among those who chose to pay the agency fee willingly or otherwise, a higher proportion are said to come from science, engineering, and business than from other disciplines.

One of the Amherst 11, physics professor Mike Kreisler, suggests that it may be true that “people in science are mobile, self-confident.” But he thinks that faculty in the social sciences and humanities also may have been reacting to seeing “resources channeled into the sciences” and portions of money from grants returned to science departments.

Kreisler, head of a high-energy physics research group currently working at Brookhaven, says he thinks that many of his colleagues “in a desire to counter the results of a poor economy are willing to sacrifice the principle of tenure.”

Several faculty members at Amherst who belong to the union but are not active in its affairs say that when a large public university depends on a state government rather than its own trustees and administration to make major financial decisions, unionization is the realistic course for the faculty to take.

The dissenters appear to remain in the minority. A petition circulated recently asking that the agency fee provision be removed from the new contract gained more than 300 signers. But it appears that not only is the agency fee clause likely to prevail but that a mechanism for regularizing penalties for nonpayers such as a suspension provision will be added.

This does not mean that U. Mass. faculty are willing to see tenure go by the boards. While suspension of their four colleagues seems to have been accepted by the faculty at large, the visitor to Amherst gets a strong impression that the reaction would have been quite different if a move had been made to fire them. As things stand, therefore, the Amherst 11 appear to have a case but not a cause.—**JOHN WALSH**

NAS Elects New Members

The National Academy of Sciences has elected 60 new members bringing the total membership to 1415. Twelve new foreign associates were elected bringing that total to 216. Newly elected members are:

Dennis B. Amos, immunology, Duke University Medical Center; **Edward M. Arnett**, chemistry, Duke University; **Charles J. Arntzen**, plant research, Michigan State University; **Richard Axel**, biochemistry and pathology, Institute of Cancer Research, Columbia University; **Richard E. Bellman**, mathematics, electrical engineering, and medicine, University of Southern California; **Günter Blobel**, cell biology, Rockefeller University; **Felix H. Boehm**, physics, California Institute of Technology; **Martin J. Bukovac**, horticulture, Michigan State University; **Guilio L. Cantoni**, general and comparative biochemistry, National Institute of Mental Health; **Minor J. Coon**, biological chemistry, University of Michigan School of Medicine; **Allan McCormack**, Tufts University; **George B. Craig, Jr.**, biology, University of Notre Dame; **Ronald W. Davis**, biochemistry, Stanford University; **Michael J. S. Dewar**, chemistry, University of Texas, Austin; **Thomas M. Donahue**, atmospheric and oceanic science, University of Michigan; **Raymond L. Erikson**, pathology, University of Colorado Health Science Center; **Leopoldo M. Falicov**, physics, University of California, Berkeley; **Richard F. Fenno, Jr.**, political science, University of Rochester; **James L. Flanagan**, acoustics research, Bell Laboratories; **David Gale**, mathematics, operations research, and economics, University of California, Berkeley; **John Garcia**, psychology and psychiatry, University of California, Los Angeles; **Wilford R. Gardner**, soils, water, and engineering, University of Arizona.

Eugene A. Hammel, anthropology, University of California, Berkeley; **Stanley R. Hart**, geochemistry, Massachusetts Institute of Technology; **Richard J. Havel**, cardiovascular research, University of California, San Francisco; **Carson D. Jeffries**, physics, University of California, Berkeley; **Harry Kesten**, mathematics, Cornell University; **Paul E. Lacy**, Washington University School of Medicine; **Davis S. Landes**, economics, Harvard University; **Melvin Lax**, physics, City College of New York; **Rachmiel Levine**, emeritus, City of Hope Medical Center; **Frank Lilly**, genetics, Albert Einstein College of Medicine; **William C. Lineberger**, chemistry, University of Colorado; **Samuel McD. McCann**, physiology, Southwestern Medical School, University of Texas; **Lynn Margulis**, biology, Boston University.

Jerome Namias, meteorologist, Scripps Institution of Oceanography; **Norman F. Ness**, extraterrestrial physics, Goddard Space Flight Center, National Aeronautics and Space Administration; **Lindsay S. Olive**, botany, University of North Carolina, Chapel Hill; **Leo A. Paquette**, chemistry, Ohio State University; **Mary Lou Pardue**, biology, Massachusetts Institute of Technology; **Dominick P. Purpura**, Stanford University School of Medicine; **Murray Rabinowitz**, medicine and biochemistry, University of Chicago School of Medicine; **Charles C. Richardson**, biological chemistry, Harvard Medical School; **Morton S. Roberts**, National Radio Astronomy Observatory, Charlottesville, Va.; **Isadore Rudnick**, physics, University of California, Los Angeles.

Howard L. Sanders, Woods Hole Oceanographic Institute; **Anthony San Pietro**, plant biochemistry, Indiana University, Bloomington; **Thomas J. Sargent**, economics, University of Minnesota, Twin Cities, Minneapolis; **Stanley Schachter**, social psychology, Columbia University; **Phillip A. Sharp**, Center for Cancer Research, Massachusetts Institute of Technology; **Joan A. Steitz**, molecular biophysics and biochemistry, Yale University; **Dennis P. Sullivan**, City University of New York; **Gareth Thomas**, materials science and mining engineering, University of California, Berkeley; **William P. Thurston**, mathematics, Princeton University; **Alar Toomre**, applied mathematics, Massachusetts Institute of Technology; **George H. Trilling**, physics, University of California, Berkeley; **Sidney Verba**, government, Harvard University; **Sherman M. Weissman**, medicine and molecular biophysics and biochemistry, Yale University School of Medicine; **David T. Wilkinson**, physics, Princeton University; **Jean D. Wilson**, internal medicine, Southwestern Medical School, University of Texas.

The newly elected foreign associates are:

Vladimir I. Arnold, mathematics, Moscow State University, USSR; **William Ian Axford**, Victoria University, Wellington, New Zealand; **Max L. Birnstiel**, Institut für Molekularbiologie II der Universität Zürich, Zürich, Switzerland; **Jean Pierre Changeux**, molecular neurobiology, Pasteur Institute, Paris, France; **Michael E. Fisher** (United Kingdom), chemistry, physics, and mathematics, Cornell University; **John Heslop-Harrison**, University College of North Wales, United Kingdom.