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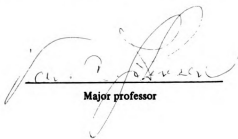
Effect of Collective Bargaining on Tenure
in Selected Unionized Four-Year Public
Higher Education Institutions

presented by

Dorothy M. Skinner

has been accepted towards fulfillment
of the requirements for

Doctor of Philosophy degree in Administration and
Higher Education (Higher Education)



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EFFECT OF COLLECTIVE BARGAINING ON TENURE
IN SELECTED UNIONIZED FOUR-YEAR PUBLIC
HIGHER EDUCATION INSTITUTIONS

By

Dorothy M. Skinner

A DISSERTATION

Submitted to
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ABSTRACT

EFFECT OF COLLECTIVE BARGAINING ON TENURE IN SELECTED UNIONIZED FOUR-YEAR PUBLIC HIGHER EDUCATION INSTITUTIONS

By

Dorothy M. Skinner

Tight budgets, lowering enrollments and affirmative action plans may be incompatible with the present tenure system. A change in tenure has been predicted when collective bargaining comes to campus. There are presently 648 campuses with collective bargaining.

The purpose of this study was to look at the effect of collective bargaining on tenure at selected unionized four-year public higher education institutions. Those institutions whose pre and post collective bargaining tenure procedures differed were selected for study.

Topics related to tenure were studied in the collective bargaining agreements from these institutions. Interviews were conducted with fourteen persons who are knowledgeable about these collective bargaining agreements. The fourteen interviewees included four union presidents, two tenure review committee chairmen, four provosts, one Deputy Commissioner of Higher Education, two Directors of Labor Relations, and one lawyer.

Dorothy M. Skinner

In addition to discussion of the tenure topics in the collective bargaining agreement, the interviewees were asked questions which related to: a) any change in conditions for tenure b) any alternate plans to tenure c) any factors other than collective bargaining which effected tenure d) any settlements on tenure disputes.

The major tenure topics found in the collective bargaining agreements are that:

- Campus-wide committees play a role in the tenure process in all institutions, with six of the committees making an independent decision before the central administration, one reviewing the negative decision before it goes to the faculty member and one which reviews all faculty submitted for tenure but votes only on the negative decisions made by the Provost.
- Review of tenured faculty for possible dismissal was found in three institutions.
- Removal of the "up or out" policy for tenure was found in four institutions.
- The ability of an arbitrator to award tenure was present in three contracts.
- Retrenchment plans were present in seven of the eight collective bargaining agreements.

Major findings of the study are that:

- Collective bargaining has provided a method for faculty to have more influence in tenure decisions. This influence is seen by faculty representatives as making the tenure process fairer but tenure harder to secure.
- Review of tenured faculty with removal of those persons who cannot meet the needs of the institution

Dorothy M. Skinner

is correcting the problem of permanence of position. The peer review of tenured faculty with dismissal possible provides a mechanism for hiring qualified faculty in departments which currently have a high percentage of tenured faculty.

- Removal of the "up or out" policy for tenure decisions provides academic flexibility for both management and faculty.
- In arbitration cases, the arbitrator usually rejects the administrative position when it is in opposition to the campus-wide committee.
- Retrenchment plans provide for program cutback or discontinuance when meeting the needs of the institution. The tenured faculty may be dismissed last provided they are capable of teaching the needed subjects.
- While academic freedom was historically the basis for tenure, the two are treated as separate issues in nearly all of the institutions studied. Job security has become the basis for tenure at these institutions.

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TABLE OF CONTENTS

Chapter	Page
I. INTRODUCTION	1
Background	1
Significance	4
Problem	5
Statement	5
Data	5
Limitations of the Study	6
Definitions	7
II. REVIEW OF RELATED LITERATURE	8
History	8
Academic Freedom	15
Due Process	16
Major Features of A Tenure System	16
Tenure Conflicts	17
Tenure Evaluation Procedures	17
Low Enrollment and Tight Job Market	19
Affirmative Action	20
Rise in Percentage of Tenured Faculty	21
Collective Bargaining	21
Support For Tenure	22
Academic Freedom	22
Faculty Security	23
Society Benefit	24
Senior Faculty and Management, Not Tenure, Under Attack	25
Opposition to Tenure	26
Inequality Among Faculty	26
Limited Mobility	28
Lower Academic Standards	29
Source of Opposition to Tenure	30
Young Faculty, Students, and Society	30
Suggestions for Improving the Tenure System	32
The Commission on Academic Tenure in Higher Education	32

Chapter	Page
National Independent Tenure Accreditation Board	33
Tenure Ratio	34
Tenure Variables Administratively Controllable	36
Administratively Uncontrollable	37
Tenure Quotas	38
Retirement and Tenure	39
Retrenchment	41
Legal Implications of Tenure	43
Alternatives to Tenure Quotas	46
Alternatives Within Tenure System	47
Tenure and Non-Tenure Track	47
Secondary Tenure	48
Increased Peer Review Before Tenure Decision	48
Periodic Review of Faculty After Tenure Decision	49
Alternatives to Tenure	51
No Tenure	51
Collective Bargaining and Grievance Procedures	53
Alternatives Which Have Been Implemented	53
Collective Bargaining	56
Purpose	56
Concepts	57
Structures	58
Growth	60
Collective Bargaining Agents	61
Importance	62
Research	63
Tenure and Collective Bargaining	66
Advantage	67
Disadvantage	68
Tenure Procedures	70
Criteria	70
Problem of Open File	71

Chapter	Page
Probationary Period	71
Before and After Collective Bargaining . . .	72
Contract Contents	73
Academic Freedom	73
Tenure	74
Arbitration	75
Research	78
Loss of Tenure	82
III. METHODS AND MATERIALS OF RESEARCH	85
Sources of Data	87
Institutions Studied	88
Topics Studied in the Eight Collective Bargaining Agreements	96
IV. FINDINGS	98
Collective Bargaining Structures	98
Separate Bargaining Unit With Centralized State Control	98
Single Campus/Single Bargaining Agent	99
Entire System Within a Single Bargaining Unit With One Encompassing Contract	99
Topics Studied in Eight Collective Bargaining Agreements and Discussed with Interviewees	101
Tenure Review Process	101
Limitation of Tenure	112
Tenure Review for Members of Administration.	113
Review of Tenured Faculty	113
Holding Pattern for Tenure Decision	115
Non-Renewal Procedures	116
Role of the Arbitrator	118
Dismissal of Faculty Member for Cause	119

Chapter	Page
Retrenchment	120
Retirement Age	121
Additional Topics Discussed With	
Interviewees	122
Change in Probationary Period	122
Alternate Plans to Tenure	124
Modifications Within the Tenure System	125
Effect on Tenure by Factors Other Than	
Collective Bargaining	126
V. SUMMARY AND CONCLUSIONS	127
Summary	127
Conclusions	131
IMPLICATIONS	132
RECOMMENDATIONS FOR FURTHER STUDY	135
Appendix I	
I. Faculty Bargaining Agents in Four-Year Public	
Institutions of Higher Education	137
BIBLIOGRAPHY	142

LIST OF TABLES

Table	Chapter	Page
1. TYPE OF APPOINTMENT BY RANK, 1932 . . .	II	12
2. COMPARISON OF THE NUMBER OF FACULTY BY RANK AT 38 SELECTED INSTITUTIONS OVER A TWO-YEAR PERIOD	II	12
3. TENURE PROSPECT RATIO AS A FUNCTION OF SELECTED TENURE QUOTAS	II	39
4. SUMMARY OF FACULTY BARGAINING DECISIONS.	II	62
5. PERCENTAGE OF FULL-TIME FACULTY MEMBERS WITH TENURE STATUS OF CATEGORY, TYPE OF AFFILIATION, ALL RANKS, AND SEX . .	III	86
6. TOPICS STUDIED IN THE EIGHT COLLECTIVE BARGAINING AGREEMENTS	IV	123

CHAPTER I

INTRODUCTION

Background

Perkin has stated that academic freedom and tenure are under attack from those in education who want to keep all university faculty on their toes.¹ Lieberman has described the issue of faculty tenure as controversial and confusing. When there were more jobs available, concern over tenure was not a high priority issue. That situation no longer exists. Collective bargaining is another factor which has entered higher education and may affect tenure.²

In the report of the Commission on Academic Tenure in Higher Education, there was concern that the principle of tenure will not last unless the faculty take the initiative to correct the weakness and abuses of the tenure process. The recommendations of the Commission included faculty input in the development of tenure policies and involvement in tenure decisions.³ It was also suggested that faculty

¹Harold Perkin, "Academic Tenure," Association of University Teachers, 42 (1972), p. 14.

²Myron Lieberman, "Tenure: A New High-Priority Issue," Phi Delta Kappan. Vol. LVI, No. 7, (March 1975), p. 450.

³William Keast, Faculty Tenure, edited by William Keast, (San Francisco: Jossey-Bass Inc. Publishers, 1973), pp. 23-25.

should not include tenure matters into the collective bargaining process.⁴

McHugh has claimed that management representatives in collective bargaining may negotiate for forms of academic appointment other than tenure. Management may be able to obtain some faculty pre-bargaining rights when faculty negotiate for higher salaries or other items they consider important at the time of negotiation.⁵

Park asserted that the affiliation of tenure and collective bargaining could be a serious problem to the future of higher education. Collective bargaining contracts may stipulate that tenure is a non-negotiable item. His concern is that the future for untenured faculty may be bleak with the tight economy if the tenure system can never be changed.⁶ Kemerer and Baldrige have claimed that unions must continue to uphold professionalism while supporting the terms of the union contract or higher education will be damaged.⁷

⁴Ibid., p. 90.

⁵William F. McHugh, "Faculty Unionism and Tenure," Faculty Tenure, pp. 211-213.

⁶Dabney Park Jr., "Tenure Shock," The Chronicle of Higher Education, Vol. VII, No. 35 (June 1973), p. 16.

⁷Frank R. Kemerer and J. Victor Baldrige, Unions on Campus, (San Francisco: Jossey-Bass Inc. Publishers, 1976), p. 137.

From the data obtained from the 1974 Stanford Project on Academic Governance, it was found that both union chairpersons and union presidents surveyed felt that faculty senates and unions are perceived to have more influence over faculty promotion and tenure than over faculty hiring. Their findings indicated that the unions are more influential than faculty senates in affecting faculty personnel decisions.⁸ In the Stanford survey, presidents and union chairpersons were asked if faculty collective bargaining will result in more equitable personnel decision making (such as who gets promotion, tenure or laid off). Sixty-two percent of the non-unionized school presidents said no, forty-three percent of the unionized school presidents said no, while ninety-four percent of the union chairpersons said yes.⁹

The growth of collective bargaining has gone from participation of eleven campuses in 1966 to 648 campuses in 1979. Tenure concepts have been found in contracts from some of these campuses.

It is the intent of this study to identify certain effects of collective bargaining on tenure in selected unionized four-year public higher education institutions

⁸Ibid., p. 119.

⁹Ibid., p. 125.

in the United States whose pre and post collective bargaining documents were different.

Significance

There is a need for research in the area of the relationship of tenure and collective bargaining.

According to McHugh, the faculty bargaining agent will play a big part in promotion and tenure. However, he stated that there were not any studies on the impact of contract provisions on tenure.¹⁰

A study of the effect of collective bargaining on tenure in selected unionized public four-year higher education institutions may show members of the academic community what can be accomplished through negotiations. Those academic representatives who wish to make changes related to tenure concepts may find a description of the effects of collective bargaining on tenure useful for their needs.

A description of the procedures which could be implemented by collective bargaining may help those members of the academic community who haven't negotiated any items relating to tenure and haven't thought about that possibility.

¹⁰William F. McHugh, p. 206.

The Problem

The tenure system has been claimed by some writers to be a problem in higher education. Some faculty who have tenure are no longer able to meet the goals of the institution. Collective bargaining may become a mechanism to deal with tenure problems or to help perpetuate them. The literature seems to indicate that with the growth of collective bargaining on campuses, the positive or negative effect of collective bargaining on tenure will have much impact on higher education.

Statement

The problem to be considered in this study is the effect of collective bargaining on tenure in selected unionized four-year public higher education institutions in the United States whose pre and post collective bargaining documents were different.

Data

The data were collected from a study of selected topics in the collective bargaining agreements and interviews with persons involved in negotiations in those institutions whose pre and post collective bargaining tenure procedures were different. The topics studied in the collective bargaining agreements were those which are related to tenure or tenured status.

In addition to selected topics in the collective bargaining agreement, changes in tenure procedures, alternate plans to tenure, other factors affecting tenure and tenure decision disputes were discussed.

Limitations of the Study

In the findings the institutions are purposely not identified because some discussions contained information of a sensitive nature. However, this prevents another researcher from comparing the findings with the institutional variables.

The study is limited to those unionized four-year public institutions whose pre and post collective bargaining tenure procedures are different. The study doesn't look at the unionized four-year private institutions or at the unionized four-year public institutions whose pre and post collective bargaining tenure procedures are alike.

Another limitation is that the study does not consider what is happening to tenure in non-unionized public or private four-year institutions. With budget constraints, tenure in those institutions may be undergoing a similar attack from faculty and administration.

Definitions

In this study, the following definitions are used:

Administration and management are terms used interchangeably to refer to the employer in the academic institution.

Campus-wide refers to the entire academic system of the individual institution.

Collective bargaining agreement or contract refers to the settlement of negotiations between the faculty and administration.

Faculty bargaining or collective bargaining or negotiations refers to the process where faculty and administration make offers and counteroffers which affect the conditions of employment.

CHAPTER II

REVIEW OF RELATED LITERATURE

History

Metzger in an historical essay on tenure described the early concept of tenure to date back to 1158. The rulers of church and state developed rules to protect scholars from physical attacks and to provide preferential treatment for them. Even with these safeguards, the scholars developed their own organization. With this organization the scholars developed the regulations as to how they would relate to others and how others would relate to them. This has been described as a root of academic tenure. Tenure meant that the scholar who had earned certain degrees and had special skills was accepted by the collegial group. He could not be removed by a nonacademic group. However, the collegial group could inflict penalties and expulsion on peers. In other words, early tenure provided both protection and tyranny for the scholar.¹

Germany provided the American University with the concept of academic freedom. In the German academic

¹Walter P. Metzger, "Academic Tenure in America: A Historical Essay," Faculty Tenure A Report and Recommendation By The Commission on Academic Tenure in Higher Education, edited by William Keast, (London: Jossey-Bass Inc. Publishers, 1973), pp. 94-103.

institutions, the professor was free to study and report whatever he found. The students were also free to come and go, responsible only for final exams. The German professor was not only free to teach whatever he studied, but was encouraged to do so. However, the professor did not have the same privilege outside the University.

The American concept of academic freedom was somewhat different from the German version in that it included only the teacher.²

Tenure in the United States began at Harvard. In the Harvard charter the fellow (faculty) was given no limit for employment. There were attempts in 1697 and 1700 to set limits on the time of the contracts for fellows. However, neither of these limits were accepted. In 1716 a time limit was established for the contract of a tutor. Professorships began to be developed at Harvard in 1721. In 1760, limitations were set for how long tutors could stay within a rank. The term of office for professors were without a time limit. By 1820 Harvard had around 24 professors. A two-track system was developed whereby some faculty moved up in rank and others stayed at the same rank.³

²William F. Stier Jr., Academic Freedom and Academic Tenure, (Washington D.C.: Education Resources Information Center, April 1977), pp. 7-8.

³Walter P. Metzger, Faculty Tenure, pp. 116-118.

In state-supported institutions in the nineteenth century the governing boards of the academic institutions gave yearly appointments to faculty based on yearly funding from the legislature. However, most academic presidents wished to offer renewable contracts to junior faculty and indefinite contracts for senior faculty.⁴

In 1913 eighteen full professors at John Hopkins University asked their colleagues at nine other institutions to help develop a national association of professors. In January 1915 the American Association of University Professors (AAUP) was formed. One of the functions of the association was to develop rules for tenure attainment and to establish standards for faculty dismissal.⁵

In 1915 the definition of academic freedom included:

1. freedom of studying research
2. freedom of teaching within the academic institution
3. freedom of speech or action outside the University

At the second annual meeting of the American Association of University Professors they developed the Report of the Committee on Academic Freedom and Tenure. This committee linked academic freedom to the needs of research,

⁴Ibid., p. 123.

⁵Walter P. Metzger, Faculty Tenure, pp. 135-136.

instruction and public service. The committee attempted to define the breadth of academic freedom. Due process, tenure and the definition of professional competence were the areas considered in obtaining academic freedom.

In 1922 the Association of American Colleges (AAC) accepted the American Association of University Professors terms of academic freedom and tenure adding financial exigency as an additional reason for dismissal of tenured faculty.⁶

By 1932 only a few academic institutions had formally adopted the American Association of University Professors tenure statement. During the Depression, tenure meant job security for the faculty. A 1932 study identified that only 115 of 238 institutions gave the faculty a formal contract. The American Association of University Professors identified that those faculty who were in the upper ranks and had some form of tenure were not dismissed. The American Association of University Professors committee in 1932 was concerned that the economic situation would increase the possibility of arbitrary decisions by the institution administrators.⁷

⁶William F. Stier Jr., Academic Freedom and Academic Tenure, pp. 9-11.

⁷James B. Hirsh. "University Faculty in Crisis," pp. 53-57.

Table 1⁸

TYPE OF APPOINTMENT BY RANK, 1932

Length of Appointment	Inst.	Asst. Prof.	Assoc. Prof.	Professor
Initial 1 year appointment	222*	169	134	130
Initial apt. for definite period	237	217	182	156
Presumption of permanency after original appointment	38	91	106	--
Indefinite original appointment	-	52	76	--

*Indicates number of institutions.

Source: Committee on Tenure of University and College Teachers, "Report," Bulletin of the American Association of University Professors, April, 1932, p. 256.

Table 2⁸

COMPARISON OF THE NUMBER OF FACULTY BY RANK AT 38 SELECTED INSTITUTIONS OVER A TWO-YEAR PERIOD

Rank	Number of Faculty	
	1931-1932	1932-1933
Professor	1682½	1687
Associate Professor	707	705
Assistant Professor	1223½	1201
Instructor	1991	1895
Part-time Instructor	878	783
TOTALS	6482	6271

Source: "Current Economic Conditions of the Profession," Bulletin of the American Association of University Professors, May, 1932, p. 404.

⁸James Hirsch, "The Changing Place of Faculty Tenure in a Period of Financial Crisis," University Faculty in Crisis: Collective Bargaining, Tenure, Faculty Development. Occasional Papers in Higher Education, edited by Allan O. Pfmister, (Washington D.C.: Education Resources Information Center (September 1975), p. 53.

In 1925 the American Council on Education adopted the 1922 statement of the Association of American Colleges. In 1938 the American Association of University Professors and Association of American Colleges met and identified six years as the probationary period for tenure. In addition, notice of termination was to be one year and both non-tenured and tenured were to have academic freedom. The Association of American Colleges accepted the 1938 report after the change of six to seven years for probationary period for tenure. In 1940 the statement of Principles on Academic Freedom and Tenure was developed by Committee A of the American Association of University Professors and accepted by both American Association of University Professors and Association of American Colleges.⁹

According to the 1940 statement of Principles on Academic Freedom and Tenure of the American Association of the University Professors, tenure is:

1. Freedom of teaching and research and of extramural activities and
2. A sufficient degree of economic security to make the profession attractive to men and women of ability.¹⁰

⁹William F. Stier, Jr., Academic Freedom and Academic Tenure, pp. 11-12.

¹⁰Malcolm G. Scully, "Attacks on Tenure Mount; Limitations are Proposed in 5 States," The Chronicle of Higher Education, Vol. V., No. 24 (March 1971), p. 1.

In 1954 the American Civil Liberties Union (ACLU) developed a statement on academic "due process." The 1958 "Statement on Procedural Standards in Faculty Dismissal Proceedings" was developed through the American Civil Liberties Union, the American Association of University Professors, and the Association of American Colleges. Stier pointed out that the untenured professor has as much academic freedom as the tenured professor since they are both protected by the same academic due process. He then raised the question as to why is tenure necessary if the untenured have the same protection.¹¹

Academic tenure leaves the untenured faculty insecure until he has tenure. With "constitutional tenure" the faculty member can have academic freedom. The principle of "constitutional tenure" relates to the faculty members substantial rights and protections. For example a faculty member in a public school cannot be terminated for exercising a freedom given him by the Constitution of the United States. These rights can only be limited if they interfere substantially with public interest. These concepts protect both untenured and tenured faculty. Further, a faculty member whether tenured or untenured is

¹¹William F. Stier Jr., Academic Freedom and Academic Tenure, pp. 18-19.

protected by the 14th amendment against dismissal which is arbitrary, capricious, or without any basis. However, in the case of the untenured non-renewal, the proof is the responsibility of the faculty member.¹²

If there is any truth to the conception of tenure as unbreakable, it is because of institutional practices rather than because of precise protective doctrines developed by the courts. Nothing in the rationales, norms of rules of tenure legally shields any faculty member from accountability for performance as teacher, scholar and colleague.

Academic Freedom

Constitutional Rights

14th amendment -

1. substantive
2. procedural

Professors at public institutions have constitutionally guaranteed rights whether they are tenured or non-tenured. The faculty may teach in the classroom what is relevant to assignments and has educational worth.

¹²H. W. Pettigrew, "Constitutional Tenure: Toward a Realization of Academic Freedom," Case-Western Reserve Law, Vol. 22: 475 (1971), pp. 476-500.

Due Process

Faculty are entitled to their procedural due process if termination negatively affects "property" interest under the 14th amendment of the Constitution of the United States. A "property" interest would apply for a tenured faculty member but not a faculty member for example in a second year non-renewal appointment.¹³

Major Features of a Tenure System

Stier described tenure as the continuance of a position or the terms on which the faculty person may expect to hold his position until he is retired, let go for adequate cause or financial exigency.

Academic freedom is based on three foundations:

1. Intellectual freedom with beginnings in Greece. This freedom moved to Europe during the Renaissance and grew during the Age of Reason.
2. Autonomy which was prevalent in the universities in Europe, especially in Germany.
3. The Bill of Rights of the Constitution of the United States which is supported by the court system.¹⁴

¹³Ronald C. Brown, "Tenure Rights in Contractual and Constitutional Context," Journal of Law and Education, Vol. VI, No. 6 (July 1977), pp. 280-300.

¹⁴William F. Stier Jr., Academic Freedom and Academic Tenure, pp. 3-5.

Tenure allows a faculty member to teach and study without restrictions which might hinder independent thought and action (academic freedom). With tenure the faculty enters the academic world of acceptance by his peers. Tenure is a mechanism for job security.

The tenure review process may consist of committees who evaluate criteria which has been developed with faculty input. In this situation the department evaluates the faculty member prior to a college and campus committee evaluation. The authority to grant tenure rests in the trustees by statute, charter or by-laws, depending on whether the institution is public or private.¹⁵

Tenure Conflicts

Tenure Evaluation Procedures

According to a study by Byse done on institutions in 1954-55, half of the eighty colleges and universities responded that their criteria for evaluation are not specifically documented.¹⁶

¹⁵William F. McHugh, "Faculty Unionism and Tenure," Journal of College and University Law, Vol. 1, No. 1 (Fall 1973), pp. 50-51.

¹⁶Clark Byse and Louis Joughin, Tenure in American Higher Education Plans, Practices, and the Law, (Ithaca: Cornell University Press, 1959), p. 28.

They also responded that the college or university committees which deal with tenure evaluations were usually appointed by the administration.¹⁷

Miller stressed that tenure should not be given because of a faculty member's past services but from his potential contributions to the institution.¹⁸

Dressel in a review of tenure policies at thirty-one major universities in 1962 has identified problems with tenure procedures. He has identified:

1. Lack of objectivity in recommending promotion and tenure.
2. Overly generous commitments by administration to new appointees.
3. Discrepancies among departments in standards and qualifications for promotion and tenure.
4. Failure to terminate the services of certain persons at the appropriate time.
5. The expediency of giving promotions and tenure in lieu of increase in salary.
6. Extension of rank and tenure to the growing numbers of administrative and non-instructional personnel.¹⁹

¹⁷Ibid., p. 36.

¹⁸John Perry Miller, "Tenure: Bulwark of Academic Freedom and Brake on Change," Educational Record, Vol. 51, No. 3, (Summer 1970), pp. 243-244.

¹⁹Paul Dressel, "A Review of the Tenure Policies of Thirty-one Major Universities," Educational Record, Vol. 44 No. 3 (July 1963), pp. 252-253.

Boyd described five problems of tenure as being:

1. Tenure given by time of service only.
2. Short probationary periods.
3. Faculty not fully aware of criteria by which they would be evaluated.
4. Untenured faculty involved in tenure decision.
5. Use of department only in the faculty evaluation process.²⁰

Low Enrollment and Tight Job Market

Higher education enrollment growth is tapering and enrollments are likely to be static for some years in the 1980's. Resources are to a large extent enrollment-based. Many universities are changing from growth to steady-state conditions.²¹

At the June 1979 meeting the general secretary of American Association of University Professors told the members that the continued existence of the American Association of University Professors was questionable. Among the reasons for this concern for the future of the American Association of University Professors was the fact

²⁰William Boyd, "The Question of Tenure," Proceedings, First Annual Conference, National Center for the Study of Collective Bargaining in Higher Education, Maurice Benewitz, editor (April 1973), p. 118.

²¹Robert A. Johnson, A Model for Projecting Tenure Proportions and Faculty Flow, (Washington D.C.: Education Resources Information Center, 1978), p. 2.

that the tenure system had been substantially eroded. He asserted that untenured faculty members are not interested in being members since the association supports tenure in spite of limited job opportunities. Because of financial difficulties, some academic institutions are no longer adhering to the academic freedom and tenure principles. A commission on tenure is being developed to protect academic freedom during these academically troubled times.²²

Affirmative Action

Chait and Ford in discussing tenure and affirmative action claimed that tenure develops a status quo in an academic institution and restricts employment opportunities. This situation may place minority-group members and women in junior and temporary positions. If tenure quotas or tightened tenured procedures exist, advancement into tenured positions will become even more difficult. With collective bargaining, courts, and state and federal governments may view tenure as a seniority system to protect job security. Since this concept would hurt

²²"Survival and AAUP in Doubt, Its General Secretary Warns," The Chronicle of Higher Education, Vol. XVIII, Vol. 15 (June 1979), p. 9.

minorities and women in the job market, tenure may be dropped or altered.²³

Rise in Percentage of Tenured Faculty

Between 1968-1969 and 1972-1973 the proportion of the nation's tenured professors increased from 50 to 65 percent. In 1972 5.9 percent of the higher education institutions limited the percent of tenured faculty; while 9.3 percent limited tenured faculty in 1974.²⁴

Collective Bargaining

The growth of collective bargaining has caused higher education administrators to question tenure. According to Chait and Ford, unions are designed to protect all members equally while tenure protects select faculty.²⁵

Collective bargaining and tenure may not be compatible. It has been pointed out in the School Law

²³Richard Chait and Andrew T. Ford, "Affirmative Action, Tenure and Unionization: Can There Be Peaceful Coexistence?" The Chronicle of Higher Education, Vol. VIII, Vol. 15 (June 1979), p. 9.

²⁴Susan Abramowitz and Stuart Rosenfeld, Declining Enrollments: The Challenge of the Coming Decade. Washington D.C.: U.S. Department of Health, Education and Welfare, National Institute of Education (March 1978), p. 397.

²⁵Richard Chait and Andrew T. Ford, "Affirmative Action, Tenure and Unionization: Can There Be Peaceful Coexistence?" ERIC Ed. 090 808, 1973, as quoted in Susan Abramowitz and Stuart Rosenfeld, Declining Enrollments, p. 397.

Newsletter that tenure is losing ground as a legal concept and reliance on procedural due process is mushrooming.²⁶

In 1972 the American Association of University Professors expanded the rights of the non-tenured. The National Education Association also gives the same protection of due process to tenured and non-tenured faculty.

Support For Tenure

Academic Freedom

Pincoffs in The Concept of Academic Freedom has identified four possible advantages for tenure:

1. It is necessary for protection of faculty academic freedom.
2. It is sufficient for protection of faculty academic freedom.
3. It is necessary for protection of the environment of academic freedom.
4. It is sufficient for protection of the environment of academic freedom.²⁷

²⁶School Law Newsletter, Vol. 6, No. 1 (1976), as quoted in Susan Abramowitz and Stuart Rosenfeld, Declining Enrollments: p. 397.

²⁷Edmund L. Pincoffs, Concept of Academic Freedom, (Austin: University of Texas Press, 1975), p. 147, as quoted in William F. Stier, Academic Freedom and Academic Tenure, p. 6.

Machlup claimed that untenured faculty non-renewals are often because the faculty member has done something which has embarrassed someone in the institution.²⁸

Faculty Security

Edwards asserted that without tenure, faculty would turn to collective bargaining. The tenure review is seen as more difficult than the requirements laid down by a union. She felt that the tenure system is more receptive to student, professional, and institutional needs than the union. Besides since it takes three to four years getting a doctorate and six years in a probationary period, perhaps tenure is a fitting reward for a long apprenticeship.²⁹

Van Alstyne stated that term contracts provide for a revolving door and the uncertainty of this concept produces stress for the faculty. Courts do not protect faculty by making rules but see that the institution carries out its own procedures. In other words, courts may support the procedures of tenure but not develop them. In the courts the individual must prove that the cause for dismissal was wrong or illegal. Van Alstyne pointed out that the courts

²⁸Fritz Machlup, "In Defense of Academic Tenure," AAUP Bulletin, Vol. 50 (Summer), p. 120.

²⁹Margaret Edwards, "Or a Fitting Reward For A Long Apprenticeship?" The Chronicle of Higher Education, Vol. XVIII, No. 10 (April 1979), p. 72.

also will support the institution for firing someone for an illegal reason if the person should have been fired anyway.

He further stated that the tenure system saves expense by using the institutional procedures of due process rather than the court system. If due process has been followed, the court is not likely to interfere.³⁰

Wilde in his study of legal decisions in public institutions of Higher Education in the United States 1970-75, has discussed academic tenure with many tenured and non-tenured faculty. He found that many faculty agree the tenure system has problems, but not many faculty are willing to reject the value of tenure.³¹

Society Benefit

Machlup identified the important advantage of the tenure system is to society. Society benefits because academic freedom is obtained by the tenure system. He felt that scholars for themselves would trade tenure for more money. Therefore, society is the real benefactor of the tenure system. These benefits to society may be

³⁰William W. Van Alstyne, "Tenure; A Conscientious Objective," Change, (1979), pp. 41-42.

³¹Glen Richard Wilde, Tenure and Personnel Policies; A Study of Legal Decisions in Public Institutions of Higher Education in the United States, 1970-75, (Unpublished Ph.D. dissertation, University of Utah, 1976), p. 183.

scientific discoveries, political, social or cultural advances.³²

Senior Faculty and Management, Not Tenure, Under Attack

O'Neil suggested that it is the senior faculty who are under attack rather than the tenure system. The senior faculty are attacked by various legislative groups. The senior faculty are also weakened by sharing their power with various groups. The legislation against faculty takes the form of laws passed to penalize them for committing certain offenses. One example is an Ohio bill passed after the 1970 Kent-Cambodia uprising. The bill provided for the arrest of a faculty member for certain crimes and for a due process hearing for possible suspension until time of trial. Then if the faculty member is found guilty, he is dismissed from the University and cannot be hired by a state-supported institution for a year. These legislative decisions do not take into consideration whether the faculty member is tenured or not.³³

The senior faculty share their authority in the collective bargaining process. The rights of the untenured

³²Fritz Machlup, "In Defense of Academic Tenure," p. 116.

³³Robert M. O'Neil, "Tenure Under Attack," The Tenure Debate, pp. 183-184.

are strengthened when senior faculty must defend non-renewal decisions. The senior faculty are being held more accountable in that their tenure procedures must meet certain standards.³⁴

Saltzman pointed out that the problem with the tenure system is related to supervision by management. These members of management are not able or willing to adequately evaluate and discipline the tenured faculty. This often happens because the members of management lose their perspective as they become good friends of the tenured faculty rather than managers.³⁵

Miller rejected the concept that tenure should be eliminated. He pointed out that the tenure process forces faculty and administrators to make the difficult decisions of retention or not.³⁶

Opposition To Tenure

Inequality Among Faculty

Machlup considered the disadvantages of tenure to individual faculty. The younger faculty may have to

³⁴Ibid., pp. 185-186.

³⁵H. Saltzman, "Proposing A National Board To Accredited Tenured Professors," The Chronicle of Higher Education, Vol. VI, No. 7 (November 1971), p. 8.

³⁶John Perry Miller, "Tenure: pp. 243-244.

continue changing jobs in an "up-or-out" decision. He asserted that perhaps these faculty should have been let go sooner rather than wait six or seven years for the decision. If the faculty of questionable ability were let go sooner, then the results may be less embarrassing to the faculty member since it could be said the institution didn't have enough time to make a good decision.³⁷

Park claimed that tenure is an outmoded, unfair and harmful system. He asserted that tenure supports the tenured at the expense of the untenured. The non-renewal of a non-tenured faculty member does not have to be supported by cause. The non-tenured faculty member whose contract is not renewed must prove his rights were violated. To dismiss a tenured faculty member, the institution must prove incompetence or misconduct.

Park felt that it would be in the best interests of the academic institutions to recruit young faculty and give them academic freedom and a reasonable guarantee of job security. He claimed that tenure doesn't preserve academic freedom.³⁸

³⁷Fritz Machlup, "In Defense of Academic Tenure," p. 118.

³⁸Dabney I. Park Jr., "A Loyal AAUP Member Says Down With Tenure," Change, (March 1972), pp. 33-34.

Miller asserted that intellectual cowardice is caused by the tenure system. Young professors must do what their superiors wish or they may not get tenure.³⁹

The tenured faculty may stay aloof of the non-tenured so as to not feel too badly when the terminal decision comes for the untenured.⁴⁰

Limited Mobility

According to O'Toole, tenure lowers the self-image of professors. They begin to think they need it. Turnover is at 14.8% among top executives. Yet at the faculty level the turnover rate was 8 percent in the 1960's and 1.4 percent in 1972. When mobility is limited, everyone in the academic community is negatively affected. Tenure may also negatively affect professional growth. After a faculty member gets tenure, he may continue to stay at the same level for 30 years that he was at the time he was tenured.⁴¹

Machlup claimed that the tenure system may keep salaries lower. He explained that more faculty go into

³⁹R. Keith Miller, "A Cause of Intellectual Cowardice," The Chronicle of Higher Education, Vol. XVIII No. 10 (April 1979), p. 72.

⁴⁰Dabney I. Park Jr., "A Loyal AAUP Member Says Down With Tenure," pp. 36-37.

⁴¹James O'Toole, "Tenure A Conscientious Objection," Change, (1979), pp. 9-13.

the profession because of tenure and the amount of money to go around is less for all faculty.⁴²

According to Lessard, if a faculty member has tenure, he may stay at his job whether he enjoys his job or not. She pointed out that people work better if they feel free to leave.⁴³

Lower Academic Standards

John Silber has claimed that tenure has supported the lowering of the quality of research. The drive for publication pushes faculty into research which can be turned out quickly rather than do studies which may be more valuable but time-consuming.⁴⁴

Since tenure is given according to academic departments, academic freedom is restricted into thinking in those areas in which one wishes to gain tenure.⁴⁵

⁴²Fritz Machlup, "In Defense of Academic Tenure," p. 118.

⁴³Suzannah Lessard, "The Terms of Tenure: To Have and Be Held," Washington Monthly, (September 1971), p. 11.

⁴⁴John R. Silber, "Tenure in Context," p. 49 as quoted in Change, (1979), p. 17.

⁴⁵Dabney I. Park Jr., "A Loyal AAUP Member Says Down With Tenure," pp. 36-37.

Dressel and Faricy claimed that tenure can support irresponsibility because it permits the faculty to avoid criticism while they pursue their interests.⁴⁶

Source of Opposition to Tenure

Young Faculty, Students, and Society

Carr claimed that tenure is not necessary for academic freedom because the attack on the tenured faculty is not coming from the administration. Tenured faculty are under attack because some untenured faculty think they are more qualified than the tenured faculty to meet the responsibilities of the position.⁴⁷

The main threat to tenure will come from young Ph.D.'s who cannot find employment. At a 1971 annual meeting of the American Association for Higher Education, a great majority of the graduate students wanted tenure modified or eliminated. Many students are not happy with the teaching ability of some of the older faculty. Many of these students do not identify with the older faculty. As the student is allowed to chose more of his program,

⁴⁶Paul Dressel and William Faricy, Return to Responsibility, (London: Jossey-Bass Inc. Publishers, 1972), p. 192.

⁴⁷Robert K. Carr, "The Uneasy Future of Academic Tenure," Educational Record, Vol. 53, No. 2, (Spring 1972), p. 121.

some courses taught by these faculty will have low enrollment. He felt that the removal of a tenured teacher for incompetence would encourage other teachers to shape up.⁴⁸

Student George McCough making a student-oriented case against faculty tenure said:

*"A high ratio of tenured faculty will, in the long run mean higher tuition and a stagnant curriculum. Students must actively seek to participate in those areas where tenure affects the character of the college and university community. He further stated that students must be involved in collective bargaining as parties to the contract. Also a predominant factor in the reappointment, promotion, and tenure process must be a reliance upon student evaluations of faculty teaching ability."*⁴⁹

Nadel claimed that the tenure process doesn't always allow for keeping the best faculty member. Tenure encourages some faculty to go into semi-retirement. It protects those faculty who have the least to contribute. He felt that competent faculty do not need tenure.⁵⁰

According to Nisbit, tenure is bound for trouble because the survival of the institutions will force them

⁴⁸ Ibid., pp. 123-127.

⁴⁹ George McCough, "On Faculty . . .," (New York: University Student Press Service of Cuny, January 1971), p. 1, as quoted in Everett Carll Ladd Jr. and Seymour Martin Lipset, Professors, Unions, and American Higher Education, (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1973), pp. 89-90.

⁵⁰ Mark Nadel, "The Trouble With Tenure," Washington Monthly, Vol. 9 (January 1978), pp. 32-33.

to get out from underneath the costs of tenure. Academic institutions do not enjoy the privileged position in society as it once had and the policy of tenure for life for faculty may also be criticized.

Not all the employees of society have tenure; why then the professors?⁵¹

Suggestions For Improving The Tenure System

The Commission on Academic Tenure in Higher Education

The Commission on Academic Tenure in Higher Education was established during 1971 and worked under a grant from the Ford Foundation. The commission was jointly sponsored by the Association of American Colleges and the American Association of University Professors.

The report and recommendations of this commission suggested that properly administered "tenure systems" have a positive value in strengthening academic freedom and producing quality in faculties and conditions which uphold excellence in teaching. The report suggested improving the "tenure system" through the actions of faculties themselves.⁵²

⁵¹Robert Nisbet, "The Future of Tenure," Change, (April 1973), p. 31.

⁵²William Keast, Faculty Tenure, p. 20 as quoted in W. J. Kilgore, "Reviewing Tenure", AAUP Bulletin, Vol. 59, No. 3 (September 1973), p. 341.

The report stated that reliable procedures for institutional review of department personnel decisions should involve faculty members outside the department and relate to institutional procedures and criteria.

The Commission recommended that academic freedom and tenure issues be excluded from collective bargaining. Since the faculty have the grievance mechanism in collective bargaining, they may be tempted to "bargain away" basic tenure or academic freedom in return for more money.⁵³

National Independent Tenure Accreditation Board

Since evaluations at individual academic institutions aren't being done well according to Saltzman, he recommended a national independent tenure accreditation board. This board would develop standards and criteria for evaluating the performance of faculty members. The recommendations by the board would be for continuance, improvement, or dismissal. He suggested that this board have scholars on it, lay members who are interested in educational matters, university trustees and students. The team would visit the academic institution every five years and would have the power of recommendation only.

Saltzman suggested that faculty should institute a plan of evaluation such as this national accrediting board

⁵³Ibid., Faculty Tenure, p. 47.

before an outside source imposed its own standards which may destroy academic freedom.⁵⁴

However, according to Trow, a national policy for tenure would be a problem since tenure means one thing at a research institution while relating differently in a small college.⁵⁵

Tenure Ratio

Simpson felt that tenure should be one of the easier problems to solve in higher education. According to him, tenure can be studied by analytical methods, since inputs and outputs are measurable and their connecting relationships can be identified. Models of the tenure system have been built by Hopkins, Lasalle, Scott and Taylor, and Oliver. The models, according to Simpson, have been helpful in deciding which items have the most effect on tenure and on evaluating different plans for tenure policy. While the models have provided good information, nothing much has happened with it.

One of the problems of using the model is, according to Simpson, identifying the proper unit to determine the

⁵⁴H. Saltzman, "Proposing A National Board to Accredite Tenured Professors," p. 8.

⁵⁵Martin Trow, "The Distribution of Academic Tenure in American Higher Education," The Tenure Debate, p. 250.

basic percentage of tenured faculty. He has identified seven subgroups of faculty which have to be considered:

- a. All tenured faculty.
- b. All tenured faculty involved in teaching.
- c. All full time equivalent faculty.
- d. All full time faculty excluding graduate assistants.
- e. All ranked faculty.
- f. All ranked faculty in tenure system including those on probationary period for tenure.
- g. All teaching ranked faculty in the tenure system.⁵⁶

Simpson pointed out that if the administrator is concerned with the effect of tenure on available positions, then the ratio of all tenured faculty to all ranked faculty in the tenure system is the ratio to be considered.

Once a tenure ratio has been identified, it is necessary for the administration to plan now for what they would like to see as the tenure ratio ten years from now. Simpson has pointed out that most institutions try to hold a steady-state tenure ratio plan. The steady-state tenure ratio for all tenured faculty to all ranked faculty in the tenure system in large universities is around 85 percent.

⁵⁶William A. Simpson, "Tenure, A Perspective View of Past, Present and Future," Educational Record, Vol. 56, No. 1 (Winter 1975), p. 50.

Once zero-growth is established, it will take ten years to reach this 85 percent value.⁵⁷

Simpson pointed out once a desired tenure ratio has been established, there are many variables which then affect its level.

Tenure Variables Administratively Controllable

1. Rate of new appointments directly to tenure.
2. Rate of appointments from non-tenure to tenure status.
3. Length of probationary period for tenure.
4. Retirement rate.
5. Rate of new appointments into tenure track.

Simpson pointed out that the length of the probationary period is the best control for tenure ratio. He gave an example of an institution with a steady-state tenure ratio of 88.5 percent and an average probationary period of three years which could reduce the ratio to 76 percent by making the probationary period six years.

According to Simpson a means of controlling the rate of new appointments from non-tenure status would be to create a board of senior professors who make final decision on all departmental tenure requests.

⁵⁷Ibid., p. 51.

Another plan would be to not appoint new faculty into the tenure track. Simpson suggested that this idea would lead to an anxious faculty who have no hold on an academic future and who may turn to unionization. He then suggested that perhaps the best plan is to standardize and improve policies for tenure attainment. Some of his suggestions are:

1. Make earlier non-renewal decisions on those faculty who appear unqualified for tenure.
2. Separate tenure and promotion decisions.
3. Develop a central committee from various academic disciplines to decide the final fate on all tenure requests.
4. Establish seven years as probationary period for tenure.
5. Develop some appointments outside the tenure track for those areas with declining enrollment.

Administratively Uncontrollable

1. Rate of resignations from tenure and non-tenure positions.
2. Death rate from all classifications of faculty.

Early retirement hasn't been helpful in correcting tenure ratio problems. The most qualified faculty are known to be the ones to retire, leaving the "deadwood" on the payroll.⁵⁸

⁵⁸William A. Simpson, "Tenure," pp. 52-54.

Tenure Quotas

The American Association of University Professors has taken the stand that failing to give tenure because of a fixed quota is not acceptable.⁵⁹

A tenure quota may hurt rather than help the innovation of an institution where tenure may be very difficult to attain. If tenure is hard to get, the faculty member who does join the institution may spend all his time doing things to insure his "tenurability" and not contribute to any committee on campus. His expertise during the probationary period will not contribute to any innovations for the institution.⁶⁰

Dill suggested that a tenure prospect ratio would be more useful than a tenure quota. The tenure prospect ratio relates to the growth or contraction of an institution. He identified in Table 3 how the tenure prospect ratio works as a function of selected tenure quotas.⁶¹

⁵⁹American Association of College Professors Committee A, "On the Imposition of Tenure Quotas," AAUP Bulletin, Vol. 59 (December 1973), p. 430.

⁶⁰David D. Dill, "Tenure Quotas: Their Impact and An Alternative," Liberal Education, Vol. 6 No. 4 (December 1974), p. 470.

⁶¹*Ibid.*, pp. 471-472.

Table 3

Tenure Prospect Ratio as a Function
of Selected Tenure Quotas

Tenure Prospect Ratio	Tenure Quotas	Initial Appoint- ments	Non Tenured Faculty	Tenured Faculty	Average Retirement Per Year
.04	.20	16	80	20	.66
.11	.40	12	40	40	1.33
.16	.50	10	50	50	1.66
.25	.60	8	40	60	2.00
.66	.80	4	20	80	2.66

Dill suggested a plan in which the probationary period is increased so that each faculty member has at least a 40 percent chance of gaining tenure.⁶²

Adams suggested that tenure quotas won't give institutions more money or flexibility but hurt careers and develop two groups of faculty, those with tenure and those with no hope of security. Quotas on tenure may discourage many future faculty from entering academic life.⁶³

Retirement and Tenure

The age discrimination issue raising the minimum mandatory retirement age from 65 to 70 will affect academic

⁶²Ibid., p. 473.

⁶³Walter Adams, "A Letter From the President," AAUP Bulletin, (June 1973), p. 134.

institutions in 1982. Either the mandatory age for retirement in academic institutions will be raised to 70 or removed entirely. This will further tighten the positions available for faculty. The tenured professors, many middle-aged, may be able to work longer and this will make less employment opportunities for minorities and women.⁶⁴

The retirement issue is causing academic administrators to express their concern with tenure. Some of the possible effects on tenure may be a limit on how long tenure is granted for and a tightening of the procedures used in making tenure decisions.⁶⁵

In the case Rehor v. Case Western Reserve University (1975), the court has declared that academic tenure does not guarantee continued appointment in view of changes in institutional rules for retirement. The court pointed out that the continuing appointment is based on the University rules and regulations which the University has a right to change.⁶⁶

⁶⁴Ellen K. Cuglin, "Later-Retirement Movement Fuels Concern Over Tenure," The Chronicle of Higher Education, Vol. XVI No. 8 (April 1978), p. 1.

⁶⁵Ibid., p. 18.

⁶⁶Philip W. Semas, "Tenure and Retirement," The Chronicle of Higher Education, Vol. X No. 20 (August 1975), p. 6.

To allow for more available positions for younger faculty, he suggested an option for older faculty whereby they could have a gradual diminishing workload. With this arrangement more faculty may leave if they didn't have to leave full time employment all in one day. Carr feels that tenure doesn't have to be dropped as an ideal but that it should be more acceptable as a practice.⁶⁷

Retrenchment

Tucker a trial lawyer asked the question "Is termination of tenured faculty by reason of financial exigency permissible under any circumstances in the absence of any financial exigency clause in the tenure contract? He said that the answer appears to be yes. He suggested that the administration follow the Association of American Colleges and the American Association of University Professors guidelines and dismiss untenured faculty first. However, the Association of American Colleges doesn't encourage leaving a department with all tenured faculty.

Tucker further stated that for two years no new faculty can replace a tenured position according to Association of American Colleges and American Association

⁶⁷Robert K. Carr, "The Uneasy Future of Academic Tenure," pp. 126-127.

of University Professors guidelines of financial exigency. The problem at the Bloomfield College was essentially a violation of the above principle. The College terminated eleven tenured faculty and immediately tried to hire, twelve new full time non-tenured faculty, some of these supposedly in the same disciplines as the dismissed tenured faculty.⁶⁸

Tucker suggested that the tenure contract of institutions should specify financial exigency and the plan for dismissal of faculty.

Tucker described the case of Johnson v. Board of Regents which involved thirty-eight tenured professors at the University of Wisconsin system. The Wisconsin legislature in 1972 was going to impose a 2½ percent reduction in funds for the state university system for 1974-75. The faculty involved would have had a one year notice of dismissal. The chancellors decided who would be laid off and then the tenured faculty member took his case to a reconsideration committee whose suggestions were ignored by the chancellor in four of the five campuses. On the fifth campus, the reconsideration committee agreed with the chancellor.

⁶⁸John C. Tucker, "Financial Exigency, Rights, Responsibilities, and Recent Decisions," Journal of College and University Law, Vol. 2 No. 3 (Spring 1975), p. 105.

The dismissed faculty filed the case claiming their property rights were taken away without due process.

In Judge Doyle's decision, he pointed out that tenured professors had no protected rights in the budget decisions at the legislative level, had no protected interest on how reduction of funds were allocated and that the chancellor could decide who should be dismissed. He also pointed out that there is no constitutional basis for dismissal contingent on seniority or merit. He clarified that according to the 14th amendment, due process requires a hearing for the tenured faculty member after he has been designated for termination but not before the decision.⁶⁹

Tenure does not represent a vested right to a job but provides for an expectancy of continued employment under usual and ordinary circumstances. To represent a vested right, tenure would not have to be contingent upon anything.⁷⁰

Legal Implications of Tenure

There are legal differences in tenure in public and private institutions. Tenure in a state-supported

⁶⁹Ibid., pp. 108-110.

⁷⁰Marjorie Mix, Tenure and Termination in Financial Exigency AAHE-ERIC/Higher Education Research Report No. 3 (Washington D.C.: American Association for Higher Education, 1978), p. 5.

institution is awarded by the governing board. Loss of tenure from a public institution would be similar to taking property without due process. However, in a private academic institution, any tenured faculty dismissed must file for breach of contract. The tenured faculty member in a public academic institution may ask the court for reinstatement, while in the private institution the solution is money damages. Administration may identify program curtailment or reallocation of funds without violating academic rights.⁷¹

In the case, Board of Regents v. Roth (1972), the court ruled that the tenured faculty member with a continuous contract has a property right and this right cannot be removed without due process of law under the Constitution.⁷²

In the case, Levitt v. Board of Trustees of Nebraska State College (1974), the court ruled that no guarantee of continued employment existed in view of proof of an operating deficit. The court pointed out that in cases of financial exigency, the tenured rights of the plaintiff do not guarantee him continued rights to employment in the public sector.⁷³

Bloomfield College lost its appeal in its decision to abolish tenure and dismiss eleven tenured faculty members.

⁷¹Ibid., p. 6. ⁷²Ibid., p. 7. ⁷³Ibid., p. 10.

In this case the Bloomfield College had not taken any steps to cut expenses before they claimed "financial exigency". The court supported that if an obligation is to be dismissed, then the reason for the dismissal of obligation must be proven.⁷⁴

An Iowa district judge ruled that the University of Dubuque had the right to dismiss a tenured professor in 1972 because of the university's financial problems. Since the university had established financial exigency, its actions were not subject to review by the court.⁷⁵

In the case Browzin v. Catholic University (1975), the U.S. court of appeals upheld that an academic institution must try to find another job for a faculty member before laying him off for financial reasons.⁷⁶

In development of retrenchment procedures, Furniss identified the following areas of consideration:

1. The governing boards and administrators have much leeway in developing retrenchment procedures without restricting the faculty members 14th amendment rights.

⁷⁴Philip W. Semas, "Bloomfield Loses Appeal," The Chronicle of Higher Education, Vol. XI No. 7 (October 1975), p. 8.

⁷⁵Malcolm G. Scully, "Tenure," The Chronicle of Higher Education, Vol. VIII No. 39 (August 1974), p. 2.

⁷⁶"AAUP Layoff Rule Upheld," The Chronicle of Higher Education, Vol. 11 No. 14 (December 1975), p. 169.

This leeway, however, may be controlled by state law, collective bargaining, contract, Civil Rights Act and other local or federal employment laws.⁷⁷

2. The conditions needed to use these retrenchment plans need to be clearly identified. The expected result of these plans need to also be spelled out. Layoff and recall should be considered rather than termination of personnel.
3. The principles of the Equal Employment Opportunity Task Force should be upheld in any reevaluation procedures used in the retrenchment process.
4. Seniority systems for retrenchment may become complicated and should be used with care.
5. Alternatives to layoff and recall may include reduced salary for all employees or an adjusted mission of the institution.⁷⁸

Alternatives to Tenure Quotas

Chait identified nine alternatives to tenure quotas.

1. Develop stricter procedures for tenure.
2. Restrict appointments with instant tenure.
3. Give less credit for prior service at academic institutions.
4. Increase the probationary period for tenure.
5. Provide for "holding pattern".
6. Develop faculty positions outside the tenure track.

⁷⁷W. Todd Furniss, "Retrenchment, Layoff, and Termination," Educational Record, Vol. 55 No. 3 (Summer 1974), p. 169.

⁷⁸Ibid., p. 170.

7. Evaluate tenured faculty.
8. Process promotion and tenure decisions separately.
9. Develop early retirement plans.⁷⁹

Chait cautioned against abolishing tenure entirely because most prestigious institutions have tenure and aren't about to abolish it. An institution without tenure may have trouble recruiting faculty. In addition, he pointed out that in those institutions with contracts, most of the contracts are renewed. The decision which the tenure system forces may be advantageous to the continued signing of every contract.⁸⁰

Alternatives Within Tenure System

Tenure and Non-Tenure Track

Meyer suggested options be established which can exist along with the tenure system. His plan is to offer faculty two options at the end of a three to six year probationary period. One plan would be a tenure track and the other would be a non-tenure track with a higher salary offered than in the tenure track. In the non-tenure track

⁷⁹Richard P. Chait, "Nine Alternatives to Tenure Quotas," AGB, Vol. 18 No. 2 (March/April 1976), pp. 41-42.

⁸⁰Ibid., p. 43.

the faculty member and administration would develop objectives and an acceptable performance level for the individual. At the end of a contract period, evaluation of performance would be necessary before reappointment or termination.⁸¹

Secondary Tenure

According to Mann a faculty member could be given conditional tenure and then after a specified number of years be reevaluated. A permanent tenure decision could then be made. However, secondary tenure will probably be as much a problem to an institution as regular tenure since the faculty member who is going to be "deadwood" will probably do it after obtaining secondary tenure also. The only thing gained is the productivity in the years between the first and the permanent tenure decision.⁸²

Increased Peer Review Before Tenure Decision

The cyclic system described by Rapp involves long-term renewable appointments with the following criteria:

1. The initial appointment is for three years.

⁸¹Richard A. Meyer, "Up or Out for the Tenure System," The Chronicle of Higher Education, Vol. 11 No. 5 (October 1975), p. 19.

⁸²William R. Mann, "Is the Tenure Controversy a Red Herring?" Journal of Higher Education, Vol. XLIV No. 2 (February 1973), p. 90.

2. A second three year appointment is made after a positive review at the end of the second year of the initial appointment. This appointment covers years three through five.
3. A positive decision in the second year would prompt a final three year appointment. This appointment covers years five through seven.
4. The tenure decision (if applicable) could be made in the second year of the final three year appointment. Cyclic tenure would begin in the seventh year with a seven year renewable appointment.

In the fifth year of a seven-year contract, the faculty member would be evaluated by a tenure committee. A positive evaluation would prompt another seven year contract. If the evaluation was not satisfactory, the faculty member has two years to make other employment plans.⁸³

Periodic Review of Faculty After Tenure Decision

Vaccaro suggested a periodic review of tenured faculty. The reviews could take place three, eight and fifteen years after the attainment of tenure. This procedure would seem to help the administration to improve standards in the

⁸³George Rapp, "The Cyclic System," As part of "Can You Suggest Workable Alternatives to the Tenure System," p. 54.

institution and provide faculty with an incentive to keep pace.⁸⁴

Clark pointed out that review of faculty every five years is not practical since it would require too much time in evaluation. Instead, a plan for improvement, and development of those who may have become dull and less than competent. Support may be given to the professor in deciding how he can improve. Advantages of this program are that the professor may improve or he may voluntarily decide to change employment.⁸⁵

Doyno has suggested that institutions should establish criteria for faculty and evaluate them every seven years. If the faculty have not met the criteria, they could be given salary decreases. These decreases should be re-established every seven years at evaluation time.⁸⁶

⁸⁴Louis C. Vaccaro, "The Tenure Controversy: Some Possible Alternatives," Journal of Higher Education, No. 43 (1972), p. 42.

⁸⁵Robert D. Clark, "Tenure and the Moderation of Conflict," New Directions for Higher Education, Vol. 2 No. 3 (Autumn 1974), p. 37.

⁸⁶Vic Doyno, "Seven-Year Evaluations," As part of "Can You Suggest Workable Alternatives to the Tenure System," pp. 54-55.

Alternatives to Tenure

No Tenure

Instead of tenure Park suggested fixed-length contracts which would allow for a periodic evaluation of the faculty member's performance. Park pointed out that this system would allow for both the faculty member and the institution to evaluate their common goals and the possibility of change of career direction for the faculty members. Also, decisions of promotion and tenure renewal should be made not only by members of ones own discipline but by faculty of other disciplines.⁸⁷

The ballooning contract is described by Weeks of Northern Arizona University. The initial contract is two years followed by appointments of five, seven, ten and fifteen to retirement. The evaluation is done by a committee composed of three senior faculty from the candidate's department, one faculty member outside the department and one administrator. There is a one year notice of non-renewal if faculty retrenchment is needed by the institution. Weeks suggested that this system provides

⁸⁷Dabney I. Park Jr., "A Loyal AAUP Member Says Down With Tenure," pp. 36-37.

security for all faculty while tenure provides freedom for the tenured and caution for the untenured.⁸⁸

Sartorius suggested extending the provisions of academic freedom to all in the university and not have a tenure system. Under this system the probationary period would be shortened. After this initial probationary period, the faculty member could be let go for "just cause" only. If the faculty member appeals the decision and has support from an informal peer group committee, then the institution will have to show proof for the dismissal of the faculty member. He did not suggest fixed contracts but periodic review every five years. If the faculty member did not pass the review, he would be eligible for removal from the faculty. Any dismissal in between reviews would be for academic irresponsibility with the burden of proof on the institution.⁸⁹

Nisbet said, "My guess is that within a decade or two tenure codes will take their place in the archives alongside the quaint English guild charters for fishmongers,

⁸⁸Richard Weeks, "The Ballooning Contract," As part of "Can You Suggest Workable Alternatives to the Tenure System," Change, (December 1977), p. 54.

⁸⁹Rolf Sartorius, "Tenure, Academic Freedom, and the Nature of the University," The Concept of Academic Freedom edited by Edmund L. Pincoffs, (Austin: University of Texas Press, 1972), pp. 185-187.

apothecaries and Fullers which for so long now have been objects of tourist curiosity."⁹⁰

Collective Bargaining and Grievance Procedures

Vaccaro suggested rather than have tenure for life, faculty could through the mechanism of collective bargaining develop a grievance procedure for problems. Both the administration and faculty would have to agree to the decisions made by the grievance committee. The grievance procedure could protect academic freedom for the faculty and free the administration from guaranteeing tenure for life.⁹¹

Alternatives Which Have Been Implemented

The flexible contract system has been used for seven years at Hampshire College.

1. The initial contract is four years.
2. The renewal appointments are five or seven years.
3. The notice of decision reaches the faculty member seventeen months in advance.

⁹⁰Robert Nisbet, "The Future of Tenure," p. 33.

⁹¹Louis C. Vaccaro, "The Tenure Controversy:
p. 42.

4. The college committee which makes the tenure decision consists of five faculty and two students.⁹²

The ten year plan was implemented in 1974 at Coe College. The tenure process is started the first year a faculty member is appointed. Ten percent of faculty are hired into a non-tenure track. A yearly evaluation is done by the department head and every two years a self-evaluation is done by the faculty. A year before the faculty member is eligible for tenure he must submit a ten-year plan for professional growth and development. This information is used in evaluating the faculty member. Tenured faculty also submit a ten-year plan. Five years later the faculty member is evaluated and the plans for the next five years are revised if necessary. Every five years this cycle is repeated.⁹³

Six-year contracts replaced tenure at Lincoln College. Each faculty member will be reviewed every six years by a peer-review committee which can suggest to the administration one of three decisions. The actions to be taken

⁹²Lestor Mazor, Miriam Slater and Frederick Weaver, "Flexible Contract," As part of "Can You Suggest Workable Alternatives to the Tenure System," Change, (December 1977), p. 53.

⁹³W. E. Spellman, "The 10-Year Plan," As part of "Can You Suggest Workable Alternatives to the Tenure System," pp. 53-54.

by the administration will be reappointment on a six-year contract, probation for one year, or non-renewal.⁹⁴

In 1977, the University of Wisconsin regents extended the probationary period from seven to ten years. Under this system the decision to tenure or not would still be made at the end of six years. The faculty member would then be given a three-year appointment to the academic staff until a tenured opening occurred.⁹⁵

At Dominican College in San Rafael, the faculty, students, and administration have replaced tenure with periodic review and extended appointments. The new system replaces the traditional tenure with scheduled reviews before appointments, reappointments or promotions. The length of appointment or reappointment is dependent upon the rank and nature of review. No person receives an appointment for life or until retirement.

The faculty are reviewed by a Committee for Professional Review which functions through the college. The committee is made up of two administrators, three faculty and two students. The committee examines evaluations

⁹⁴"Six-Year Contracts Will Replace Traditional Tenure for Faculty Members at Lincoln College," The Chronicle of Higher Education, Vol. VIII No. 39 (August 1974), p. 2.

⁹⁵"10-Years for Tenure in Wisconsin," The Chronicle of Higher Education, Vol. XIV No. 21 (August 1977), p. 2.

from students, peers and self-evaluations of the instructor's record of accomplishments.⁹⁶

Board of Trustees at Wilson College has denied tenure to five assistant professors. Instead of tenure, they have been offered one-year terminal appointments. Assistant Professors haven't presently been eligible for tenure. With a system to be implemented in the future, assistant professors would be eligible for tenure after seven years.⁹⁷

Collective Bargaining

Purpose

The union movement in higher education is depicted as a defense of academic life in its difficult times. According to Nielsen and Polishook, no union will abandon academic administrators in their mutual struggle for survival. Collective bargaining in higher education is a way to preserve the American system. With the problems of budgetary cutbacks, declining financial support for higher education is a way to preserve the American system. With the problems of budgetary cutbacks, declining

⁹⁶Charles W. Lauaroni and John J. Savant, "Replacing Tenure With 'Periodic Review'," Phi Delta Kappan, No. 58 (February 1977), p. 499.

⁹⁷"Faculty Members Fired At Wilson College," The Chronicle of Higher Education, Vol. XII No. 19 (July 1976), p. 2.

financial support for higher education, unions can help defend higher education. In addition, tenure and academic freedom are under attack and retrenchment of faculty is present on some campuses. The faculty know that organized strength is the mechanism for survival of higher education.⁹⁸

Kazlow and Giacquinta reported that unionization represented a second mechanism for job security since tenure was coming under attack in many university settings and many are in departments with declining student enrollments. However, for younger faculty, they may see unionization as a way of blocking or slowing down security and their mobility.⁹⁹

Concepts

McHugh described four concepts of collective bargaining as follows:

1. Collective bargaining suggests an adversary relationship.
2. A contractual relationship is established between the faculty and administration.

⁹⁸Robert M. Nielsen and Irwin H. Polishook, "Collective Bargaining and Beyond," The Chronicle of Higher Education, Vol. XVIII No. 13 (May 1979), p. 7.

⁹⁹Carole Kazlow and Joseph Giacquinta, "Tenure, Support of Collective Bargaining, and Unionism in Higher Education: Some Challenging Findings," Research in Higher Education, Vol. 6 No. 1 (1977), p. 59.

3. The bargaining agent is responsive to all members regardless of rank or status.
4. Collective bargaining provides for mediation, fact-finding and arbitration to resolve conflicts during contract negotiations and for grievances during the life of the contract.¹⁰⁰

Structures

Weinberg described four structural patterns of relationships in collective bargaining. The first system involves a multi-campus system with the campus represented by a single collective bargaining agent. Examples of this type are SUNY, CUNY, and University of Hawaii. In SUNY, the Office of Employee Relations handles the collective bargaining while in CUNY, the Board of Education is the agency responsible for coordinating collective bargaining. At the University of Hawaii, the executive branch of government and Board of Regents handles collective bargaining.

The second structure involved systems with separate institutions each controlled by their own governing boards. Examples are Massachusetts and Pennsylvania. The higher education system is controlled by five different

¹⁰⁰William F. McHugh, "Faculty Unionism and Tenure," Journal of College and University Law, Vol. 1, (Fall 1973), p. 55.

governing boards. Some of these boards govern many campuses. Each board bargains with the faculty involved where collective bargaining is present.

Pennsylvania has three different types of higher education systems. There are four state universities. The governing board of each institution negotiates the contract with its faculty. The second type of system is the state colleges and Indiana University. The control of these campuses is with the Pennsylvania Department of Education. The Department of Education negotiates with the faculty in collective bargaining. The fourteen community colleges each have a board which negotiates with their faculty.¹⁰¹

The third structure of collective bargaining is one in which each college and university has a great deal of autonomy. Each institutional governing board negotiates with its faculty in collective bargaining. Michigan is an example of this type of structure.

The fourth pattern of collective bargaining involves a system in which the negotiations are done at the state

¹⁰¹William M. Weinberg, "Structural Realities of Collective Bargaining in Public Higher Education," Journal of the College and University Personnel Association, (April 1974), pp. 5-8, as quoted in Kenneth P. Mortimer and Mark Johnson, "Faculty Collective Bargaining in Public Higher Education," Educational Record, Vol. 57 No. 1 (Winter 1976), p. 39-40.

level but the faculty of each institution is a separate bargaining unit.¹⁰²

Growth

In 1965 Michigan and Massachusetts enacted statutes authorizing bargaining by public employees. By 1972, thirty-seven states had some agreement to collective bargaining for public employees.¹⁰³

The faculty collective bargaining began in 1966. The growth has gone from 11 campuses in 1966 to 648 in 1979. The growth of campuses has been as follows:

<u>Year</u>	<u>Number of Campuses</u>
1966	11
1967	25
1968	65
1969	130
1970	160
1971	230
1972	290
1973	330
1974	360 ¹⁰⁴

¹⁰²Ibid., p. 40.

¹⁰³Robert Carr and Daniel VanEyck, Collective Bargaining Comes to Campus, (Washington D.C.: American Council on Education, 1973), p. 21.

¹⁰⁴Frank Kemerer and J. Victor Baldrige, Unions on Campus, (London: Jossey-Bass Inc. Publishers, 1975), p. 1.

<u>Year</u>	<u>Number of Campuses</u>
1975	385
1976	461
1977	544
1978	600
1979	648 ¹⁰⁵

Collective Bargaining Agents

1. American Association of University Professors
2. American Federation of Teachers
3. National Education Association
4. American Association of University Professors/American Federation of Teachers
5. American Association of University Professors/National Education Association
6. Independent

¹⁰⁵Fact-File "Faculty Bargaining Agents," The Chronicle of Higher Education, Vol. X No. 15 (1975), p. 5, Vol. XII No. 14 (1976), p. 4, Vol. XIV No. 14 (1977), p. 10, Vol. XVI No. 16 (1978), p. 8, Vol. XVIII No. 16 (1979), p. 13.

Table 4

Summary of Faculty Bargaining Decisions

	<u>4-Year Campuses</u>			<u>2-Year Campuses</u>			<u>Grand</u>
	<u>Public</u>	<u>Private</u>	<u>Total</u>	<u>Public</u>	<u>Private</u>	<u>Total</u>	<u>Total</u>
American Association of University Professors....	23	28	51	6	1	7	59
American Federation of Teachers.....	72	21	93	123	6	129	222
National Education Association.....	51	15	66	226	2	228	294
A.A.U.P.-A.F.T.....	14	0	14	0	0	0	14
A.A.U.P.-N.E.A.....	3	0	3	7	0	7	10
Independent and other....	5	12	17	32	1	33	50
Total.....	168	76	244	394	10	404	648
Bargaining rejected.....	23	38	61	13	3	16	77

Source: Fact-File, "Faculty Bargaining Agents on 648 Campuses," The Chronicle of Higher Education, (June, 1979), p. 13.

Importance

According to Julius, the most important influence of collective bargaining has been the impact on the decision-making process. The unions have replaced informal processes with formal procedures which meet the contract. Collective bargaining has caused an increase of rules and regulations. The use of formal authority has increased and internal decisions are being evaluated by outside

sources more often. These rules, regulations and formal authority have provided more consistency of treatment in evaluations and promotions.¹⁰⁶

Walters stressed that collective bargaining helps to restore collegiality. In the collective bargaining process, the common interests of faculty may be pursued. The commitment in the contract provides for unity of the various groups on the campus. He also pointed out that the contract system of governance requires that any decisions for the future be made at the time of agreement, thus allowing for planning of events. The professional status of the faculty member is also preserved in the contractual system as their role and responsibility is increased in governance.¹⁰⁷

Research

Rabinoff did a review of studies which identified some possible causes for faculty interest in collective

¹⁰⁶Daniel J. Julius, "Collective Bargaining in Higher Education: The First Decade," Eric/Higher Education Research Currents, (Washington D.C.: Education Resources Information Center, November 1977), p. 4.

¹⁰⁷Donald E. Walters, "Collective Bargaining Helping to Restore Collegiality," The Chronicle of Higher Education, Vol. VIII No. 10 (November 1973), p. 24.

bargaining. He has described the studies as follows:

1. Ladd and Lipsett (1973) see collective bargaining as a trend toward equalization and away from elitism.
2. According to (Davis 1969) others see that faculty want collective bargaining because of administrative tyranny.
3. (Mayhew 1969) identified that faculty wanted to get involved in university policy when the institution couldn't handle student unrest.
4. (Finken 1971) and (Marmion 1969) identified the absence of a system for faculty decision-making in governance of the academic functions as the reason for collective bargaining in some institutions.
5. The weakness of many faculty senates is another reason for the interest in collective bargaining.
6. (Garbarino 1975) reported that in large university systems parity between faculty at different academic levels and other professional staff caused problems and led to collective bargaining.
7. (Wollett 1971) pointed out that in state-wide systems, faculty are concerned over loss of control they once thought belonged to them.
8. (Euwenia 1961) found that misconceptions of the role of administrators by faculty and the role of faculty by administrators has caused an interest in collective bargaining for faculty.
9. The level of faculty salary was found to be cause of interest in collective bargaining. (Garbarino 1975) identified that salary might be a cause for faculty to unionize in public institutions but not in private.

10. (Blackburn 1971) and (Provost 1971) discussed that a tight budget and an oversupply of Ph.D.'s added to the interest in collective bargaining.
11. In a study done by (Tyler 1971-72) 49 percent of faculties in 1969 had tenure. The untenured did not want the tenured to decide their fate. Thus the untenured were interested in collective bargaining.
12. (Masters 1975) pointed out that the need for job security was a cause for collective bargaining.
13. (Marmion 1969) pointed out that the discontinuance of traditional procedures of tenure and promotion caused a faculty interest in collective bargaining.
14. (Lozier 1974) identified that those administrators who caused problems in promotion and tenure procedures encouraged faculties to use collective bargaining to get job security through tenure.
15. The termination of tenured faculty without due process was another cause for tenured faculty to support collective bargaining (Lozier 1974).
16. Tenure and job security was cited by (Shearer 1976) and The Carnegie Commission on Higher Education (1973) as critical issues supportative of interest in collective bargaining.
17. (Lussier 1974) and (Means and Semas 1976) also identified job security as a cause for collective bargaining.¹⁰⁸

¹⁰⁸ Marc A. Rabinoff, The Collective Bargaining Movement in Higher Education: A Chronological Analysis and Review of the Factors, Consequences, and Trends, 1961-1977, (Washington D.C.: Education Resources Information Center, 1977), pp. 1-15.

Goodwin and Andes published a list of contracts from the 1973 collective bargaining contracts. The items relating to retrenchment included notice times, criteria for release, recall information and benefits during unemployment.¹⁰⁹

The items relating to tenure included the length of probationary period, times for notification, rank for tenure, procedures for decisions, criteria for tenure and causes for termination of tenure.¹¹⁰

House, in a study of self-perceived effects of faculty collective bargaining on roles of academic administrators found that the decision-making items most affected are compensation, work-load of faculty, promotion, tenure, reappointment, non-reappointment and retrenchment.¹¹¹

Tenure and Collective Bargaining

Schmid feels that the collective bargaining process will be the stage for the faculty and administration to

¹⁰⁹Harold Goodwin and John O. Andes, Collective Bargaining in Higher Education: Contract Content 1973, (Washington D.C.: Educational Resources Information Centers 1974), pp. 73-74.

¹¹⁰Ibid., pp. 90-91.

¹¹¹Charles House, Self Perceived Effects of Faculty Collective Bargaining on the Academic Leadership Roles of College and University Administrators, (Unpublished Ph.D. dissertation, Michigan State University, 1975.

deal with the future of tenure. Collective bargaining provides a framework for faculty and administration to clarify and discuss tenure. Some of the most difficult problems relating to tenure can be answered in collective bargaining. The plans for faculty dismissal due to financial exigency or decline in student enrollment can be put in the contract.¹¹²

Advantage

Collective bargaining can provide for an arena in higher education where administration and faculty work together to promote institutional excellence. If the union is secure, it will not need to defend weak grievances. Likewise the faculty who do not produce scholarly work or do qualified teaching will not be recommended for tenure by their peers.¹¹³

Blackburn pointed out that collective bargaining has not replaced tenure. He sees collective bargaining as a

¹¹²Margaret Schmid, "The Tenure System: Are Other Approaches Possible That Will Still Protect Academic Freedom and Assure Security for Qualified Faculty," Proceedings, Seventh Annual Conference, National Center for the Study of Collective Bargaining in Higher Education, (April 1979), pp. 4-6.

¹¹³George Angell and Edward Kelly, Handbook of Faculty Bargaining, (San Francisco: Jossey-Bass Inc. Publishers, 1977), p. 21.

protection for faculty, whether it be called tenure or solidarity.¹¹⁴

Disadvantage

According to McHugh, the tenure system is apt to be a major negotiable issue in collective bargaining. Negotiating tenure may cause problems with the academic institution. One problem is in separating the management functions from the professional responsibility of the faculty. The second problem is the desire of faculty to use unionism as a chance to make decisions for the institution.¹¹⁵

A union can bargain for a change in tenure policies which would change the status for non-tenured faculty. Since non-tenured faculty have no property rights, the bargaining process can establish a plan which will change the condition of their employment.

Changing the status of tenured faculty may be more difficult to do in the collective bargaining process. The tenured faculty have a property right in continued employment. But in J. I. Case Co. v. NLRB the Supreme

¹¹⁴Robert T. Blackburn, Tenure Aspects of Job Security on the Changing Campus, (Atlanta: Southern Regional Education Board, 1972), p. 43.

¹¹⁵William F. McHugh, "Faculty Unionism and Tenure," p. 60.

Court supported that individual contracts are superseded by collective bargaining.¹¹⁶

If the younger and non-tenured faculty, become more influential through the collective bargaining process, it may be that the now-known tenure, academic freedom, grievance, promotion and retrenchment policies will change.¹¹⁷

Boyd, feels if tenure is a subject of bargaining, it could be bargained away. He is concerned that with rigid personnel policies and fear of grievance, some needed decisions may not be made. He sees tenure within the collective bargaining concept as becoming like the civil service system.¹¹⁸

Tice sees that tenure could be traded off or that such change could be made in the procedures for tenure attainment that only the high level performing faculty would qualify. The level of performance expected can be controlled by using standardized procedures applied to

¹¹⁶Arthur P. Menard, "May Tenure Rights of Faculty Be Bargained Away?" Journal of College and University Law, Vol. II No. 3 (Spring 1975), pp. 262-263.

¹¹⁷Michael W. Nicholson, "Effects of Faculty Bargaining," College of University Personnel Association Journal, Vol. 28 No. 2 (Spring 1977), p. 43.

¹¹⁸William Boyd, "The Question of Tenure," pp. 122-123.

all faculty and using criteria which support high standards.¹¹⁹

Tenure Procedures

Criteria

Dressel and Faricy predicted that under collective bargaining the procedures for promotion and tenure may become so uniform that no room is left for professional decisions.¹²⁰

All of the associations base evaluation for tenure on merit. American Association of University Professors recommends faculty involvement in development of criteria for evaluation and participation in the faculty review. American Association of University Professors disagrees with tenure quotas, however, they support the development of strict standards for tenure review, which could reduce the possibility of a positive tenure review.¹²¹

¹¹⁹Terrence Tice, Faculty Power: Collective Bargaining on Campus, (Ann Arbor: The Institute of Continuing Legal Education, 1972), p. 32.

¹²⁰Paul Dressel and William Faricy, Return to Responsibility, p. 96.

¹²¹Virginia Lee Lussier, "National Faculty Associations in Collective Bargaining: A Comparative Discussion," Special Report #8, (Washington D.C.: Academic Collective Bargaining Information Service 1974), pp. 4-5.

Problem of Open File

Unions support the concept that if the faculty member meets the objectives, he should keep the job, even if there is a more qualified person who could be hired. The faculty member's personnel file is open for him to see the material which is used in his tenure evaluation. This practice may cause those persons who make tenure decisions to decide in favor of a weak faculty member rather than spend the time defending a negative decision.¹²²

The openness of information in tenure decisions may limit the effectiveness of peer evaluations.¹²³

Probationary Period

In a comparative discussion of faculty associations, Lussier identified the National Education Association as asking for a reduction in the length of the probationary period to a three-year maximum. The American Association of University Professors support a seven-year maximum. The National Education Association does not think that the lengthy probationary period is of value to the individual or the institution. Local practice at

¹²²Everett Carl1 Ladd Jr. and Seymour Martin Lipset, Professors, Unions and American Higher Education, p. 73.

¹²³A. W. J. Thomson, An Introduction to Collective Bargaining in Higher Education, (Ithaca: Publications Division, Cornell University, 1974), p. 26.

institutions do not always reflect the national policy of the organization. American Federation of Teachers contracts at three institutions provide for tenure decisions between two and five years.

The American Federation of Teachers and the National Education Association suggested that the reduced probationary period provides for more protection for the non-tenured person.¹²⁴

Before and After Collective Bargaining

Batz in 1973, compared the difference in tenure being formally written before and after collective bargaining at ninety-seven community colleges. He found no significant difference in tenure being formally written after collective bargaining as compared to its being written before collective bargaining. There was also no significant difference in granting of tenure before and after collective bargaining.¹²⁵

No significant change in the availability of tenure before and after collective bargaining was found. In

¹²⁴Virginia Lee Lussier, "National Faculty Associations in Collective Bargaining," p. 6.

¹²⁵Robert L. Batz, A Critical Investigation of Policies and Procedures Pertinent to Tenure and the Grievance Procedure, Both Before and After Collective Bargaining at Public Community Colleges, (Unpublished Ph.D. dissertation, University of Missouri, 1973), p. 139-140.

summary he pointed out that collective bargaining only provided for the pre-existing tenure policy to be written into the formal agreement.¹²⁶

Contract Contents

Academic Freedom

Moskow found the academic freedom concept in 80 percent of the 1969-70 contracts of the twenty community colleges analyzed. However, the American Association of University Professors object to an academic freedom clause in collective bargaining contracts since including it in negotiations makes it vulnerable to change.¹²⁷

Nicholson found that according to the American Association of University Professors, academic freedom is not a negotiable item. However, the contracts at Oakland, St. Johns and Rutgers (American Association of University Professors affiliates) all contain a statement relating to academic freedom. The statement also appears in the contracts at Boston State College, Southeastern Massachusetts University and SUNY.

¹²⁶Ibid., p. 143.

¹²⁷Michael H. Moskow, "The Scope of Collective Bargaining in Higher Education," Wisconsin Law Review, Vol. 33 No. 1 (1971), p. 51.

If the contract discusses academic freedom then a complaint must be handled through the grievance-arbitration procedures in the contract. If the complaint is resolved within the academic institution, the academic freedom principles must have been used by peers and administrators in arriving at the solution of the problem. If external arbitration is used, however, there is a worry that the academic freedom principles may be different from those known in academic institutions.¹²⁸

Tenure

Mortimer studied thirty-one contracts in 4-year institutions in 1974. He found that 80 percent made reference to tenure. The contracts from New York and New Jersey did not include reference to tenure since tenure is a part of state law.

Thirteen of the twenty-four contracts which refer to tenure, identified the process used in making tenure decisions. Ten of the twenty-four contracts identified the criteria to be used for the tenure decision.

Thirteen of the twenty-four contracts with tenure provide for binding arbitration for grievances, but only eight of these thirteen contracts support binding

¹²⁸Michael W. Nicholson, "Effects of Faculty Bargaining," p. 41.

arbitration for tenure. In four of these eight contracts, the arbitrator's decision is related to procedural violation only. In eleven contracts which have no binding arbitration provision, eight have an appeal process for tenure matters.

In seventeen of the twenty-four contracts with tenure, a clause on academic tenure was also in the contract. This finding may support the concern that the collective bargaining process may separate the academic freedom from the tenure concept.¹²⁹

According to Mortimer, he is not aware of any studies which answer the question whether tenure is easier or harder to get under systems of collective bargaining. From studies of grievance procedures in SUNY and CUNY he found promotion and tenure decisions provide the most grievances.¹³⁰

Arbitration

McHugh described tenure and grievance. There are plans to keep the tenure decision out of the grievance process. At one University the tenure grievance comes

¹²⁹Kenneth P. Mortimer, Research Data on Tenure and Governance Under Collective Bargaining, (Washington D.C.: Education Resources Information Center, November 1974), pp. 5-6.

¹³⁰Ibid., pp. 6-7.

before an in-house committee with no arbitration. Another plan for tenure and grievance is to let the arbitrator review the procedures for any violation. However, the procedures may become so complicated as to automatically cause a violation.¹³¹

Grievance of the tenure decision may also reduce the value of judgment of peers.¹³²

Wollett pointed out the conflict between the concept that ones peers should evaluate him for promotion and tenure and the concept that unfairness in an institution should be taken care of by an impartial arbitrator. Those who support peer evaluation for promotion and tenure keep the procedures out of the arbitration process. However, since peer evaluation may not always be fair, the promotion and tenure process may be exposed to the grievance mechanism.

The American Association of Higher Education Task Force proposal supports peer evaluation in tenure decisions and arbitration to be used when the administration does not support the peer review or when a question of

¹³¹William F. McHugh, "Faculty Unionism and Tenure," p. 65.

¹³²A. W. J. Thomson, An Introduction to Collective Bargaining in Higher Education, p. 26.

intrusion on academic freedom is involved in the peer decision.¹³³

In collective bargaining, negative tenure decisions may be turned over to outside arbitrators. This approach destroys academic self-government. In addition, the practice of instant tenure would produce a public school concept where certified teachers are tenured in. This concept would be disastrous for scholarly standards in the higher education academic institutions.¹³⁴

National Education Association places the burden on the institution to provide proof against the faculty member. They believe that the faculty member be permitted to ask for a hearing and then appeal the decision to binding arbitration by a neutral party if necessary.

The American Association of University Professors leaves the process to the individual institutions. The American Association of University Professors thus allows for the person to submit material which might be helpful in the consideration of the reappointment. The faculty member has the chance to ask for a reconsideration by the decision-making body or to go to a grievance committee.

¹³³Donald H. Wollett, "The Status and Trends of Collective Negotiations for Faculty in Higher Education," Wisconsin Law Review, Vol. 2 No. 1 (1971), pp. 20-21.

¹³⁴Everett Carl1 Ladd Jr. and Seymour Martin Lipset, Professors, p. 73.

Not all local American Association of University Professors chapters support the national policy. Tenure and promotion decisions cannot be referred to grievance procedures at some institutions. However, a flaw in procedure can be submitted to arbitration. At one other institution, the negative tenure decision may go to arbitration, however, the burden of proof is on the faculty member who was denied tenure.

Some local American Federation of Teachers contracts do not support national policy in that they do not provide for grievance and arbitration procedures for tenure and promotion decisions. National Education Association contracts at some institutes provide for grievance procedures for tenure decisions.¹³⁵

Research

Carol Shulman in a review (1972) of literature discussing collective bargaining identified five articles which related to the concern that traditional tenure and academic freedom will be lost in collective bargaining. In two other articles, she found authors who felt that

¹³⁵Virginia Lee Lussier, "National Faculty Associations in Collective Bargaining:," pp. 5-6.

faculty rights are better protected in a binding legal document.¹³⁶

Jones' findings suggest that the introduction of collective bargaining reduces the power of the president's office to influence the quality of the faculty, since faculty salaries, hiring and tenure are all determined through formalized procedures. Jones found that the loss of power is evident in salaries and tenure, where unions have begun to exert their power in establishing salary structures and reducing administration influence in tenure decisions. He concluded that the authority of the president has become less in tenure appointments and retrenchment in staff.¹³⁷

Lee, in an analysis of studies of the collective bargaining process, described the concerns of the critics.

The critics worried that emphasis on seniority and egalitarianism rather than the emphasis on merit would reduce standards (Oberer 1969) and would ruin the selective reward system used to encourage excellence (Carr and VanEyck 1973). The union emphasis on job security for all members is counter to the

¹³⁶Carol Shulman, Collective Bargaining on Campus, (Washington D.C.: Education Resources Information Center, March 1972), p. 14.

¹³⁷Gary L. Jones, Changes in Role of the President's Office in Selected Universities Following Faculty Unionization, (Unpublished Ph.D. dissertation, Michigan State University, 1975), pp. 185-187.

academic norm or merit and scholarly achievement (Mortimer and Lozier 1974). In the Kemerer and Baldrige survey of presidents and union chairpersons at unionized institutions, the results show that promotion policies were more formalized as a result of unionization. Mortimer and Lozier point out that formalization of promotion procedures is a gain for the faculty. Another concern was that collective bargaining would weaken the relationship between tenure and academic freedom with greater emphasis on tenure as job security (Mortimer and Lozier 1974). Others have predicted that tenure may be granted "by default." This could happen if the burden of the candidate be placed on the academic institution (Kemerer and Baldrige 1975).

According to (Begin 1978) most tenure procedures in contracts are pre-collective bargaining systems rather than complete revisions. One academic institution in order to overcome the high percentage of tenuring negotiated with the faculty union for a third status for full time faculty. These faculty at Monmouth College who were qualified for tenure but because the proportion of tenured faculty in their unit was too high, were given the status of "Tenure Deferred Due to Ratio." They were given three-year reappointment contracts but tenure could not be given until the proportion of tenured faculty in their unit had decreased to the approved level. (Kemerer and Satryb 1977) pointed out that collective bargaining is less of a threat to tenure than financial and environmental forces. If alternatives to tenure are necessary for financial exigency or to be in line with state or system education agencies, collective bargaining assures faculty participation in the process. Collective bargaining, however, cannot guarantee the continuation of the form of tenure now in existence.¹³⁸

In a 1976 survey, it was found that unions have tried to limit the power of those who make tenure awards. It is

¹³⁸Barbara A. Lee, Collective Bargaining in Four-Year Colleges: Impact on Institutional Practice, (Washington D.C.: American Association for Higher Education, 1978), pp. 31-34.

difficult to tell whether collective bargaining has made it easier to get tenure since unionization has occurred during a tight job market period. Unions have increased due process in tenure decisions. The evaluation process for tenure decisions takes more time than before collective bargaining.¹³⁹

Turner in 1977 did a study in the public universities in Alabama relating to perceptions of tenure between board members, administrators, and faculty.¹⁴⁰

He found that the three groups had the following differences:

1. Tenure is in trouble in Alabama but faculty are not as aware of it as board members and administrators.
2. Board members are more aware of the attack on tenure than the administrators.
3. Board members and administrators do not see tenure as providing freedom of thought and action for faculty.
4. Board members and administrators do not see that tenure helps in the improvement of faculty professional levels.

¹³⁹"Faculty Members Note Both Positive and Negative Aspects of Campus Unions," Everett Carl Ladd Jr. and Seymour Martin Lipset, The Chronicle of Higher Education, Vol. XI No. 22 (February 1976), p. 11.

¹⁴⁰Rex A. Turner, A Study of the Present Status of Faculty Tenure as Perceived by Boards, Administrators, and Faculty of Public Universities in Alabama with Projections and Implications for the Future, (Unpublished Ph.D., dissertation, University of Alabama, 1977), p. 75.

5. Board members and administrators would require a long probation for tenure and review of tenured faculty while the faculty support the opposite view.
6. Board members and administrators don't see tenure as a help in keeping competent faculty.
7. Administrators see themselves as managers rather than faculty leaders.
8. Board members do not see that tenure policies help remove undesirable faculty, while administrators give some value to the tenure policies in removing the unqualified faculty.
9. Board members and administrators do not think tenure is any longer needed since due process is supported in the courts.
10. Faculty are concerned that if tenure was not available, board members and administrators would keep faculty for economic and personal rather than academic reasons.
11. Board members and administrators do not accept the idea that tenure protects the university against outside influences¹⁴¹ which might destroy academic freedom.

Loss of Tenure

Chait doesn't think tenure will be bargained away, but that it will fade away. He sees the union protecting all faculty through the contract but none through the tenure concept. Besides with a union contract, do the faculty need tenure? State legislators may ask why tenure

¹⁴¹Ibid., p. 79-81.

is necessary if faculty have job security through collective bargaining. If negotiation replaces legislation, the tenure concept is again weakened.¹⁴²

Nisbet questioned that tenure should be a protected right in the collective bargaining process. Tenure is not a protected right in collective bargaining for other groups in or out of the academic community.¹⁴³

At the University of Massachusetts, tenure has been eliminated and replaced with "rolling appointments." These "rolling appointments" are annually renewable three-year appointments. Every faculty member is evaluated each year. All present faculty peer-review committees are abolished and the evaluation process is an administrative function. The criteria used in evaluating the faculty are personal attributes, integrity, industry, openmindedness, objectivity, capacity for leadership, cooperation, congeniality, and attendance. Faculty can be terminated for cause. The causes included behavior incompatible with effective conduct of duty, behavior detrimental to the university, and failure to carry out assigned duties.

¹⁴²Richard Chait, "Faculty Unions and Academic Tenure: On a Collision Course," Proceedings, Third Annual Conference, National Center for the Study of Collective Bargaining in Higher Education, Thomas M. Mannix editor (April 1975), p. 64.

¹⁴³Robert Nisbet, "The Future of Tenure," p. 31.

There is pressure to change the university to a managerial model in which faculty would have less say in the running of the University. The faculty may be offered more salary for more managerial control for the administration.¹⁴⁴

¹⁴⁴William E. Connolly and Kenneth M. Dolbeare, "Collective Bargaining at the University of Massachusetts," The Chronicle of Higher Education, Vol. XVI No. 4 (March 1978), p. 25.

CHAPTER III

METHODS AND MATERIALS OF RESEARCH

As the review of related literature has shown, there are varied opinions on the value and future of tenure. Some of the writers see collective bargaining arising if tenure is dropped. Others see tenure dropped if collective bargaining is present. Still others see collective bargaining as guaranteeing "instant tenure."

According to Table 5, the percentage of tenured faculty in public institutions has held steady or in some cases has increased slightly since the 1974-75 report. It is not known from these statistics what the status of tenure is at those public four-year institutions which have collective bargaining.

The following categories define the types of institutions depicted in the Table:

Category I - includes institutions which offer the doctorate degree and which conferred in the most recent three years an annual number of fifteen or more earned doctorates covering a minimum of three nonrelated disciplines.

Category IIA - includes institutions awarding degrees above the baccalaureate but not included in Category I.

Category IIB - includes institutions awarding only the baccalaureate or equivalent degree.

Category III - includes two-year institutions with academic ranks.

Table 5

Percentage of Full-Time Faculty Members With Tenure Status
of Category, Type of Affiliation, All Ranks, and Sex

All ranks	All combined	Public		Men	Women
Category I					
74-75	62	63		67	43
75-76	59	59		62	42
76-77	61	62		66	41
77-78	65	66		71	44
78-79	65	66		72	43
Category IIA					
74-75	61	63		66	54
75-76	63	65		68	58
76-77	62	65		69	52
77-78	62	64		69	51
78-79	64	67		72	53
Category IIB					
74-75	53	48		51	40
75-76	58	53		56	44
76-77	52	53		58	41
77-78	53	56		60	44
78-79	58	58		62	48
Category III					
74-75	53	54		58	45
75-76	62	62		68	51
76-77	56	57		61	48
77-78	65	66		71	56
78-79	64	64		70	55
Category IV					
74-75	64	66		32	61
75-76	63	65		67	59
76-77	49	65		55	45
77-78	74	76		79	70
78-79	78	80		83	73
All Categories					
74-75	60	62		60	48
75-76	60	61		65	48
76-77	60	62		66	77
77-78	62	65		70	48
78-79	63	66		71	49

¹"The Annual Survey of Faculty Compensation," AAUP Bulletin, Vol. 61 No. 2, (1974-75), Summer 1975, p. 139, Vol. 62 No. 2, (1975-76), Summer 1976, p. 225, Vol. 63 No. 3, (1976-77), August 1977, p. 171, Vol. 64 No. 3, (1977-78), September 1978, p. 209, Vol. 65 No. 5, (1978-79), September 1979, Table 16 not published.

Category IV - includes institutions without academic ranks. (With the exception of a few liberal arts colleges, this category includes mostly two-year institutions.

The present study has been designed to look at tenure in selected public four-year institutions with collective bargaining. The selection of the institutions studied relates to those institutions whose present tenure process in the union contract appeared to be different than before collective bargaining.

Sources of Data

The sources of data were documents, telephone conversations and interviews. The documents used were union contracts, pre-collective bargaining documents, and other information received from those persons involved in the collective bargaining and tenure processes.

A computer search was done by (Elias Lieberman Higher Education Contract Library, The National Center for the Study of Collective Bargaining in Higher Education, Baruch College, City University of New York) on the contracts of all four-year institutions which had collective bargaining (Appendix I). The search was done to identify tenure procedures in the contracts. Those institutions whose contracts contained tenure procedures were contacted for a copy of the pre-collective bargaining tenure document. In

addition, all contracts since the implementation of collective bargaining at those institutions were obtained. The institutions whose union contract included tenure procedures which are different from the pre-collective bargaining tenure document were included in this study.

Institutions Studied

The size of faculty at each institution was identified from the 1979 American Association University Professors Bulletin. The student headcount was identified from the 1979-80 College Handbook, 17th edition.

The Montana College and University system consists of the following four colleges and one university:

	<u># of Faculty</u>	<u>Student Headcount</u>
Eastern Montana College	146	3,450
Northern Montana College	67	1,195
Western Montana College	31	862
University of Montana	414	8,363

The one campus/single unit campuses are:

	<u># of Faculty</u>	<u>Student Headcount</u>
Northern Michigan University	303	8,727
Oakland University	332	11,220
Wayne State University	1,094	33,524

The Pennsylvania State College and University systems consist of the following institutions:

	<u># of Faculty</u>	<u>Student Headcount</u>
1. Bloomsburg State College	295	6,321
2. California State College	319	5,876
3. Cheyney State College	184	2,563
4. Clarion State College	238	5,757
5. East Stroudsburg State College	229	3,875
6. Edinboro State College	397	5,686
7. Kutztown State College	262	5,240
8. Lock Haven State College	152	2,231
9. Mansfield State College	200	2,688
10. Millersville State College	285	6,029
11. Shippensburg State College	273	5,686
12. Slippery Rock State College	308	5,567
13. West Chester State College	469	8,374
14. Indiana University of Pennsylvania	560	12,019

Eastern Montana College is a liberal arts and teachers college located in the small city of Billings, Montana. There were 2,232 full-time and 816 part-time undergraduate

students. There were 145 full-time and 257 part-time graduate students. These students were taught by 146 faculty.

Northern Montana College is a teachers college located in rural Havre, Montana. There were 904 full-time students and 141 part-time undergraduate students. Graduate students number 29 full-time and 121 part-time. There were 67 faculty.

Western Montana is a liberal arts and teachers college. The undergraduate students number 509 full-time and 209 part-time. There were 13 full-time and 131 part-time graduate students. Thirty-one faculty were employed at Western Montana College located at rural Dillon, Montana.

University of Montana is located in the small city of Missoula, Montana. There were 6,279 full-time and 827 part-time undergraduate students. Graduate students number 820 full-time and 437 part-time. There were 414 faculty.

Northern Michigan University is located in the small city of Marquette in the upper peninsula of Michigan. There were 6,365 full-time and 1,238 part-time undergraduate students. There were 152 full-time and 972 part-time graduate students. Three hundred and three faculty teach at this institution.

Oakland University has three hundred and thirty-two faculty at this suburban institution in Rochester, Michigan. There were 5,750 full-time and 3,242 part-time undergraduate students. There were 587 full-time and 1,641 part-time graduate students.

Wayne State University is a urban commuter university located in the large city of Detroit, Michigan. There were 14,811 full-time and 8,738 part-time undergraduate students. Graduate students number 5,670 full-time and 4,305 part-time students. There were 1,094 faculty at this institution.

1. Bloomsburg State College is a college of arts and sciences and business administration. It is located in the small town of Bloomsburg, Pennsylvania. There were 4,844 full-time and 827 part-time undergraduate students. There were 69 full-time and 581 part-time graduate students. Two hundred and ninety-five faculty are at Bloomsburg State College.

2. California State College includes liberal arts, teachers, and technical colleges. There were 4,219 full-time and 901 part-time undergraduate students. There were 32 full-time and 724 part-time graduate students. Three hundred and nineteen teach in this institution which is located in the small town of California, Pennsylvania.

5. East Stroudsburg State College is a liberal arts and teachers college. There were 3,219 full-time and 323 part-time undergraduate students. There were 63 full-time and 270 part-time graduate students. Two hundred and twenty-nine faculty were at this institution in the small town of East Stroudsburg, Pennsylvania.

6. Edinboro College is a liberal arts college. There were 4,336 full-time and 669 part-time undergraduate students. There were 133 full-time and 548 part-time graduate students. Three hundred and ninety-seven faculty were at this institution in the small town of Edinboro, Pennsylvania.

7. Kutztown State College is a college of arts and sciences and is located in the small town of Kutztown, Pennsylvania. There were 4,100 full-time and 460 part-time undergraduate students. There were 60 full-time and 620 part-time graduate students. Two hundred and sixty-two faculty were at this institution.

8. Lock Haven State College is a college of arts and sciences and teachers college. There were 2,124 full-time and 107 part-time undergraduate students. One hundred fifty-two faculty were at this institution in the small city of Lock Haven, Pennsylvania.

9. Mansfield State College is a liberal arts college. There were 2,230 full-time and 271 part-time undergraduate

students. There were 18 full-time and 169 part-time graduate students. Two hundred faculty were at this institution in Mansfield, Pennsylvania.

10. Millersville State College is a liberal arts college. There were 4,312 full-time and 964 part-time undergraduate students. There were 71 full-time and 742 part-time graduate students. Two hundred and eighty-five faculty were at this institution in the small town of Millersville, Pennsylvania.

11. Shippensburg State College is a liberal arts college. There were 4,371 full-time and 163 part-time undergraduate students. There were 96 full-time and 1,056 part-time graduate students. This rural college has 273 faculty in Shippensburg, Pennsylvania.

12. Slippery Rock State College is a liberal arts college. There were 4,756 full-time and 265 part-time undergraduate students. Graduate students number 113 full-time and 433 part-time. There were 308 faculty at this institution in rural Slippery Rock, Pennsylvania.

13. West Chester State College is a liberal arts college. There were 5,895 full-time and 1,121 part-time undergraduate students. There were 105 full-time and 1,253 part-time graduate students. Four hundred and sixty-nine faculty were at this institution in the large town of West Chester, Pennsylvania.

14. Indiana University of Pennsylvania is located in the large town of Indiana, Pennsylvania. There were 9,948 full-time and 918 part-time undergraduate students. Graduate students number 323 full-time and 830 part-time. There were 560 faculty.

While the institutions were chosen for the difference in their present and pre-collective bargaining procedures, they represented three types of bargaining structures.

1) Entire system within a single bargaining unit with one encompassing contract:

The Pennsylvania College and University System involves thirteen colleges and one university. Collective bargaining is centralized in the State Board of Education in Harrisburg, Pennsylvania. The State Board of Education negotiates one contract for these institutions.

2) Separate bargaining units with centralized state control:

The Montana University System includes Eastern Montana College, Northern Montana College, Western Montana College and University of Montana. The State Board of Education negotiates separately with the bargaining agent at each of these institutions.

3) Single campus/single unit bargaining structure with local autonomy:

Northern, Oakland and Wayne State Universities represent this collective bargaining structure. Each of these administrations negotiate separately with their faculty's collective bargaining agent.

The collective bargaining agents represented are:

Eastern Montana College	AAUP
Northern Montana College	NEA
Western Montana College	NEA
University of Montana	AFT
Northern Michigan University	AAUP
Oakland University	AAUP
Pennsylvania State College and University System	NEA
Wayne State University	AAUP

Interviews were conducted which involved twenty-one institutions and eight collective bargaining agreements. The interviews were conducted at the State Board of Education for the two state centralized collective bargaining contracts. For the single campus/autonomous structure, interviews were held on campus for two institutions and by telephone for the third institution.

The fourteen interviews were with the following persons:

1. Four Union Presidents
2. Two Tenure Review Committee Chairpersons
3. Four Provosts
4. One Deputy Commissioner of Higher Education
5. Two Directors of Labor Relations
6. One Lawyer

Topics Studied in the Eight Collective Bargaining Agreements

The topics in the collective bargaining agreements related to tenure were studied. The interviewees described and discussed the following topics:

- A. Tenure Review Process
- B. Limitation on Tenure
- C. Tenure for Members of Administration
- D. Review of Tenured Faculty
- E. Holding Pattern for Tenure Decision
- F. Non-Renewal Procedures
- G. Role of the Arbitrator
- H. Dismissal of Faculty Member for Cause
- I. Retrenchment
- J. Retirement

The interviewees were asked:

- A. Have there been any changes in the probationary period?
- B. Are there any alternate plans to tenure?
- C. Are there any modifications within the tenure system?
- D. What is the effect on tenure by factors other than collective bargaining?

CHAPTER IV

FINDINGS

Collective Bargaining Structures

The eight contracts involving twenty-one academic institutions are represented by three collective bargaining structures.

Separate Bargaining Unit with Centralized State Control

1. American Association of University Professors Eastern Montana College and the Montana University System
2. Northern Montana College Faculty Education Association and the Montana University System
3. Western Montana College Faculty Education Association and the Montana University System
4. University Teachers' Union University of Montana and the Montana University System

In the Montana University System, the Board of Personnel decides on the bargaining unit. The Department level Chairpersons are in the unit. The administration opposed this since if a faculty member has a problem with a Chairperson, the faculty member would be grieving against a member of the union. The Chairpersons don't do many administrative functions. At one institution in the system the Associate Deans do some of the administrative functions which were formerly done by the Chairpersons.

The central administration (State Board of Education) negotiates with each campus administration before going to the bargaining table. The central administration team from the State Board of Education then goes to each campus to negotiate the agreement so that release time for the negotiating faculty will be less since the faculty member must take vacation when bargaining.

Single Campus/Single Bargaining Agent:

1. Board of Control Northern Michigan University
and American Association of University
Professors Northern Michigan University Chapter
2. Oakland University and the Oakland University
Chapter American Association of University
Professors
3. Wayne State University and the Wayne State
University Chapter of the American Association
of University Professors

At Northern, Oakland and Wayne State Universities, a member from the administration negotiated with the faculty union's representative. The Chairpersons are in the bargaining unit at Oakland University. The Chairpersons are outside the bargaining unit at Northern and Wayne State Universities.

Entire System Within a Single Bargaining Unit With One Encompassing Contract

1. Association of Pennsylvania State College and University Faculties and Commonwealth of Pennsylvania

In the Pennsylvania system the Chief Negotiator is from the Governor's office. The Department of Education has a representative on the negotiating team. The negotiating team from the academic institutions represent the 13 colleges and 1 university in one contract. The Chairpersons are part of the bargaining unit. Negotiations take place in the same central area for each contract. There is a policy team which involves 2 presidents, 1 vice-president, the Co-Commissioner for Higher Education, the Chief of Labor Relations and the Chief Negotiator.

The eight collective bargaining agreements will be referred to by numbers one to eight. The discussion will follow with the collective bargaining agreements discussed in an order different than previously described.

In questioning the effects of collective bargaining on tenure at the institutions studied, topics were studied in the collective bargaining agreements which related to tenure. The topics are presented as described by collective bargaining agreement or interviewee. A discussion of the topic by the interviewees who found them significant to tenure follows each description.

Topics Studied in the Eight Collective Bargaining Agreements
and Discussed with Interviewees

A. Tenure Review Process

In Collective Bargaining Agreement #1, the faculty member must initiate the tenure process or he isn't considered for tenure. The probationary period is five years with at least three of these years at the institution involved in this agreement.

The process involves the following:

1. Department Faculty
2. Chairperson
3. Dean
4. Campus-wide Committee
5. Academic Vice-President

There are campus-wide guidelines which must be used in the development of tenure criteria within the faculty unit.

The Department Chairperson sends a recommendation to the campus-wide committee. The campus-wide committee made up of faculty and students appointed by the faculty senate reviews the files and makes recommendations to the appropriate Dean. The Dean sends a recommendation to the Academic Vice-President. The faculty and Chairperson of the appropriate discipline will initiate the recommendation

for promotion and tenure for members of the administration (Deans, Provost).

There is an appeals committee comprised of seven members of the bargaining unit. Three members appointed by the Faculty Senate, three appointed by the President of the University and one appointed by the union following the procedures developed by that organization. The Appeals Committee will hear only appeals which are based on the allegation that proper procedures have not been followed.

In Collective Bargaining Agreement #2, the Tenure Commission made up of six members, two named by the collective bargaining agent, two named by the Board of Presidents and two named by the Secretary of Education, identifies the tenure procedures used in the colleges and gives recommendations to the President when he makes tenure decisions.

The tenure review takes place at the end of three years of service. The review involves:

1. Department Head
2. Department Committee of Tenured Faculty Members
3. Campus-wide Tenure Committee
4. President

The department head sends the departmental recommendation to the campus-wide tenure committee. The committee

reviews and sends recommendations to the President. When the President does not support a positive recommendation of the campus-wide committee, he must tell the committee and the faculty members the reason for his action.

The faculty can appeal the negative tenure decision to the union. When the negative decision has come from the committee, the union is in the position of defending the faculty member against the faculty committee.

In Collective Bargaining Agreement #3, the tenure review is done during the seventh year of the probationary period. The faculty member is told by the administration that he is being considered for tenure. The units involved in the tenure process are:

1. Faculty Unit
2. College Committee on Appointment and Promotion
3. Dean
4. Campus-wide Committee
5. Administration

The faculty unit submits its recommendations to the college committee. This committee makes recommendations to the appropriate Dean. The recommendations go to the administration and the negative decisions go to the campus-wide committee before the decision goes to the faculty member.

An appeal of a tenure decision may be reviewed by the Tenure Review Commission. This committee of three members consists of one member selected by the University and one selected by the union. These two members select a third member who serves as chairperson of this commission.

The Tenure Review Commission will submit a written decision to award tenure or terminate the bargaining unit member.

The tenure review process in Collective Bargaining Agreement #4 is done during the sixth year of probation. The President tells the unit head to start the tenure review for a faculty member. The review involves:

1. Faculty Unit
2. Department Head
3. Dean
4. Campus-wide Committee
5. Academic Vice-President
6. President

Each faculty unit must develop tenure procedures and meet time requirements. If the unit committee fails to develop these procedures or meet the time deadlines, the campus-wide committee may act independently in the tenure process. If the campus-wide committee does not then take independent action in the tenure process, the faculty member can grieve the matter.

The campus committee must have seven faculty members who are full-time faculty with tenure and from the bargaining unit. The faculty referral goes from the campus committee to the Academic Vice-President to the President.

An applicant denied tenure may appeal to the Tenure and Promotion Appeals Committee if there appears to be a possibility of:

1. factual error
2. procedural error
3. prejudice
4. new information

This committee is to be an Ad Hoc Committee composed of two persons selected by the Faculty Administration Committee at the time when there is a notice of appeal. The Appeals Committee makes its recommendation to the President and to the faculty member who grieved the decision.

In Collective Bargaining Agreement #5, the probationary period is five years. The Board upon recommendation of the President may extend it for two years. The units involved in the tenure review process are:

1. Departmental Faculty
2. Department Head
3. Dean

4. College Committee
5. Campus-wide Faculty Committee
6. Provost

Each of the above units make a decision and refers the information to the next unit. The Provost informs the campus-wide committee and faculty member in writing when the Provost's decision doesn't match that of the campus-wide committee.

The faculty member may appeal the Faculty Review Committee's recommendation to the Provost. The Provost will make his own investigation and determination of the appeal and shall notify the faculty member of his decision.

In Collective Bargaining Agreements #6 and 8, the faculty member or administrator can start the tenure review. The tenure process is started in the sixth year of probation. The units involved in the review process are:

1. Faculty Committee
2. Dean
3. President

The faculty sends the recommendations to the Dean. The Dean approves or disapproves the faculty committee's recommendation and sends the approvals to the President.

Any faculty member whose tenure request is not approved by the Dean, may appeal the Dean's decision to a

committee of three members. One member of this committee is appointed by the Association, one appointed by the President and one appointed by the Commissioner of Higher Education. The committee may recommend that the President consider the tenure request, despite the Dean's failure to recommend tenure.

In Collective Bargaining Agreement #7, tenure is granted at the beginning of the seventh year. The units involved in the tenure process are:

1. Department Faculty
2. Department Head
3. Dean
4. College Committee
5. Campus-wide Faculty Committee
6. Provost
7. President

The campus-wide committee and Provost discuss the qualifications of all faculty submitted for tenure. The Provost makes a decision on all faculty submitted for tenure. The negative decisions are referred to the campus-wide committee for their vote. The decisions are then sent to the President.

If neither the department tenure committee nor the department Chairperson recommends tenure, the candidate

may within 15 days of the decision request reconsideration before the committee.

If neither the college tenure committee nor the dean recommends tenure, the chairperson or department committee may within 15 days of the decision request a reconsideration by the committee.

If the President does not recommend for tenure any candidate who received a positive tenure decision from the college committee and from the dean, the candidate may request in writing from the office of the President within 15 days after written notice, the compelling substantive reasons for not supporting the college recommendations.

Findings

In one collective bargaining agreement, most negative decisions are known to come from the committee since the President will rarely say no to a tenure decision if the committee has said yes. There is a problem with a negative committee decision here since the faculty member denied tenure is in a position of grieving against faculty who are in the same bargaining unit. When a faculty member wishes to protest a committee decision, the union prefers to give the faculty member money and let him hire his own lawyer. Then the union lawyer isn't defending faculty against faculty. The probationary period in this agreement is

three years and since it is short, the tendency may be to say yes for tenure. It was reported, however, that more negative decisions are being made with the committee structure than when the administration independently made the tenure decision.

In another collective bargaining agreement, the faculty bargained to have the administration removed from the tenure evaluation committee. The process for tenure is seen as complicated. The committee structure has provided more negative decisions. The market may be causing the problem, however, the faculty representative sees the tenure process as too complex. The committee members are elected by the union. The tenure process is seen as losing the top and bottom layer of faculty. The best faculty are lost because early decisions cannot be made. All faculty have to go through the standardized procedures.

A criticism of the campus-wide committee is that they do not use the criteria of the faculty member's school when evaluating the faculty member for tenure.

It was thought by a union representative that the Committee was harder since better qualifications are needed because of the tight market. With collective bargaining he sees the review procedures as fairer and arbitrary decisions can no longer be made. According to

him, tenure is more difficult to get but it is unrelated to collective bargaining.

The campus-wide committee and Provost usually agree on the tenure decisions. If both the campus-wide committee and the Provost deny tenure, the union discourages the faculty member from grieving.

In another agreement, tenure procedures were put into the contract by mutual agreement; however, it was a major bargaining issue by the faculty. The faculty provided procedures for evaluation, developed the committee structure and the appeal process. The tenure procedures were put in the first contract with the appeal process modified in the second contract.

There is criticism of the committee by the faculty. The committee is elected at large from faculty by faculty vote. The faculty believe the committee to be more difficult than the administration. The campus-wide committee in the tenure process was seen as the biggest problem with tenure since collective bargaining. The executive committee of the union won't let the union grieve against the campus-wide committee. If the campus-wide committee and the Provost's negative decision are alike, then the union discourages the faculty member from grieving the decision.

According to the administrative person, the tenure review committee is tougher in its deliberations than the

administration had been when they were solely responsible for the tenure decision. However, he didn't think collective bargaining had a great effect on tenure.

In the last collective bargaining agreement in this discussion, the campus-wide committee structure was put into the second contract in one collective bargaining agreement. Between the second and third contract the basis for tenure was changed. In the second contract the terms excellence, scholarly work, and creative work as appropriate were the basis for tenure. A grievance was filed by a faculty member after a non-tenure decision where his creative work was not considered as an appropriate basis for tenure. The language for the third contract specified in which disciplines creative work was acceptable. This change was proposed by management. The union proposal in the fourth contract was to identify the department peculiarities as basis for tenure decision and that there be substantive reasons for denial of tenure.

The union representative believed that collective bargaining has strengthened the procedures for tenure. The protection of the person has been increased by the process implemented under collective bargaining. The central faculty review has caused a tightening of the number tenured. The campus-wide committee and Provost

agree very well. Last year one-third of the faculty submitted for tenure were denied with the campus-wide committee and Provost agreeing on the decisions. The union has won some tenure arbitrations from the committee and Provost. The administration has the final authority to over-rule the committee. Therefore, the administration's action, not the committee's, can be grieved in a non-tenure decision.

From the union viewpoint collective bargaining has provided good personnel policies by opening personnel files and improving grievance procedures. In essence, collective bargaining has provided protection for the individual by more rigid procedures but has made it more difficult to get tenure.

B. Limitation of Tenure

In Collective Bargaining Agreement #2, the faculty member loses tenure at 65 and the President could decide to retire the faculty member. If he is not retired at this time, the faculty member is given a year to year contract.¹

¹Researchers note: The federal legislation against age discrimination which may discontinue mandatory retirement or raise the age to 70 years for college and university professors will make this data of no value.

Findings

The interviewees discussions of the limitation on tenure didn't add any more information than was described in the collective bargaining agreement.

C. Tenure Review for Members of Administration

Collective Bargaining Agreement #1 describes a tenure procedure for members of the administration. The administrator must be evaluated for tenure by faculty members of the bargaining unit in the department of his discipline.

Findings

An administrator from one institution discussed concern with handling administrative functions which may offend those in the bargaining unit who may evaluate him. If the administrator is not given tenure as a faculty member of a department, he can stay in his position with a one year notice should it become necessary to terminate him. A person may hire in as an administrator and never be considered for tenure as a faculty member. Under this system, the administrator would also have a one year notice prior to termination.

D. Review of Tenured Faculty

Review of tenured faculty procedure was found in four collective bargaining agreements.

In Collective Bargaining Agreement #1, the review of tenured faculty will be started when a tenured faculty member has received a less-than-normal salary raise for three successive years. They will also be evaluated every five years. Tenure review is done by a faculty committee in each unit and can recommend that tenure be continued for a year with re-evaluation at that time or discontinuation of tenure for one year. Re-evaluation will be done every year until tenure is returned or the faculty member is terminated.

In Collective Bargaining Agreement #2, the tenured faculty are observed annually by the department chairperson and/or a tenured member of the department committee. Evaluations on tenured faculty are done every three years.

In Collective Bargaining Agreements #6 and 8, the faculty are evaluated every fifth year after tenure. The faculty committee evaluates the tenured faculty and recommends to the Dean to:

1. Continue tenure for five more years.
2. Return to probation.
3. Dismiss.

The Dean then makes a recommendation to the Faculty Evaluation and Promotion Committee who makes a recommendation to the administration.

Findings

In one collective bargaining agreement, where tenured faculty are evaluated every five years, one tenured faculty member resigned.

In another agreement, the evaluations of the tenured faculty are put in the faculty member's file and can affect future promotions and merit increases.

E. Holding Pattern for Tenure Decision

In Collective Bargaining Agreement #1, 4, 6 and 8, a holding pattern for tenure decision is operating. The traditional "up or out" policy does not have to be followed.

Findings

The holding pattern concept was seen as significant by an administrator since if a faculty member doesn't get tenure his first or second time of evaluation, he should consider moving to another place of employment. After the faculty member has come up for evaluation and isn't recommended for tenure, the administration has the authority to dismiss him with twelve months notice. The process provides more staffing flexibility for administration.

The holding pattern helps out in arbitration problems. If the arbitrator's decision is that the tenure review

criteria were changed with not enough adequate time for faculty preparation, the solution can be to have the faculty member reapply for tenure when he is ready.

For the faculty member, the holding pattern process is acceptable since former years of service applied toward tenure often doesn't give the faculty member much time to prove himself if he is in an "up or out" process.

A union President and member of management in another collective bargaining agreement which does not have a holding pattern, considers it not to be a good policy. It was thought that the holding pattern policy would undercut the tenure process, since the difficult decisions wouldn't be made.

F. Non-Renewal Procedures

In Collective Bargaining #1, non-renewal is given four months before the end of one year, seven months before the end of two years and twelve months before the end of three or more years of appointment.

In Collective Bargaining Agreement #2, the first year faculty members must be informed four months ahead of termination. Second year faculty members are informed seven months ahead of time. The non-tenured faculty member with more than one year of service must be given a renewal unless there is just cause.

In Collective Bargaining Agreement #3, the faculty member is hired for two years and if not promoted then or within a year is not given a renewal. The faculty member then is given an appointment of three years and second of two years in assistant professor rank. After this time the faculty member is given tenure or a non-renewal.

In Collective Bargaining Agreement #4, 5, 6 and 8, the faculty member is notified of non-renewal at least three months before the end of the first year or at least six months before the end of the second year. After two years or more of service, the faculty member is given twelve months notice of non-renewal.

In Collective Bargaining Agreement #7, written non-renewals must be given six months before the end of a one-year appointment or twelve months before the end of a two-year or more appointment.

Findings

A collective bargaining agreement requiring that non-renewal after one year be for just cause only, was seen by the faculty representative as more security than tenure.

In another agreement the faculty representative reported that non-tenured faculty have no arbitration protection in their first three years of service. After

the faculty member's fourth year of service, the union can arbitrate a non-renewal decision.

G. Role of the Arbitrator

In Collective Bargaining Agreements #1 and 4, the arbitrator may not make any decision to grant tenure. The arbitrator may identify a procedural error and send the tenure decision back to the source of error for re-evaluation.

In Collective Bargaining Agreements #2, 3 and 7, the arbitrator can make a decision to award tenure.

In Collective Bargaining Agreement #5, they do not know for certain if an arbitrator can make a decision on tenure. It is felt that the role of the arbitrator will be limited to procedure violation.

In Collective Bargaining Agreements #6 and 8, the role of the arbitrator is not identified.

Findings

A lawyer for one of the above agreements pointed out that without faculty agreement on the tenure decision, very rarely can the administration sustain the decision. In five years, the administration has won only one hearing for non-tenure. It lost six cases during the same period.

In another institution, a negative tenure decision by administration was overturned by an outside arbitrator.

The panel was made up of one union representative, one management representative and a union and management mutual choice (arbitrator). Since his vote would break the deadlock, the power to award tenure was with the arbitrator.

In the third institution, the administrative tenure decision has been appealed to arbitration on seven cases. Four have been lost by administration, two were won, and one case is pending.

H. Dismissal of Faculty Member for Cause

In Collective Bargaining Agreement #1, tenured faculty may be terminated for cause. The causes are:

1. Conviction of a felony or of a crime involving moral turpitude.
2. Fraud.
3. Failure to meet identified academic responsibilities.

In Collective Bargaining Agreement #2, dismissal of a faculty member after one year of service has to be for just cause.

In Collective Bargaining Agreement #3, faculty may be discharged for:

1. Failure to fulfill professional responsibilities.
2. Professional misconduct.
3. Conviction of a felony.
4. Violation of work interruption agreement.

In Collective Bargaining Agreement #4, a faculty member may be discharged for not meeting the following criteria:

1. Maintaining professional competence.
2. Meeting all classes, advising students.
3. Teaching according to high standards.
4. Improving and updating curriculum.
5. Participating in department and college committees.

In Collective Bargaining Agreements #5, 6 and 8, faculty members may be dismissed for adequate cause. Adequate cause was not described.

Findings

In one instance, it was reported that a tenured faculty member was let go last year for lack of competency in performance. The faculty member didn't fight the case. In this agreement dismissal can be for adequate cause.

I. Retrenchment

Collective Bargaining Agreements #1, 2, 3, 4, 5, 6 and 8, describe retrenchment or lay-off procedures.

In Collective Bargaining Agreements #1, 4, 6 and 8, senior or tenured faculty will be laid-off last if they are capable of meeting the responsibilities in their unit.

In Collective Bargaining Agreement #2, regular full-time faculty with seniority are the last to be laid off.

In Collective Bargaining Agreements #3 and 5, procedures describe lay-off in order of rank and tenure with professors to be the last laid-off.

Findings

The administration can determine the areas and number of personnel to be cut back in order to maintain a balanced budget. In one statewide system of bargaining, the faculty can move to another institution within the system if they are retrenched. In the other one, the movement of faculty is only for the campus involved in the retrenchment.

Curtailment has already taken place in another agreement with faculty positions dropped in one academic area and the vacant positions given to another which has growing enrollment.

In another collective bargaining relationship, the administrative representative felt that retrenchment plans were necessary for him to function.

J. Retirement Age

Retirement is at age 70 in Collective Bargaining Agreements #1, 4, 5, 7 and 8 and age 68 for number 3's agreement. In Collective Bargaining Agreement #2, the faculty member loses tenure at age 65 and could be retired by administration or is given a year to year contract.

Findings

There was no discussion of retirement as significant to tenure. Table 6 lists when the topics were negotiated into the collective bargaining agreements.

In addition to the topics from the collective bargaining agreements, the following were discussed with the interviewees.

Additional Topics Discussed with Interviewees

- A. Change in Probationary Period
- B. Alternate Plans to Tenure
- C. Modifications Within the Tenure System
- D. Effect on Tenure by Factors Other than Collective Bargaining

Change in Probationary Period

In the collective bargaining agreement which has a three year probationary period, the management representative sees a need to lengthen it.

In one collective bargaining agreement, the probationary period has been changed from six to seven years. A faculty member can at the time of employment or up to one year of service at the institution, ask that the service from his former institution not be applied toward the probationary period.

Table 6
Topics Studied in the Eight Collective Bargaining Agreements

Collective Bargaining Agreement Topics	1	2	3	4	5	6	7	8
A. Tenure Review Process	1st	1st	2nd	1st		1st	2nd	1st
1. Campus-wide Committee to Dean to Academic Vice-President	1st							
2. Campus-wide Committee decides on all files and submits decision		1st		1st	1st			
3. Campus-wide Committee decides on the negative decisions of administration			2nd				3rd	
4. Campus-wide Committee reviews and sends file to appropriate Dean who sends it to the President						1st		1st
B. Limitation on Tenure		1st						
C. Tenure Review for Members of Administration	1st							
D. Review of Tenured Faculty	1st	1st				1st		1st
E. Holding Pattern for Tenure Decision	1st							
F. Non-Renewal Procedures	1st	1st	1st	1st	1st	1st	2nd	1st
G. Role of the Arbitrator	1st	1st	2nd	1st			1st	
H. Dismissal of Faculty Member for Cause	1st	1st**	1st	1st	1st	1st		1st
I. Retirement	1st	1st	4th	1st	1st	1st		1st
J. Retirement Age	70	65***	68	70	65	70	70	70

*1st and 2nd relates to which contract the item was negotiated in.

**Non-tenured faculty.

***No tenure but can have year to year contracts after age 65.

In another collective bargaining agreement, there has been a clarifying of the impact of prior service. There is a consistency for each rank for the amount of time applied to present service for previous service at another institution.

Alternate Plans to Tenure

There were no alternate plans to tenure in the studied group. While alternate plans were not in place, reactions to the need for tenure were given.

In an agreement where dismissal is for just cause, the administrative representative did not see a need for tenure. The union representative felt, however, that the faculty would not drop tenure, since it is "sacred."

An administrative representative in another agreement pointed out that faculty don't seem secure enough with collective bargaining alone. He further stated that if they are more secure with tenure, let them have it provided there are procedures to evaluate, lay-off and dismiss tenured faculty.

In one other agreement, an administrative representative responded that it was too early to speculate on any alternate plans to tenure since negotiations would be coming up soon.

One union response to the value of tenure was that tenure wasn't worth much, but that it is a "sacred cow" to faculty even if it doesn't give much milk.

One administrator reported that faculty want tenure for it identifies them as a member of a guild.

Another administrator thought that faculty liked the job security of tenure and they wouldn't trade it.

A union representative felt that tenure was necessary since non-tenured cannot be protected until after four years of service. The just cause protection for dismissal here is only for the tenured faculty.

Modifications Within the Tenure System

In one collective bargaining agreement, there is a provision that a faculty member can request within his first three years at the institution to be outside the tenure track. His rank is listed as a special instructor. As a special instructor, he cannot rise in academic rank, but will be outside the tenure track.

In another agreement the administrative representative thought if there were alternate plans to tenure they would be for those faculty who were on "soft money" and have no position in the institution if the money was removed.

Coaches have been removed from the tenure track in one agreement.

Effect on Tenure by Factors Other Than Collective Bargaining

It was felt by the interviewees that the high percentage of faculty already on tenure should not effect the tenure decision.

One union representative felt that there was no need for a tenure quota since there were lay-off procedures.

A management representative in another collective bargaining agreement felt that tenure quotas were no good, but that retrenchment plans were essential.

Another management representative felt that limiting tenure because of a restricted budget was not proper. He thought that if a person is qualified, he should be given tenure.

CHAPTER V

SUMMARY AND CONCLUSIONS

Summary

The purpose of this study concerned the effect of collective bargaining on tenure at selected unionized four year public institutions. The institutions were selected for their difference in the pre and post collective bargaining tenure procedures.

The institutions represented the following three types of bargaining structures:

1. Entire system within a single bargaining unit with one encompassing contract.
2. Separate bargaining units with centralized state control.
3. Single campus/single unit bargaining structure with local autonomy.

The items looked at in the collective bargaining agreements were:

- a. Tenure Review Process
- b. Limitation on Tenure
- c. Tenure for Members of Administration
- d. Review of Tenured Faculty
- e. Holding Pattern for Tenure Decision
- f. Non-Renewal Procedures
- g. Role of the Arbitrator

- h. Dismissal of Faculty Member for Cause
- i. Retrenchment
- j. Retirement

The fourteen interviewees included four union presidents, two tenure review committee chairmen, four provosts, one deputy commissioner of higher education, two directors of labor relations and one lawyer.

While academic freedom was historically the basis for tenure, the two are treated as separate issues at the institutions studied. Six of the eight contracts described academic freedom and tenure under separate sections of the contract. All faculty in collective bargaining have a right to academic freedom while job security is the basis for tenure.

The interviewees discussed the contract items which related to tenure. They also identified how tenure procedures were put into the contract, the changes made in tenure procedures, any alternate plans to tenure, the effect on tenure by factors other than collective bargaining and tenure disputes or settlements.

The tenure review process involves a campus-wide committee in all of the institutions. The role of the campus-wide committee varies among the institutions. In 6 institutions the committee make an independent decision

which is referred to the administration. While in another institution the negative decisions are sent to the campus-wide committee before it goes to the faculty member. In another institution, the Provost and the campus-wide committee discuss all faculty submitted for tenure but the committee vote only on the negative decisions made by the Provost. In instances where the committee makes a decision before the administration, it was reported that most of the time the administration agreed with the committee. In the cases where the committee and the administration agreed not to grant tenure, the union did not encourage the faculty member to dispute the decision. One of the institutions withdrew tenure when the faculty member reached 65 years old. The mandatory retirement age at the institutions ranged from 65-70 years of age.

In one instance an administrator who wishes to be considered for tenure as a faculty member, must be evaluated by faculty members of the bargaining unit in the department of his discipline.

The review of tenured faculty for purposes of dismissal was found in three institutions. A fourth institution does a review of tenured faculty but only for the purposes of promotion and salary increase.

The removal of the "up or out" policy for tenure was found in four institutions. This was seen as significant

for both faculty and administration in providing academic flexibility.

Nonrenewal procedures were significant in only one institution where a non-tenured faculty member with more than one year of service must be given a renewal unless there is "just cause". It was found in three institutions that an arbitrator can make the decision to award tenure.

Dismissal of a faculty member for cause in one institution included the faculty member's performance. A tenured faculty member was dismissed at another institution where the contract identified the reason for dismissal to be adequate cause.

Retrenchment plans were identified in seven of the eight institutions. The decision for retrenchment is the responsibility of the administration. Tenured faculty are removed last if they are capable of meeting the responsibilities of the faculty laid off.

The tenure procedures involving the campus-wide committee were put into most contracts by faculty influence. There is concern by some faculty that the campus-wide committee structure has made it more difficult to get tenure. The campus-wide committee structure has, according to faculty, made the review process fairer and has removed any arbitrary decisions by the administration.

The probationary period was increased in only one institution. No alternate plans to tenure were identified. Most respondents identified tradition as the need for tenure. However, one union representative felt that tenure was necessary for protection of the non-tenured faculty during their first three years at the institution. It was felt by both management and union that tenure decisions should not be affected by any factors other than faculty merit. Both felt that if the budget was tight, other mechanisms should be used to reduce tenured faculty rather than limit the number granted tenure.

Conclusions

The following conclusions can be drawn from the data:

- The Commission on Academic Tenure in Higher Education was concerned that academic freedom and tenure would be "bargained away" in collective bargaining. Since all faculty have the grievance mechanism against arbitrary decisions by the administration, the faculty may "bargain away" tenure or job security for more money. There is a constitutional protection of academic freedom and a separation from tenure. This supports that tenure could be "bargained away" without any effect on academic freedom.
- Collective bargaining provides a mechanism for more faculty input into tenure procedures and decisions. The input has been the most influential in the campus-wide committee structure. This influence has made the process fairer but harder for faculty to get tenure.
- Review of tenured faculty by faculty allows for removal of those persons who cannot meet the

educational needs of the institution in times of tight budgets. This procedure provides an opportunity for young qualified faculty to be hired into departments which presently have no available positions.

- The removal of the "up or out" policy for tenure decision, when supported by both management and faculty reduces the number of life-long commitments. Faculty affected then have the opportunity to be considered again within the institution or seek other employment.
- Where arbitration has been used, the arbitrator usually rejects the administrative position when it is in opposition to the campus-wide committee.
- Retrenchment plans give the administration the opportunity to meet the goals of the institution, while protecting the rights of the qualified tenured faculty in the retained disciplines.

IMPLICATIONS

The data indicates that collective bargaining affects tenure. The influence on tenure depends on the policies formulated in a contract. The institutions which have a short probationary period are more likely to grant tenure. However, the campus-wide committee structure seems to make it more difficult to secure tenure.

The tight budget considerations in academic institutions makes it difficult to prove that collective bargaining is making it more difficult to get tenure. However, in the opinion of this researcher, the campus-wide committee members are harder on their peers than the administration would be in tenure decisions. Thus, the campus-wide system

developed through collective bargaining has made it more difficult to get tenure. The standardization of the procedures used in tenure decisions makes it difficult in evaluating faculty from different departments and colleges within a University. The responsibilities of faculty members differ and standardized procedures do not take this into consideration. The control of criteria for tenure by the department and college is diminished by the campus-wide committee structure. In those institutions where the probationary period is short, the campus-wide committee may tend to give the faculty member the benefit of doubt since he hasn't had enough opportunity to excel or fail in his discipline. However, the campus-wide committee will probably give tenure less often than the administration.

Tenure may be harder to secure with the standardized procedures of collective bargaining. However, it seems from the data that the status of tenure does not necessarily mean a life-long position. If the administration is assertive in negotiating policies to meet educational needs of the institution, faculty who do not meet these needs should no longer be able to have a permanent position within the institution. The review of tenured faculty can become the mechanism for removing those faculty who cannot meet the educational needs of the department, college or

university. The review of tenured faculty will make tenure comparable to a renewable contract. With a positive evaluation, tenured faculty or those on renewable contracts are to be continued. Faculty should recognize that review of tenured faculty with dismissal of faculty who do not receive a positive evaluation is a way new faculty can be hired in a time of a tight budget and low enrollment. They should want to dismiss those faculty who no longer meet the educational needs of the institution.

The removal of the "up or out" policy for tenure gives the tenure committee another chance to evaluate and the candidate an opportunity to improve before a career decision is made. It has been stated by one interviewee that negative tenure decisions will not be made by this process. I do not agree with his concern. I think that the decision to grant tenure in the case of giving the "benefit of doubt" to the faculty member will no longer be made. This procedure should not hinder the tenure decision for faculty who have poor or excellent qualifications.

The findings that the arbitrator rejects the administrative position when it is in opposition to the campus-wide committee and the campus-wide committee is more difficult than the administration should cause the

administration to support the committee decision. The procedure where the committee and administration together review the candidates before the administrative tenure opinion is a method for decision agreement. The administration while not taking a vote of the committee in the review session, gets an informal opinion of each candidate. The administration can then make a tenure decision with a more "intelligent guess" as to which way the committee will vote on an administrative negative tenure decision.

The retrenchment plans also indicate that tenure does not provide for permanence of position. While most of the retrenchment plans provide for tenured faculty to be laid off last, the faculty members retained must be capable of meeting the assigned responsibilities.

An impression from the data is that the effect of collective bargaining on tenure depends on the assertiveness of the administration at the negotiating table.

RECOMMENDATIONS FOR FURTHER STUDY

A study to look at the status of tenure at non-unionized public four-year institutions could be done. The tight budget situation may cause them to deal with tenure.

This study has identified the effect of collective bargaining on tenure in unionized public four-year institutions. Further research could be done to correlate

the results of the tenure decisions between the campus-wide committee and the administration. The method of selection of the campus-wide committee and the impression by faculty of the committee's effectiveness and fairness could be evaluated. The relationship of the negotiating expertise of members of administration and faculty and the policies formulated affecting tenure could be studied.

APPENDIX I

Faculty Bargaining Agents in Four-Year Public Institutions of Higher Education

Institutions	No. of Campuses	2/4 Year Inst.	Size of Bargain. Unit '77-78	Current Bargain. Agent	Year	
					Current Agent Elected or Recog.	Year Initial Contract Signed
Connecticut State College System						
.Faculty	4	4	1,200	AAUP	1976	1976
.Non-teaching professionals	4	4		AFSCME	1976	
U. S. Coast Guard Academy	1	4	51	Indep.	1975	3/1/78
University of Connecticut	5	4	1,400	AAUP	1976	7/1/77
.Non-teaching professionals	5	4		AFT		
.Non-teaching professionals -Health Center		4		AFT	1978	-----
Delaware State College		4	135	AAUP	1977	-----
University of Delaware	1	4	750	AAUP	1972	5/73
University of the District of Columbia ¹	3	4	606	NEA	1978	
Florida State University System	9	4	5,400	AFT	1976	1976

¹Consolidation 8/77 of Federal City College, District of Columbia Teachers College and Washington Technical Institute.

Institutions	No. of Campuses	2/4 Year Inst.	Size of Bargain. Unit '77-78	Current Bargain. Agent	Year Current Agent Elected or Recog.	Year Current Contract Signed
Illinois Board of Governors ²	5	4	1,750	AFT	1976	1977
University of Northern Iowa	1	4	570	AAUP/NEA	1976	6/30/77
Pittsburgh State University	1	4	218	NEA	1974	5/5/78
University of Maine	7	4	1,000	NEA	1978	----
Towson State College		4	500	AAUP	1973	----
Massachusetts State Colleges ³	10	4	1,747	NEA	1977	1979
Southeastern Massachusetts University	1	4		AFT	1970	7/17/70
University of Lowell	2	4		Indep.	1970	
University of Massachusetts ⁴	2	4	1,763	NEA	1977	11/78
Central Michigan University	1	4	570	NEA (re-elected 1971)	1969	1970
Eastern Michigan University	1	4	700	AAUP	1974	12/74
Ferris State College	1	4	460	NEA	1973	1973

²Chicago State, Governors State, Eastern Illinois, Western Illinois, Northeastern Illinois bargain collectively as one unit.

³Vote 12/77 created single bargaining agent for 10 state colleges.

⁴Composition of bargaining unit challenged by University (1977).

Institutions	No. of Campuses	2/4 Year Inst.	Size of Bargain. Unit '77-78	Current Bargain. Agent	Year Current Agent Elected or Recog.	Year Initial Contract Signed
Lake Superior State College	1	4	104	NEA	1978	-----
Northern Michigan University	1	4	306	AAUP	1975	6/76
Oakland University	1	4	330	AAUP	1970	9/71
Saginaw Valley College		4		NEA	1972	
Wayne State University	1	4	1,760	AAUP	1972	7/1/72
Western Michigan University	1	4	872	AAUP	1975	9/20/76
Minnesota State College System	7	4		NEA	1975	
Eastern Montana College	1	4	144 (formerly AAUP/AFT 1975)	AAUP	1978	1976
Northern Montana College	1	4	70	NEA	1975	1976
University of Montana	1	4	460	AFT	1978	-----
Western Montana College	1	4	33	NEA	1975	11/75
Nebraska State Colleges ⁵	4	4		NEA	1972	
Keene State College ⁵	1	4	125	NEA	1977	-----
New Jersey College of Medicine and Dentistry	2	4	505	AAUP	1972	6/8/73

⁵Petition for decertification election by bargaining unit (1978); defeated Jan. 1979.

Institutions	No. of Campuses	2/4 Year Inst.	Size of Bargain. Unit '77-78	Current Bargain. Agent	Year Current Agent Elected or Recog.	Year Initial Contract Signed
New Jersey Institute of Technology	1	4	315	Indep.	1970	11/5/71
New Jersey State College System	8	4	3,200	AFT (NEA 1969)	1972	
Rutgers State University of New Jersey	3	4	2,516 Fac. 1,150 Teach. & Grad. Assistants	AAUP	1970	1971
State University of New York	32	2/4 (incl. non- teaching prof.)	16,200	UUP/AFT ⁶ (NYSUT 1971; UUP/AFT 1976)	1978	1/28/71
U. S. Merchant Marine Academy	1	4	75	AFT (NYSUT/AFT)	1976	1968
Kent State University	7	2/4	790	AAUP/NEA	1975	9/16/78
University of Cincinnati	4	2/4	1,575	AAUP	1975	6/4/73
Youngstown State University	1	2/4	395	NEA	1972	6/4/73
Oregon College of Education	1	4	175	AFT	1977	----

⁶UUP - United University Professions won right to continue representing faculty and non-teaching professionals in December, 1978 election against NYEA.

Institutions	No. of Campuses	2/4 Year Inst.	Size of Bargain. Unit '77-78	Current Bargain. Agent	Year	
					Current Agent Elected or Recog.	Year Initial Contract Signed
Portland State University -Part-time		4 4	660	AAUP AFT	1978 1978	----- -----
Southern Oregon State College	1	4	203	NEA (Indep. 1973)	1974	1975
Lincoln University		4	88	AAUP	1972	
Pennsylvania State College and University System	14	4	4,595	Indep. (NEA 1971)	1977	11/2/71
Temple University	4	4	1,325	AAUP	1972	7/74
Rhode Island College	1	4	360	AFT	1972	1972
University of Rhode Island	1	4	699	AAUP	1971	7/1/72
South Dakota Board of Regents System	7	4	1,231	NEA	1978	-----
Vermont State Colleges	4	2/4	250	AFT	1973	1/75
University of Guam		4		AFT		

141

Source: Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education, (January, 1979), The National Center for the Study of Collective Bargaining in Higher Education Barauch College, CUNY.

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