

Come Together, Right Now/Over Me, Over You, Over Us

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When Corporatization Comes to College, Faculty Unionization Must Follow

In the wake of a U.S. presidential election that will send Donald J. Trump, besmircher of the New York skyline and riverfront, to Washington D.C., I hope I can be forgiven for waxing nostalgic over a different “flat top” with “joo joo eyeballs”—one who, unlike the current orangey combed-over bogey, imagined himself in a funky self-parody “grooving up slowly.” In a 1972 New York performance of the song recorded a day after the first moonwalk in July 1969,¹ John Lennon flirted with his audience and quite possibly his wife: “Come Together, Right Now/ Over Me, Over You, Over There” as he turned and the camera cut to Yoko Ono on keyboard. How about Over Us?

How It All Started at Barnard College

Many of us become contingent faculty by default. The corporatization of universities and even small, elite liberal arts colleges like Barnard has meant not the outsourcing that has plagued industrial labor, but rather a reversal of the seesaw of majority tenure to minority contingent faculty.² Indeed, at Barnard College today there are at least three departments whose faculties are entirely nontenured, including architecture, music (aside from affiliated Columbia faculty), and Slavic.

On July 1, 2008, Debora L. Spar, formerly of Harvard Business School, on the board of Goldman Sachs, and now a trustee of the Howard Hughes Medical School, became the seventh president of Barnard College. My two percent cost-of-living increase was turned off. I received requests to chip in for the cost of the tea I drink. My “Welcome back, faculty member” appointment letters changed to “Welcome back, part-time faculty member.” The word “adjunct” began to appear in front of my title, lecturer, and later—with no forewarning—I, along with almost all my peers, was demoted on my Barnard English department faculty homepage. Then we stopped receiving appointment letters or forms at all. After double-digit years of service to the College, there was no longer anything in writing that stated I worked there or what my salary might be. But that was after I was significantly underpaid for a course in Spring 2013. A year later, in Spring 2014, I was informed that after twelve consecutive years of teaching in the first-year seminar program, my department’s recommendation to reappoint me had been “refused.” As one of my long-term colleagues put it, “If they can do this to you, they can do anything to any of us.”

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We unionized. It started in the English department with a few informal meetings, continued with tentative visits to colleagues in other departments, more meetings in small groups over coffee, and soon it was clear there was a critical mass aggrieved by the conditions of our employment and prepared to come together to do something about it. With thirty-one of us willing to put our names on a public tear-off sheet, we embarked on a petition card drive over the last weeks of the spring 2015 semester. From there, we delivered our petition with a supermajority of approximately 260 proposed members to the local National Labor Relations Board (NLRB) office at 26 Federal Plaza on a beautiful sunny June day.



Fig 1. Barnard Contingent Faculty-UAW Local 2110 file their petition with the NLRB at 26 Federal Plaza on June 11, 2015. Credit: BCF-UAW Local 2110.



Fig 2. Demonstration outside of the Plaza Hotel, where Barnard held its annual fundraising gala. May 4, 2016. Credit: Rachel Bernstein, *Columbia Daily Spectator*.

During the NLRB hearings, petty assertions of rank were the order of the day. The administration, quite probably at its lawyer's suggestion, coined a new category, "reviewed and renewable faculty," in order to distinguish nontenured faculty, who receive multiyear appointments and potential promotion, from the lowly contingent faculty (or as some prefer to refer to us, as though spitting the phrase through their teeth, "these adjuncts"), and the full-time term professors, whom the administration had created to take up the excess teaching load that had resulted from a shrinkage of tenured positions on the one hand, and Spar's gift of a reduction of teaching load from 3-2 to 2-2 to tenured faculty, on the other. Someone has to teach the courses the students and their families are paying so handsomely for.

The Thursday before our scheduled NLRB hearing, the Barnard contingent faculty-UAW organizing committee received an e-mail from all eight non-visiting and nonadjunct professors of professional practice:

As Professors of Professional Practice who teach full-time at Barnard College we do not support the inclusion of our ranks in the petition for a union election filed by some members of the Barnard faculty with the National Labor Relations Board.

While we support the Adjunct Faculty's right to organize, we believe that the line of Professor Professional of Practice would not be served by this union, and would in fact diminish the individuality of our position at the College.

The signatories of this letter represent all current Professors of Professional Practice at Barnard College.³

Though it took the College's first "union avoidance" law firm, Morgan, Brown & Joy LLP, a little longer to infiltrate and saturate the "reviewed and renewables," a majority of the full-time associates, senior associates, lecturers, and senior lecturers presented a petition they signed with the Professors of Professional Practice, or POPPs, not only to us but also to the NLRB on the second day of the hearings: "We ... respectfully demand to be withdrawn from the petition filed by the United Auto Workers 2110 with the National Labor Relations Board on behalf of Barnard Contingent Faculty."⁴

The evening before both sides were to present closing briefs on July 16, 2015, the POPPs and reviewed and renewables sent out an e-mail, which concluded:

Finally, we urge you to visit our website:

www.barnardfulltimenontenureline.com. On the site you will find accurate and honest information on the situation. You will also discover our response to the false information that is being circulated. We welcome your comments, either through the website or directly to our email: notcontingent@gmail.com.

The antiunion website was only recently taken down, though some of its content is memorialized in a lurid August 6, 2015, article on *The College Fix*, which features a cartoon visual of two suit-and-tied union goons collaring an unprepossessing-looking faculty member with the headline “Better-paid members mean higher dues for the UAW.”⁵

In the event, we gave up the POPPs and other reviewed and renewables in exchange for a neutrality agreement from Debora Spar on behalf of the College. On October 2, 2015, we won the right to collectively bargain on behalf of part-time and nonladder full-time teaching faculty, except for the POPPs and other reviewed and renewables, with 91.2 percent voting in favor of the union. However, in the bargaining process for our first contract we have not received the collegiality from the administration we had hoped for.

After electing a bargaining committee on November 3, 2015, we requested a meeting with the Barnard administration. It was not until February 19, 2016, three and a half months later, that we were granted our first bargaining session. Delay, of course, is a well-known tactic. At the table, Barnard had exchanged its first “union avoidance” firm for Jackson Lewis, the firm that wrote the union-busting playbook.⁶ Jackson Lewis partner Michael Bertoncini has strong-armed management’s right-to-work position and behaves toward us in a manner that caused one member of the bargaining committee to burst into tears after he and the rest of management’s “team” left the room.



Fig 3. Public shaming on Facebook of the Barnard administration’s union-busting tactics, in a meme created by bargaining committee member Sonam Singh, posted to <https://www.facebook.com/bcfuaw/> (accessed January 19, 2017) on May 2, 2016.

As I write this now, fourteen months after we won the right to form a union, we are far apart on basic clauses like union security, job security, wages, and health benefits, among others. The part-time majority of our bargaining unit is the only category of employee at Barnard—unlike administrators, tenured and off-ladder full-time faculty, support staff, security management, dining hall workers, janitorial staff—who have no health insurance coverage whatsoever. Management’s positions would erode our membership, divide it against itself, and put us on eggshells around a whimsical administration that continues to assert through Jackson Lewis that it must have “discretion” in making decisions and “flexibility” in exercising its prerogatives. In the face of the administration’s broad and deep needs, those of the contingent faculty do not matter.

From Yeshiva to Pacific Lutheran, We Must All Come Together: Contingent Faculty Will Lead the Way for Tenured Faculty

Different tribunals, sets of statutes, and case law guide faculty in the public versus the private sector who wish to collectively bargain: the Public Employees Review Board (PERB) in New York State, for instance, versus the National Labor Relations Board (NLRB). The *bête noire* of private faculty organizing is a 1980 Supreme Court case, *NLRB v. Yeshiva University*, 444 U.S. 672, which prohibited unions in private institutions on the grounds that faculty who share governance are “managerial” or “supervisory” and their interests are therefore not separable from those of the institution.

There are now 1.6 or 1.7 million faculty organized in collective bargaining units across the country, including graduate students. The percentage at private not-for-profit institutions like Barnard comprises only five to six percent of that figure. Such has been the force of the *Yeshiva* decision. But how much shared governance do tenured faculty at private colleges and universities have?

The problem is that tenure has been eroded by degrees, and this has been true for some time.⁷ In June/July 1994 Bennington College terminated twenty-seven faculty, “roughly two-thirds [of whom] had presumptive tenure,” “suspended all existing governance practices and procedures of the faculty,”⁸ and proceeded to a major restructuring that outsourced all language instruction and the teaching of musical instruments, limited literature faculty to those actively publishing “fiction, nonfiction, poetry, and drama addressed to the public at large,” eliminated politics, economics, and sociology as separate disciplines, and eliminated art history and architecture as constituted theretofore.⁹

More recently, under Republican Governor Scott Walker, the dismantling of tenure at the University of Wisconsin began with a \$300 million budget cut in January 2015, followed in May 2015 by an elimination of tenure by the state legislature’s joint finance committee, followed by a March 2016 announcement by the board of regents that there was a need for “flexibility” to eliminate programs and tenured faculty associated with them in order to close budget gaps.

In the private sector, two tenured faculty members at New York University’s School of Medicine, Marie Monaco and Herbert Samuels, have had their salaries slashed, by forty percent over five years in Dr. Monaco’s case, after NYU’s failure to protect their laboratories against Superstorm Sandy—Dr. Monaco lost all 1200 of her biomedical samples—resulted in cuts to their external funding. The researchers sued NYU unsuccessfully in New York State Supreme Court (*Matter of Monaco v. New York University*, 2015 N.Y. Misc. LEXIS 2429 [Sup. Ct. N.Y. County July 14, 2015]), and they have now taken their case to the Court of Appeals for the First Department in New York, where they had oral argument on November 17, 2016,¹⁰ and have just received a decision in their favor.¹¹ Meanwhile, the AAUP has sanctioned the College of Saint Rose for cutting academic programs and twenty-three faculty members, about half of them tenured, again pleading financial exigencies.¹² In an even crueler turn of events, tenured faculty at Notre Dame de

Namur University in California were permitted by administration to join part-time colleagues in their union, affiliated with the Service Employees International Union (SEIU),¹³ only to have the administration turn around a few months later “to terminate bachelor’s degree programs in philosophy, theater arts and English, along with the French, dance and theater arts minors.”¹⁴

Another reality is that, rather than sharing governance with administration, department chairs and other tenured faculty instead deliver and implement administration directives. During the lead-up to our union’s petition card drive, I repeatedly heard complaints from managerial faculty who wanted to do more for the contingent faculty under their direction but could not persuade the administration to consent, whether to fairer financial compensation or improved job stability. Recently, the BCF-UAW bargaining committee learned that when, at a mid-October 2016 meeting, Provost Linda Bell directed department chairs to prepare to replace us in the event of a strike, a single department chair stood up and publically objected. “I cannot believe you would ask us to do that,” this lone champion of solidarity is reported to have declared.

In light of the above, the *Yeshiva* decision purveys untruths: “The faculty’s professional interests—as applied to governance at a university like *Yeshiva*—cannot be separated from those of the institution.” Indeed, the faculty’s interests, and the students’ interests, *need to be* separated, *must be* separated from those of the institution and its thickening layer of top-heavy administrators and helicopter boards of trustees. In the face of corporatization, the faculty needs to function as a check and balance on the administration. It has at Barnard in one case, during the attempt by the administration to reduce library holdings by twenty percent.¹⁵ However, one could argue that it was the pressure of public opinion, not the faculty, which ultimately saved 40,000 books.¹⁶

On December 16, 2014, the NLRB issued a red-letter decision in the case of Pacific Lutheran University, Employer and Service Employees International Union, Local 925, Petitioner, Case 19-RC-102521, 2013 NLRB LEXIS 635 (2013). The case decided two sets of criteria that make it possible for faculty, even tenured faculty, at private colleges and universities to collectively bargain: If the institution has a religious mission, it must hold out faculty as performing a religious function if they are to be excluded from NLRB coverage; and secondly, criteria for a managerial or supervisory exclusion from the NLRB receives a more precise five-part consideration involving decisions about (1) academic programs, (2) enrollment management policies, (3) finances, (4) academic policies, and (5) personnel policies and decisions, with greater emphasis placed on the first three. So far, however, there have been more losses than gains when unions have tried to use Pacific Lutheran to expand the slender margin of private faculty protected by collective bargaining agreements.¹⁷

Yet, if PERB and its counterparts outside New York State have made it possible for heterogeneous faculties to come together for the purposes of

collective bargaining, including the full gamut of faculty categories: tenure, full-time contingent, part-time contingent, graduate students, and so forth, is there any real reason it could not happen at private colleges and universities? As my one-time contingent faculty colleague at Barnard, and graduate assistant in sociology/chapter chair of the Graduate Center for the Public Service Congress-City University of New York (PSC-CUNY), Luke Elliott-Negri, puts it: “I’d rather be in an industrial [versus craft] model union. It’s smarter to have as many workers as possible to negotiate with management. The tensions are real. But I’d rather deal with our differences internally.”¹⁸

That’s my vision for the future.

Come Together, Right Now

As I turn this piece over to *ILWCH* for publication, Barnard Contingent Faculty-UAW Local 2110 has been authorized, by eighty-nine percent who voted, to strike if necessary, in the wake of which we have just received phone calls and e-mails from our department chairs and program directors demanding grade books and details about our plans in the event of a strike, which may prompt us to an additional unfair labor practice charge. Can we hope the administration will cease these acts of intimidation? Can we hope it will finally come to the bargaining table in good faith so we won’t have to use that strike authorization?

Will the tenured faculty at Barnard, including department chairs and program directors, recognize that we share a greater community of interest than any of us shares with the administration, and finally support us? Would they consider, eventually, joining us?

Time will tell, but that orangey flat-top bogey is not grooving up slowly.

NOTES

1. “John Lennon—Come Together. Live Performance of John Lennon.” <https://www.youtube.com/watch?v=uSM5MpKSnqE> (accessed November 20, 2016)
2. One source estimates that it was between 1995, when I was in my first to second year of an M.A./Ph.D. program at Columbia, and 2007, five years after I finished, that “contingent faculty came to outnumber tenured faculty.” Michael Klein, *Declaring an End to “Financial Exigency”?: Changes in Higher Education Law, Labor, and Finance, 1971–2011*, 272. Quoted in *Pacific Lutheran University, Employer and Service Employees International Union, Local 925, Petitioner*, Case 19-RC-102521, 2013 NLRB LEXIS 635 (2013), 20, fn. 43.
3. E-mail to “Dear BCF-UAW Organizing Committee,” June 18, 2015.
4. Petition filed with the NLRB, June 23, 2015.
5. Madison Iszler, “DEFEATED: Union organizers lose bid to represent women’s college professors against their will,” *The College Fix*, August 6, 2015: <http://www.thecollegefix.com/post/23672/> (accessed January 19, 2017).
6. See John Logan, “The Union Avoidance Industry in the United States,” *British Journal of Industrial Relations* 44 (2006): 651–75. Logan describes Jackson Lewis as Exhibit A for union-avoidance law firms. Operating since the 1970s, and by 2006 having “23 offices throughout the country” (659), Jackson Lewis has published newsletters, papers, and a handbook in its fourth edition, *Winning NLRB Elections*. Jackson Lewis runs union-avoidance seminars and its “militant anti-union rhetoric” casts union organizers as “a ‘contagious disease’” (659).

7. See the American Association of University Professors (AAUP), "Academic Freedom and Tenure: Bennington College," *ACADEME* 81 (1995): 91–103.
8. *Ibid.*, 91–92.
9. *Ibid.*, 95–96.
10. Marie Monaco, telephone interview with the author, November 13, 2016.
11. <http://law.justia.com/cases/new-york/appellate-division-first-department/2016/2501-100738-14.html> (accessed January 19, 2017).
12. Colleen Flaherty, "Shedding Faculty at Saint Rose," *Inside Higher Ed*, May 4, 2016: <https://www.insidehighered.com/news/2016/05/04/aaup-report-condemns-college-saint-rose-cutting-more-20-tenure-line-faculty> (accessed January 19, 2017).
13. Malini Cadambi Daniel, telephone interview with the author, November 23, 2016.
14. Colleen Flaherty, "Cuts Questioned at Notre Dame de Namur," *Inside Higher Ed*, August 26, 2016: <https://www.insidehighered.com/news/2016/08/26/notre-dame-de-namur-professors-protest-academic-cuts-flowing-program-prioritization> (accessed January 19, 2017).
15. Emma Goss, "Barnard faculty frustrated by plans to remove 40,000 books from library," *Columbia Daily Spectator*, December 8, 2014: <http://spc.columbiaspectator.com/news/2014/12/08/barnard-faculty-frustrated-plans-remove-40000-books-library> (accessed January 19, 2017).
16. Emma Goss and J. Clara Chan, "After faculty backlash, Barnard changes course for Teaching and Learning Center," *Columbia Daily Spectator*, February 3, 2015: <http://features.columbiaspectator.com/news/2015/02/03/barnard-changes-library-plan> (accessed January 19, 2017).
17. See Colleen Flaherty, "Failing the Test for Faculty Unions," *Inside Higher Ed*, January 21, 2016: <https://www.insidehighered.com/news/2016/01/21/proposed-faculty-union-carroll-college-first-be-rejected-under-new-guidelines> (accessed January 19, 2017); Colleen Flaherty, "NLRB Rejects Tufts Medical Faculty Union Bid," *Inside Higher Ed*, April 6, 2016: <https://www.insidehighered.com/quicktakes/2016/04/06/nlr-rejects-tufts-medical-faculty-union-bid> (accessed January 19, 2017); Colleen Flaherty, "NLRB Rejects Full-Time Faculty Union Bid at Marywood U," *Inside Higher Ed*, May 13, 2016: <https://www.insidehighered.com/quicktakes/2016/05/13/nlr-rejects-full-time-faculty-union-bid-marywood-u> (accessed January 19, 2017).
18. Luke Elliott-Negri, telephone interview with the author, November 18, 2016.