

UNJUSTIFIED RESTRICTIONS IMPOSED BY  
AMERICAN LABOR LAW ON FACULTY UNIONIZATION  
IN PRIVATE HIGHER EDUCATIONAL INSTITUTIONS

*Chiao, Cing-kae*

Abstract

Faculty unionization in the private higher educational institutions has become a hotly debated labor law issue in the United States in recent years. Due to the unique structure of these institutions, faculty members have gradually assumed various governance functions through their professional expertise. However, the status of these members in term of their right to organize and to bargain collectively with their employers under the National Labor Relations Act (NLRA) is far from clear. Both the U.S. Supreme Court and the National Labor Relations Board (NLRB) have tried to unravel this sticky problem, but their decisions in this regard only raised more troublesome questions.

The purpose of this paper is to make an in-depth examination of several U.S. Supreme Court decisions and NLRB orders which have imposed unjustified restrictions on faculty members' right to organize and to engage in collective bargaining with their employers in the private higher educational institutions. Aside from introduction and conclusion, the main contents of this paper is divided into three parts. Section one describes the relationship between the NLRB and several categories of non-rank-and-file employees, such as these perform supervisory, professional or managerial functions. Section two analyzes a landmark Supreme Court case -- NLRB v. Yashiva University and two subsequent NLRB orders which have ruled that faculty members who had operated under a system of self-governance and thus achieved some degree of

autonomy in defining their jobs were not employees under the NLRB. In the third section, this paper points out that the decisions of the Court and the NLRB are solely based on an adversarial model of employee-employer relations which is a prerequisite for collective bargaining under current American labor law since the establishment of a collective bargaining model that promotes cooperation is strongly advocated by industrial relations experts in recent years, these ruling are disturbing indeed and need to be revoked as soon as possible.