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What's Behind Unions' Higher Ed Organizing Boom

By **Braden Campbell**

Law360 (November 23, 2020, 4:42 PM EST) -- Legal changes and job security concerns have ignited an organizing explosion among non-tenure college professors and graduate student workers, swelling organized labor's ranks in higher education by tens of thousands over the last several years, new research shows.

The Nov. 15 report by the National Center for the Study of Collective Bargaining in Higher Education and the Professions at Hunter College found unions organized more than 36,000 mostly non-tenure "contingent" faculty members and other professionals at dozens of colleges between 2013 and 2019. That same period saw unions stake out a new segment, organizing nearly 20,000 undergraduate and graduate student workers at private schools.

The student organizing boom has come following the National Labor Relations Board's ruling that **these workers are "employees"** under federal labor law, which the Trump administration is poised to undo. Adjunct professors have flocked to unions for a different reason, report co-author William A. Herbert said: Insecurity.

"In many ways what's gone on in higher education is similar to what's going on in other institutions, which has been the elimination of the idea of having long-term job security in employment," Herbert said. "There's a crisis of job security in the U.S., and contingent faculty are a perfect example of that crisis."

Here, Law360 explores the dynamics of this red-hot sector for unions.

Adjunct Unions Explode

Herbert and co-authors Jacob Apkarian and Joseph van der Naald charted a dramatic rise in the number of unionized college faculty members over the study period, with the vast majority of new unions arising among non-tenure, part-time and adjunct professors, who work term to term.

Faculty at public schools formed 50 new bargaining units comprising more than 20,000 workers, while faculty at private non-profit institutions formed 65 units made up of just under 16,000 workers. The overwhelming majority of the new private-sector units include only non-tenure faculty, compared to about half the new units at public schools.

These figures amount to a relatively small uptick in union density at public schools, where more than 300,000 faculty members were already in unions prior to 2013. But they represent a massive rise at private colleges, where there were about 26,000 unionized faculty members prior to 2013.

This rise in unionization among more precarious faculty comes as colleges have increasingly relied on part-timers and adjuncts, Herbert said. In 1969, tenure-track faculty made up close to 80 percent of the workforce, he said. Now the majority are contingent faculty, who lack long-term job security, he said.

Nicholas DiGiovanni, a partner at Morgan Brown & Joy who advises higher education institutions on collective bargaining, said it's not surprising that non-tenure professors have organized in large numbers in recent years.

"They are not paid handsomely, let's put it that way, and very rarely have any benefits or job security of any consequence, so it was a very ripe group for one union or another to target and they did a great job of that," Giovanni said.

That union has been the Service Employees International Union in both the public and private sector, the Hunter College report found. The union organized more than 14,000 of the new faculty unit members at private colleges, and more than 9,300 at public schools.

SEIU-represented workers recently ratified their first contract at Miami Dade College in Florida, where adjunct professor Stacy Wadle teaches communications and business courses. Wadle, a member of the organizing committee, said her colleagues launched their union drive about four years ago to have a greater say in their working conditions.

"A lot of times we work kind of in the dark," she said. "We get called for a class, we go in, we teach, we leave. There's not a lot of support for us."

The new contract provides members more security, upping their salaries and requiring the school pay out when it cancels a class at the last minute for low enrollment or other reasons, Wadle said.

Some non-union schools have proactively raised job conditions for non-tenure faculty in recent years to ward off union drives, DiGiovanni said. But the broader trend is likely to continue during and after a pandemic that has exacerbated the conditions that have driven the surge, he said.

"It may continue at a more rapid pace," he said.

Grad Students Blaze a Trail

The last several years have also seen unions begin to organize a new group in higher ed: Undergraduate and graduate student unions at private colleges and universities.

While many public-school student workers have long been able to unionize, and tens of thousands have, their private-school colleagues only gained this right in 2016. That August, the National Labor Relations Board said student workers are union-eligible "employees" under the National Labor Relations Act, reversing precedent that had blocked them from organizing.

By the end of 2019, more than 15,000 student workers at 11 private schools were members of newly-formed units, the report found. Student workers aren't in as precarious a spot as adjunct faculty, so other factors are driving this trend, DiGiovanni said.

"I do think their issues differ a bit from other employees, at least regarding some matters," DiGiovanni said. Securing better pay is "always in play," but other issues include sexual harassment, treatment by faculty supervisors, mental health and the desire to advance social justice issues in school policies, he said.

While the organizing trend among non-tenure professors is likely to continue, the surge among graduate students has a shelf life because the NLRB is readying a rule that would block student workers from unionizing. The agency proposed a rule last year declaring that students are not union-eligible employees because their relationship to their schools is primarily educational, and could finalize its regulation at any time.

The rule would not nullify existing contracts until they expire, nor would it stop students from banding together to make demands. But as long as the rule is on the books, the NLRB would not be able to help if schools retaliate against students or refuse to meet them at the bargaining table.

President-elect Joe Biden's appointees to the NLRB are likely to rescind the rule, but until they do, student workers will not have a formal path to unionizing. (President Trump has refused to concede and is fighting the outcome in court, and experts believe these are longshot challenges.)

"There may be more of an effort to use voluntary recognition as a process that can be negotiated with the employer to avoid going to the NLRB," Herbert said.

--Editing by Leah Bennett.

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