

Faculty Unionization: What Difference Does It Make?

A Submission from Robert Hackett, PhD, with Ashley Pullman

CUFA BC's 20 Questions for 2020 Project

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Introduction

One of the reasons I originally agreed to run for President of your faculty association was actively to explore more effective ways of representing faculty interests in university decision-making and resource allocation.

In particular, I wanted to find out more about the pros and cons of certifying as a trade union under BC's Labour Code. There must be some reason, I thought, why a reported 79% of our colleagues across Canada had unionized by 2004 (Dobbie and Robinson 2008: 131) – a rather high figure, especially considering that in Alberta, provincial law precludes formal unionization. (To my astonishment, contrary to the blue-collar, lunch bucket image of unions, the most highly unionized sector of the Canadian economy is evidently none other than higher education!) (Dobbie and Robinson 2008: 132).

My methods and sources have ranged from the informal (conversations with colleagues at other universities and the Canadian Association of University Teachers [CAUT]) to the formal – a review of the legal processes and costs/benefits of certification by SFUFA Executive Director Doug Dorward, and a preliminary review of the academic literature on the impact of unionization by Canadian faculty, conducted by SFU Communication and Sociology student Ashley Pullman, to whom I am grateful. I also want to thank SFU labour historian Mark Leier for his advice, and Professors Elizabeth Hodgson and Wayne Peters, who spoke to our Spring General Meeting about their experiences of certification at UBC and the University of Prince Edward Island respectively. (Their talk and the subsequent discussion is posted on the SFUFA website.)

This research is still very much work in progress. But here, I offer some initial thoughts on points and themes – some of them surprising – that have stood out in my mind. (While this is not a peer-reviewed academic paper, I provide references for interested readers.)

Governance

Faculty unionization has shifted power and authority relationships in Canadian universities. Consider due process and tenure – the institutional underpinnings of academic freedom. We often take these for granted as norms in Canadian universities. But they were not gifts from benevolent administrations or governments; rather, collective bargaining was instrumental in achieving them (Savage 1994).

More generally, areas of university policy that had once been decided by administration or governing boards became subject to collective bargaining, and administrations have had to cede some of their erstwhile control and authority to faculty (Tudiver 1999). Unionization paralleled faculty involvement in more traditional avenues of governance. For example, the proportion of Canadian university governing boards with faculty representation increased from 9% in 1955, to 92% by 1975 (Jones, Shanahan and Goyan, 2001).

Some observers feel that faculty unions have unduly weakened administrations, boards or senates, on the one hand, and grass-roots participation, on the other. Roland Penner (1994: 52) at the University of Manitoba, argued that "creeping legalism" is the greatest potential drawback to democracy in the academic workplace, as "...the availability of legal remedies in the collective agreement and the fiscal ability of the faculty association to take grievances through to arbitration, often at great cost, leads the membership to rely more and more on the association's paid staff and its lawyers and less and less on grass-roots grievance committees."

Other observers, to the contrary, see unions as the best guarantor of genuinely collegial governance. The CAUT's executive director argues that while they are irreplaceable, most university senates "fail to reflect the voice of academic staff"; instead, unionization and collective bargaining have become the most effective means by which academic staff can "sit down as equals with the administration to shape the nature of their university" (Turk 2008: 302). Penner himself argues that based on his experience, "creeping legalism" can be avoided; collective agreements that safeguard against unilateral and adverse policy changes by the administration and board, are perfectly compatible with maintaining and strengthening "an active and democratically managed faculty association". Penner implies that there is a big difference between "creeping legalism" and fair policies entrenched in collective agreements, policies that are applied equally and can militate against favouritism and special treatment.

At the same time, faculty unions are far from all-powerful, and much depends on their political will. Unions of full-time tenured faculty have been unable or unwilling to reverse the trend towards the casualization – the greater reliance on short term contract workers – of academic labour in Canada (Dobbie & Robinson 2008), or for that matter, the shift of university resources towards a growing administrative stratum.

Support for the Union

Amongst faculty members, who would you guess are the strongest supporters of unionization? A 1987 survey found that professors with working-class fathers; junior faculty and sessionals; professors with fewer publications and lower income; women; Quebecois; professors in liberal arts and in mainly comprehensive and undergraduate (as distinct from doctoral/professional) universities, were more supportive than their colleagues outside these groups. Interestingly, however, the strongest predictor of support was whether the faculty members' association was already unionized (Nakhaie and Brym 1999). I've asked colleagues familiar with collective bargaining at Canadian universities whether any faculty unions have voted to decertify and return to non-union status. Nobody is aware of a single instance, even though that process is as easy as certifying in the first place.

Salaries

How does unionization affect faculty earnings? The evidence is mixed, but probably certification would not greatly to enlarge the aggregate pot of money available for faculty salaries. That's probably especially true in British Columbia, where our bargaining is constrained by the Public Sector Employers' Council. A study of Ontario universities compared the salary impact of four types of faculty associations. Non-unionized associations with "special plans" without the right to strike and where the university's governing board could reject settlements, were below average; "special plans" with binding third-party arbitration were above average; unions, surprisingly, were similar to informal, statusless faculty associations (Martinello 2007). By contrast, Hosios and Siow (2004) found that unions have a small positive effect on faculty earnings, and a national study found that unions boosted salaries by 2-3%, compared to non-unionized faculty (Ress, Kumar and Fisher 1995).

More clearly, the research does suggest that unions can effectively redistribute earnings across disciplines and ranks, with some evidence that unionized universities have reduced the associate/full professor differential compared to non-union Ontario universities (Martinello 2007). Unionization has also tended towards a seniority rather than merit or productivity-based salary structure (Clark 2003). Whether that is a good thing or not is a matter of perspective. Some researchers argue that union-negotiated salary scales have a negative effect on research output (Hosios and Siow 2004). On the other hand, here at SFU, some of our members are equally critical of the merit/productivity salary structure, on a number of grounds: It punishes faculty for "life issues" beyond their control, such as maternity or illness; biennial salary reviews take up a lot of Tenure & Promotion

Committee time; their outcomes are shaped as much by TPC composition or shifting standards as by 'merit' in the abstract. Some argue that it may be desirable to separate the evaluation of merit/productivity, from annual salary increases.

Relations with Administrations

Some SFUFA members have expressed concern that certification could render our relationship with the administration more adversarial. There seems to be little published evidence addressing that question. The best sense from informal discussions is that the relationship may become more formalized, more subject to rules and regulations (Ponak, Thompson and Zerbe 1992) – but not necessarily either more collaborative or adversarial. That question seems to hinge rather, on other exogenous and idiosyncratic factors – such as specific personalities, issues, and institutional histories.

Others fear that certification will ultimately mean going on strike and losing income. Again, that is far from necessarily the case. Provincial labour law requires majority support through a secret ballot before any such action can be taken. About 95% of collective agreements are reached without strikes or lockouts. Some faculty unions, like UBC, have even waived the right to strike in favour of binding arbitration – even though many in the labour movement consider the right to strike an essential aspect of freedom of association and the right to bargain collectively. Again, whether such a concession is advisable is a matter of perspective; it minimizes the already low likelihood of potential disruption, but also sacrifices increased bargaining power.

Equity

Collective agreements can be an effective vehicle to support rights and benefits for equity-seeking groups. Those groups can benefit from negotiated clauses on such issues as gender-neutral language; non-discrimination; sexual harassment; affirmative action and employment equity; family-related leaves; child care; technological change; and part-time workers' rights. One Canadian study (Akyeampong 2005) notes that "Growing demands for fairness and equity...have been a driving factor in collective bargaining...Employment and pay equity provisions were more likely to appear in settlements in heavily unionized" economic sectors.

But there is no automatic relationship between certification and equity improvements. Summaries of relevant research by Linda Brisk (2005) suggest that exogenous factors, such as strong pay equity and anti-discrimination legislation, play a role. So too, does the

willingness and ability of unions themselves to develop more inclusive and less discriminatory cultures and structures.

What are Faculty Unions For?

The above considerations suggest that economic issues may not be the only driver or benefit of certification. Other issues – governance, rights, equity – may be equally or more important. There is research support for this view. A survey of Canadian faculty association leaders in the 1990s found that while “negotiating salaries and benefits for your membership” had the highest mean rating, this was followed closely by “assisting individuals with grievances related to the policies of your university” and “influencing the policies of your university which relate to the interests of your membership” (Anderson and Jones 1998). A broader survey of Canadian faculty members' bargaining goals found overwhelming support for the goals of grievance and layoff procedures, as well as salaries and benefits (Ponak, Thompson and Zerbe 1992); there was much less support at that time for negotiating over evaluation of teaching, office and research facilities and size of the student body.

How Would Certification Change SFUFA?

SFUFA already has many characteristics of a faculty union, more so than many other nonunionized associations in Canada. We have a Framework Agreement that functions much like a collective agreement. It covers various aspects of our rights as employees. It identifies a range of specified University policies – “negotiated policies” – that can only be changed with SFUFA's consent.

So what would change if SFUFA members voted to certify? Nobody can predict *all* the consequences. How much of our current existing Framework Agreement would be carried forward into the new legal rubric, how it would affect the costs and workload of running the Association, how it would impact upon relations with the Administration or within our membership – these are contingencies that are affected by such factors as negotiating skill, democratic decisions by the membership on strategic priorities, and the degree of goodwill and intelligence on all sides.

But we can specify some important changes in the legal framework.

Membership Rights

First, it would enhance the democratic rights of our members vis-à-vis the Association itself. Once certified, members have the right to be fairly represented by the association – a right that can be upheld through processes at the Labour Relations Board. We already hold SFUFA to the high standards expected of unions, and currently, we could be taken to court for breaching the standards expected under the common law Duty of Fair Representation. Under the Labour Relations code, however, dissatisfied members have recourse through the Labour Relations Board, rather than to the courts, whose judges are less experienced in dealing with labour matters. This makes it more feasible for members to pursue complaints against their union, since costs are minimal, particularly if the member does not hire counsel (which is not required before the LRB).

Comprehensive Agreement

Second, the Labour Relations Code specifies that certain issues have to be included in collective agreements, and that others must be included if one of the parties so requests. This would provide an opportunity to expand the list of “negotiated policies,” a list that has not changed since 1998. Under certification, these policies would be included in the collective agreement, one that could not be unilaterally changed by the employer. Moreover, these policies would be negotiated as part of the same process and document as salaries and benefits. This would give our negotiators vastly greater opportunity, during tough economic times, to focus on rights, procedures and non-monetary benefits, rather than salaries, and to make advantageous trade-offs between them. Currently, we do not have that option.

Bargaining our first collective agreement would also give us the opportunity to eliminate some gaps in our current policies (e.g. financial exigency procedures). We could also re-negotiate other policies that our members might like to see changed (for example, the Faculty Code of Ethics, which currently has no enforcement mechanism).

Cost-effective Redress

Third, access to the Labour Relations Board, available only to certified associations, provides a much more effective mechanism for seeking redress to violations of the collective agreement, and to defend individual members who have filed grievances. The Labour Relations Code regulates the relationship between unions and employers. It clarifies some questions that are left outstanding with our Framework Agreement. For

example, if we wish to appeal an arbitration decision, our only recourse currently is to pursue judicial review of that decision, potentially at great expense. Under the Labour Code, appeals of many arbitration decisions are to the LRB where there is a better understanding of labour issues, and a set of precedents that could arguably make outcomes more predictable. For most matters, going to the LRB constitutes a more expeditious and cost-effective solution than do courts.

In sum, I am convinced that neither the fondest hopes of certification supporters, nor the worst fears of its opponents, are likely to be realized. Certification should be understood as providing a set of legal tools, a new legal framework that is not without risk, but that potentially enables faculty to pursue a range of goals more effectively. There is no guarantee that those tools would be used to maximum advantage; much would depend on the political will and strategic choices made by our association – ultimately, our members. The question of certification is one that should be approached with pragmatism, adequate information, collegial discussion, and an open mind.

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Bio

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