

# Book Review

*Unionization in the Academy: Visions and Realities*  
Judith Wagner DeCew  
(Rowman Littlefield Publishers, Inc., 2003, 238 pp., \$26.95)

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*Unionization in the Academy: Visions and Realities*, by Judith Wagner DeCew,<sup>1</sup> is an interesting look at the issues surrounding academic unions in institutions of higher education. The book is divided into two distinct parts. The first part, labeled “Commentary,” provides the reader with an overview of the issues surrounding academic unions and addresses the many distinct sub-issues within the debate over union representation of academic related positions on today’s modern collegiate campuses.

The second part, labeled “Selected Readings,” brings together a series of articles written by other commentators that supplement her commentary in more detail and offer a thoughtful and complete analysis of the particular issues addressed. These articles cover three main areas: faculty unions and academic politics; faculty unions and the legal landscape; and unionization and part-time faculty.

DeCew begins her analysis of academic unions with a survey of the current landscape, summarizing statistics on representation rates among college faculties, identifying the major national unions that represent college faculty members and outlining each of their respective histories and ideologies. She provides an overview of the various faculty views on unionization, contrasting the differences that the type of institution and the institution’s system of governance can have on the faculty’s propensity to unionize. She observes that “faculty unions exist predominantly at public institutions, multicampus schools and two-year colleges but generally not at large top-tier research universities, Ivy League schools, and elite liberal

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1. JUDITH WAGNER DECEW, *UNIONIZATION IN THE ACADEMY: VISIONS AND REALITIES* (2003).

arts colleges.”<sup>2</sup> In fact, based on the most recent data available, as of 1994 ninety-five percent of unionized faculty members were at public institutions.<sup>3</sup>

Attempting to explain this disparity, DeCew notes that other scholars have argued that this is due to the fact that in the elite private institutions, faculty members enjoy high status and have generally acquired various powers including the power to choose new colleagues, to decide if they should be retained, and to determine individual salary increases.<sup>4</sup> As a result they generally do not view the university administration and trustees as their employer in a fashion comparable to those faculty members at lower-tier schools. This view is in stark contrast to the general view of faculty members at large state universities who are concerned that legislatures will retain power over their job conditions, possibly even tenure and academic freedom. Additionally, she opines that “faculty at lower-tier schools in terms of scholarly prestige and financial benefits worry about their salaries and economic benefits” more than their counterparts at elite private universities and view collective bargaining as a strategy for enhancing their terms of work.

According to DeCew, while the liberalism of elite school faculty pushes them toward unionism it is not strong enough to counterbalance their professional status which pushes them away from unionization. She concludes that in light of current unionization statistics and past studies, when the two major factors which would lead to a view in favor of unionism—lower professional status and political ideology—conflict, professional status overrides political ideology in determining faculty support for union representation and collective bargaining.<sup>5</sup> She argues that this explains why we see higher rates of unionization among faculty at lower echelon institutions.

Next, in chapter two, DeCew lays out arguments for and against faculty unions and addresses problems academic unions have in gaining legitimacy. She groups the arguments under four broad headings: (1) arguments concerning collegiality on campus and the extent it is enhanced by unions versus arguments claiming that unionization merely incites and increases adversity; (2) arguments citing the practical effectiveness of unionization versus those that find unions ineffective, harmful, and a liability on campus; (3) arguments about the nature of university and union organizations and whether unions are needed because of a new corporate structure at institutions of higher education versus arguments that unions only cause colleges and universities to become more businesslike; and (4)

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2. *Id.* at 14.

3. *Id.* at 13.

4. *Id.* at 14.

5. *Id.* at 15.

arguments for and against faculty unions based on fundamental academic values.<sup>6</sup> DeCew finds many of these arguments evenly balanced. She imports from other scholars the concepts of pragmatic and moral legitimacy and argues that academic unions' failure to establish moral legitimacy is an obstacle to their general acceptance.

While arguments concerning union effectiveness are found in the context of most debates about unionization, the argument concerning a union's effect on academic values is unique to the question of faculty unionism. DeCew frames this debate as one over moral and ideological concerns about academic freedom and the autonomy it preserves. Academic freedom has been described by one commentator as "who may teach, what may be taught, how it shall be taught, and who may be admitted to study."<sup>7</sup> The arguments focus on whether or not unionization is compatible or incompatible with promoting these values. DeCew argues that the answer to the question of compatibility is fact specific and therefore depends on the situation.

In chapter three, DeCew outlines the legal landscape in which faculty organizing takes place. DeCew examines what she describes as a watershed event in the history of academic unions, the Supreme Court's ruling in *National Labor Relations Board v. Yeshiva University*.<sup>8</sup> In essence, the Supreme Court's 1980 decision in *Yeshiva* held that full time faculty members at Yeshiva University, a private institution, exercised sufficient power over governance and academic matters at that institution to make them managerial employees judicially excluded from coverage under the National Labor Relations Act (NLRA).

In *Yeshiva*, the Yeshiva University Faculty Association ("Union") filed a representation petition with the National Labor Relations Board ("Board"), seeking certification as a bargaining agent for the full-time faculty members of certain schools of Yeshiva University, a private university. The University opposed the petition on the ground that all of its faculty members are managerial or supervisory personnel and hence not employees under the NLRA. The evidence at hearings before the Board's hearing officer showed, *inter alia*, that the faculty members effectively determined its curriculum, grading system, admission and matriculation standards, academic calendars, and course schedules. Also, the overwhelming majority of faculty recommendations as to faculty hiring, tenure, sabbaticals, termination, and promotion were implemented. Despite this evidence, the Board granted the Union's petition and rejected the University's contention that its faculty members were managerial

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6. *Id.* at 31.

7. *Id.* at 38 (quoting Catherine Stimpson, "A Dean's Skepticism about a Graduate Student Union," *THE CHRONICLES OF HIGHER EDUCATION*, May 5, 2000).

8. 444 U.S. 672 (1980).

employees.

After the Union won the election and was certified, the University refused to bargain with it. In subsequent unfair labor practice proceedings, the Board ordered the University to bargain and sought enforcement in the Court of Appeals, which denied the petition. The Second Circuit found that the Board had ignored "the extensive control of Yeshiva's faculty" over academic and personnel decisions as well as its "crucial role . . . in determining other central policies of the institution," and accordingly held that the faculty members are endowed with "managerial status" sufficient to remove them from the Act's coverage.<sup>9</sup>

The Supreme Court affirmed this ruling, finding that due to their decision making power the faculty members were "managerial" employees, exempt from coverage by the NLRA. Since *Yeshiva*, the Board has frequently found faculty at private institutions to have managerial authority, making them ineligible for collective bargaining.

It is worth noting that parts of DeCew's discussion of the *Yeshiva* decision and its implications are at best incomplete and at worst misleading. For example, at one point she notes "the Supreme Court decision in *Yeshiva* criticized the NLRB harshly for failing to make adequate factual findings at the appellate court level."<sup>10</sup> However, since factual findings are not made at the appellate court level it is at best unclear what proposition she is trying to convey and at worst perhaps an indication that she has misread the case. In actuality the Court, noted "[i]nstead of making findings of fact as to *Yeshiva*, the Board referred generally to the record and found no "significan[t]" difference between this faculty and others it had considered."<sup>11</sup> It continued, "[s]ince the Board had made no findings of fact, the court examined the record and related the circumstances in considerable detail."<sup>12</sup> This commentary on the Board's lack of factual determinations in its decision in the underlying representation case has nothing to do with the NLRB's conduct in the appellate court proceedings.

In chapter four, DeCew quantifies the major effects of faculty unionization. Relying extensively on studies by various individuals and particularly one authored by Everett Carl Ladd, Jr. and Seymour Martin Lipset, titled *Professors, Unions and American Higher Education*,<sup>13</sup> she reviews unions' effects on salary and compensation; job security and tenure; faculty governance, academic freedom and autonomy; adversity between faculty and administration; and tensions between faculty and

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9. 582 F.2d 686, 698 (1978).

10. DECEW, *supra* note 1, at 46.

11. *Yeshiva*, 444 U.S. at 678.

12. *Id.* at 679.

13. DECEW, *supra* note 1, at 58 n.2.

students. She concludes, "there is multiple evidence of the adversity that faculty unions bring on campus, both between faculty and administrators and between faculty and students . . . and it is not clear that faculty unions enhance salary and economic benefits as much as they had hoped."<sup>14</sup> Yet there is evidence that even when a union is unsuccessful in some areas, they are often successful in their defense of job security and tenure, due process and grievance procedures, and academic freedom and autonomy.<sup>15</sup> In her view, this helps explain why faculty unions have formed at institutions where faculty members feel they are treated as replaceable and expendable.<sup>16</sup>

DeCew then examines the issues of unionization for specific cadres of employees within institutions of higher education, specifically focusing on unionization among part-time faculty and graduate students. In chapter five, she addresses part-time faculty. She notes that unionization among part-time faculty presents issues somewhat distinct from those of full-time faculty. Part-time faculty members have greater concerns about job security since they are in non-tenure track positions, and often have different concerns regarding compensation and benefits.<sup>17</sup> DeCew addresses these differences and notes that the number of part-time faculty is increasing at a rapid rate. She attributes the increase to the fact that part-time faculty is less expensive and they enhance an institution's ability to shift resources because they are easier to hire and let go.<sup>18</sup> As of 2000, part-time faculty comprised between forty-three and fifty percent of all faculty, depending on definition used.<sup>19</sup> Since "salaries for part time faculty are usually woefully bad"<sup>20</sup> and since part-time faculty are less likely managers or supervisors under the NLRA, part-time faculty is a fertile ground for organizational activities and most likely represents the future battleground for faculty unionization movements at private institutions. DeCew reasons that this is because part time faculty, unlike their full time counterparts, are less likely to be deemed managerial or supervisory employees that do not enjoy organizational rights.

The unionization of graduate student unions has stirred up significant controversy in recent years. This topic is addressed in chapter six. Unfortunately, the legal issues concerning graduate student unions are somewhat clouded by DeCew's analysis. For example, the dichotomy between public universities and private institutions is of vital importance

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14. *Id.* at 71.

15. *Id.*

16. *Id.*

17. *Id.* at 78.

18. *Id.* at 77.

19. *Id.* at 75.

20. *Id.* at 78.

when discussing the precedential effect of court and agency decisions. The relationship between graduate students at public universities and their institution is governed by state law and decisions of state labor relations boards, not the NLRA or the NLRB. Thus, when DeCew writes, “graduate students at the University of Pennsylvania (private) and Pennsylvania State University (public) [are] both governed by the same labor relations board as Temple [University] (public),”<sup>21</sup> this statement is simply false; it is therefore hard to credit her analysis on the issue.

The legal scholarship in the discussion of graduate student unionization is disappointing. For example, at one point in the text, DeCew states that “[t]he regional NLRB director has recently ruled that some graduate students at State University of New York at Albany can unionize.”<sup>22</sup> I find this incredible, as SUNY Albany is clearly a public institution over which the NLRB does not have statutory jurisdiction.<sup>23</sup> In addition, DeCew frequently uses incorrect terms and titles to refer to employees and actions of the National Labor Relations Board. She consistently fails to appropriately indicate what numerical region issued a decision instead using geographical designations she deems appropriate, i.e. “New Jersey NLRB” and does not provide citations to cases and decisions she mentions within her commentary. Misstatements of the precedential value of decisions coupled with the use of ambiguous, confusing and improper terms make following her legal analysis harder than it need be.

Furthermore, while DeCew discussed graduate student unionization in chapter six and the legal context in which private faculty organize in chapter three, she fails to address the interrelated nature of the issues. The emerging issue to be addressed is not the managerial status of faculty as discussed in *Yeshiva*, but whether a determination that graduate students are employees for the purposes of the NLRA makes some members of the faculty supervisors under the NLRA. Since supervisors are not “employees” under the NLRA and cannot organize, the resolution of this issue will surely inform the future debate over private faculty unionization efforts.

In determining what effect a decision that finds that graduate students are employees under the Act may have on the supervisory status of faculty members, it is important to first look to the language of the act. The NLRA clearly defines supervisors as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge,

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21. *Id.* at 94.

22. *Id.* at 95.

23. 29 U.S.C.S. § 152(2) (2003) (“The term employer . . . shall not include the United States or any other wholly owned Government corporation . . .”).

assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.<sup>24</sup>

Besides engaging in one of the above listed supervisory activities under the Act, a supervisor must exercise the authority in his/her independent judgment and in the interest of the employer. It is likely that faculty members with responsibility assigning, evaluating, hiring/admitting, and scheduling graduate students could be found to be supervisors under the Act.

One university has already publicly expressed this position. In a Memo to Provost Alison Richard from Vice President & General Counsel Dorothy K. Robinson, dated December 1, 2000, Robinson informed Richard that “[a]s a result of the NLRB’s new position, [that graduate assistants at New York University are employees under the National Labor Relations Act (NLRA)] *faculty in all likelihood would be considered supervisors* of [graduate students] when those students are teaching or when they have a reasonable expectancy of teaching in the future even if they are not currently doing so.”<sup>25</sup> Ironically, if graduate students at private institutions are granted the right to organize, it might be the end of full-time faculty organization at those same institutions. The intersection between emerging graduate student rulings and the ability of private faculty to unionize is worth noting and should have been addressed in this book.

In chapter seven, DeCew explores the experience of one university, University of Massachusetts at Amherst, in dealing with the unionization of its undergraduate resident advisors. This discussion exemplifies the extrapolation of the student as employee rationale to great lengths under a state law backdrop. In this instance, the Massachusetts Labor Relations Commission found that despite their status as students, the resident advisors were also state employees entitled to bargain collectively under Massachusetts state law. While DeCew opines, “[t]he UMass case now sets a precedent . . .”,<sup>26</sup> this decision is relatively insignificant since under principles of *stare decisis* it is not binding on any other state or the NLRB.

In her conclusion, DeCew again astutely points out the conceptual questions that persist surrounding academic unions. For example, are unions a threat because they conflict with academic values and create adversity? Or, do unions support academic values by creating community

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24. 29 U.S.C.S. § 152(11) (2003).

25. Memorandum from Vice President & General Counsel Dorothy K. Robinson, to Provost Alison Richard (Dec. 1, 2000), available at <http://www.yale.edu/opa/gradschool/robinson.html>.

26. DECEW, *supra* note 1, at 117.

and collegiality? But, like the book itself, the conclusion provides few definitive answers.

DeCew's hesitation to provide definitive answers is understandable due to the differences that exist in every situation and because facts vary from campus to campus. DeCew understandably avoids drawing conclusions that are not universal and instead notes that the answers to these questions are not uniform across different campuses. Even within a particular institution of higher education, individuals' answers differ based on individual and group experiences, and based on reactions and feedback one receives from colleagues and peers. While most will agree with this assessment, given the infrequency of book-length publications on the subject, some may be disappointed because DeCew offers little in the way of new data and is unable to clarify many of the issues surrounding faculty unions.

Following DeCew's commentary are eight selected readings on various topics within the arena of academic unions. These selected readings are reprints of articles by various authors that appeared in other publications, selected by DeCew to supplement her commentary. The most informative and useful article in this section is *Collective Bargaining and the Professoriate: What the Law Says*, by Deborah C. Malamud.<sup>27</sup> This article is useful to inform one's understanding of the legal context in which the organizing of faculty and other academics takes place. Although she contends that the Supreme Court did not interpret the "managerial" exception consistent with the purpose of the NLRA in *Yeshiva*, she nonetheless provides a clear and cogent summary of the law governing private institution faculty collective bargaining and contains a thoughtful analysis of the *Yeshiva* decision, its application to other professionals and its effects on bargaining rights. This article proposes a novel solution to the conflict between protecting employee rights and management interests. She suggests that the court should "work out a compromise" by adapting the protections of the Act to professionals who manage or supervise instead of eliminating them all together.<sup>28</sup>

Taken as a whole, *Unionization in the Academy: Visions and Realities* provides both a basic survey of the issues surrounding the unionization of full-time faculty members and other persons acting in an academic capacity such as adjuncts, lecturers, graduate students, and teaching assistants. *Unionization in the Academy: Visions and Realities* is at its best when DeCew provides the reader with a general overview and highlights the key questions that shape particular issues. She skillfully compiles the work of many researchers from several fields and identifies factors influencing the

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27. This article was reproduced from Deborah C. Malamud, *Collective Bargaining and the Professoriate: What the Law Says*, ACADEME, Nov.-Dec. 1998, at 18-22.

28. DECEW, *supra* note 1, at 196.



debate. She ably summarizes and consolidates the results of the original scholarly research from which she draws, shaping the results into a single work, creating an informative and easy to read resource on the issues surrounding unions in academia. However, she fails to take advantage of an opportunity to engage in original scholarship or to provide an insight into the effects of some of the recent changes she highlights, such as how graduate student unionization will affect the future of academic unions.

Despite its lack of depth, *Unionization in the Academy: Visions and Realities* is a worthwhile contribution to the scholarship on the subject. It presents the reader with a well-balanced picture of the issues surrounding academic unions in institutions of higher education. It outlines academics union's histories, purposes, and the conflicts they have caused and continue to cause. However, it leaves the reader wanting more.