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You've Been with the Professors: An Examination of Higher Education Work Stoppage Data, Past and Present

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YOU'VE BEEN WITH THE PROFESSORS: AN EXAMINATION OF HIGHER EDUCATION WORK STOPPAGE DATA, PAST AND PRESENT

BY WILLIAM A. HERBERT & JACOB APKARIAN*

I. INTRODUCTION

Strikes and strike threats are very powerful tools. As historian Erik Loomis has stated: “Strikes are moments of tremendous power [for labor] precisely because they raise the stakes, bringing private moments of poverty and workplace indignity into the public spotlight.”¹ Strikes are inherently disruptive, substantially impacting the entire community, and can lead to regional and national media coverage because the “media loves a good labor stoppage.”² As Loomis and other scholars have demonstrated, strikes reflect their times and offer many important lessons in labor law, labor and political history, and labor relations.³

Some argue that faculty strikes in higher education can lead to reputational damage to an institution, adversely impacting student enrollment and faculty recruitment.⁴ While certainly possible, notorious scandals involving sexual abuse, admissions, and sports programs, along with college affordability and ideological attacks against higher education, may have a far greater likelihood to cause reputational harm. A study of student support for a faculty strike at York University in 1997 found that the greatest predictor of student support was their viewpoint toward labor rather than the academic or economic costs of the strike.⁵ Indeed, student support for faculty can play an important factor in the outcome of a strike.⁶

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1. ERIK LOOMIS, *A HISTORY OF AMERICA IN TEN STRIKES* 6 (2018).

2. Jon Shelton, *Teacher Strikes May Be More Powerful Now than Ever Before*, WASH. POST (Apr. 4, 2018), <https://www.washingtonpost.com/opinions/teacher-strikes-may-be-more-powerful-now-than-ever-before/2018/04/04/d085bfb6-3767-11e8-acd5-35eac230e514_story.html?utm_term=.2271f8e187ca>.

3. See generally LOOMIS, *supra* note 1; JOSEPH A. MCCARTIN, *COLLISION COURSE: RONALD REAGAN, THE AIR TRAFFIC CONTROLLERS, AND THE STRIKE THAT CHANGED AMERICA* (2011); JON SHELTON, *TEACHER STRIKE! PUBLIC EDUCATION AND THE MAKING OF A NEW AMERICAN POLITICAL ORDER* (2017).

4. JUDITH WAGNER DECEW, *UNIONIZATION IN THE ACADEMY: VISIONS AND REALITIES* 36 (2003).

5. J. Paul Grayson, *Student Hardship and Support for a Faculty Strike*, 40 RES. IN HIGHER EDUC. 589, 610 (1999).

6. Mrinalini Greedharry, *Showing Up for Faculty: How Student Solidarity Tipped the Scales in*

Higher education strikes can arise in many contexts: as a means of attaining union recognition; as a tactic in negotiations; as a response to unfair labor practices or the imposition of austerity measures; as a method of protecting academic freedom and tenure rights; as a protest of disciplinary action and policy changes; or in sympathy with strikes by others.⁷ Among the better known sympathy strikes were the faculty strike at San Francisco State College in 1969 in support of student demands, and the Boston University clerical workers and librarians joining a strike commenced by faculty in 1979.⁸

The legality as well as the timing of a strike will depend on the terms of the National Labor Relations Act (NLRA) or an analogous state collective public sector bargaining law, as well as the terms of a negotiated contract.

As will be demonstrated in Part II, early strikes in higher education were spontaneous acts of disaffected faculty at a time when they lacked a statutory right to unionize. Later, faculty strikes became organized and led by unions after passage of state collective bargaining laws and the 1970 National Labor Relations Board (NLRB) decision to begin asserting jurisdiction over nonprofit higher education institutions.⁹

A far more common tactic is a strike authorization vote, which constitutes a strong collective statement of resolve and commitment among organized workers. The 2019 contract settlements at Rutgers University and the Community College of Philadelphia are examples of the effectiveness of credible strike threats in achieving better contract results for labor.¹⁰

Laurentian University's Faculty Strike, BRIARPATCH MAG. (Dec. 21, 2017), <<https://briarpatchmagazine.com/articles/view/showing-up-for-faculty>>.

7. The 2018 strike wave by public school teachers and staff in Red States, who lack collective bargaining laws and a right to strike, were successful in achieving another purpose: to compel increased state funding for education and to stop proposed changes in health care. Absent from those strikes, however, were traditional labor demands of union recognition and collective bargaining. See ERIC BLANC, RED STATE REVOLT: THE TEACHERS' STRIKES AND WORKING-CLASS POLITICS (2019); LOOMIS, *supra* note, 1, at 1–2.

8. See ARLENE KAPLAN DANIELS ET AL., ACADEMICS ON THE LINE: THE FACULTY STRIKE AT SAN FRANCISCO STATE (1970); Gary Zabel, *The Boston University Strike of 1979*, in THE ENCYCLOPEDIA OF STRIKES IN AMERICAN HISTORY 690 (Aaron Brenner et al. eds., 2009).

9. Cornell University, 183 N.L.R.B. 329 (1970); see also William A. Herbert & Jacob Apkarian, *Everything Passes, Everything Changes: Unionization and Collective Bargaining in Higher Education*, 21 LERA PERSPECTIVES ON WORK 30, 30-31 (2017), <https://academicworks.cuny.edu/yc_pubs/196/>.

10. Catherine Carrera, *Rutgers Reaches Contract Agreement with Faculty to Avoid Disruptive Strike*, NORTHJERSEY.COM (Apr. 16, 2019, 11:24 PM), <<https://www.northjersey.com/story/news/2019/04/16/no-strike-rutgers-university-faculty-claims-win-contract-negotiations/3492244002/>>; Susan Snyder, *Philadelphia Community College and Its Faculty Union Reach Tentative Labor Agreement*, PHILA. INQUIRER (Apr. 3, 2019, 8:59 PM), <<https://www.philly.com/news/community-college-contract-negotiations-strike-20190404.html>>. In 2016, members of the Professional Staff Congress, the union which represents City University of New York faculty and staff, voted to authorize a strike during negotiations, which led to a contract soon afterward. Stephen Johnson, *PSC-CUNY Votes to Authorize Strike*, AMSTERDAM NEWS (May 19, 2016, 4:40 PM), <<http://amsterdamnews.com/news/2016/may/19/psc-cuny-votes-authorize-strike/>>.

In this article, we have not attempted to quantify or analyze strike threats in higher education because of the frequently amorphous nature of the behavior that may constitute a threat.

The United States Bureau of Labor Statistics (BLS) reported that in 2018 the number of all major strikes, defined as involving 1000 or more employees, was the highest since 2007.¹¹ The most prominent of those strikes were by primary and secondary school teachers and staff in West Virginia, Arizona, Oklahoma, Colorado, and North Carolina.¹² The BLS report was based upon data the agency maintains of all major work stoppages, including strikes and lockouts, over the past twenty-five years.

The value of BLS data of major work stoppages for higher education administrators, unions, faculty, graduate assistants, and staff, however, is limited. The BLS criterion for a major work stoppage results in an undercounting of higher education strikes because they usually involve fewer than 1000 employees. In addition, the BLS major work stoppage data does not distinguish between strikes and lockouts. A 2016 Century Foundation report noted that although there has been a general decrease in the number of strikes over the past few decades, “lockouts have experienced only a slight decline, such that lockouts now constitute a significant portion of all work stoppages.”¹³

Another factor in the undercounting is the decision by BLS to count simultaneous strikes by different unions as a single strike. Based on its methodology, BLS identified only seven major strikes involving higher education institutions over the past seven years with only two involving faculty.¹⁴

If stakeholders are to fully understand the state of labor relations in higher education, they need objective and accurate strike information and analysis. While objective, the strike data provided by BLS is insufficient and largely uninformative for higher education because of the limited size of most work stoppages in the industry.

In this article, we present and analyze more complete work stoppage data for calendar years 2012–2018 involving academic and nonacademic employees at higher education institutions, including academic medical centers that have common ownership with a college of medicine at a university. A detailed table of the work stoppages in 2012–2018 is presented in the Appendix.

The data was collected by the National Center for the Study of Collective Bargaining in Higher Education and the Professions (National

11. Economic News Release, Bureau of Labor Statistics, U.S. Dep’t of Labor, Work Stoppages Summary (Feb. 8, 2019), <<https://www.bls.gov/news.release/wkstp.nr0.htm>>.

12. *Work Stoppages Involving 1000 or More Workers, 1993–2018*, BUREAU OF LABOR STATISTICS, <<https://www.bls.gov/web/wkstp/monthly-listing.htm>> (last visited Feb. 2, 2020).

13. Moshe Marvit, *Unions & Organizing, Is It Time for the Courts to End Labor Lockouts?*, CENTURY FOUND. (June 30, 2016), <<https://tcf.org/content/report/time-courts-end-labor-lockouts/?agreed=1>>.

14. See *Work Stoppages Involving 1000 or More Workers, 1993–2018*, *supra* note 12.

Center) utilizing information from government sources, news reports, and decisions found on LexisNexis, Westlaw, and other electronic sources. Our research disaggregates and supplements the data maintained by BLS. As part of our analysis, we will compare faculty strike data over the recent period with an earlier National Center dataset for the period 1966–1994.

Collecting and analyzing strike data has been a part of the National Center's labor-management mission since 1973. During its first three decades, the National Center maintained data and regularly reported on faculty work stoppages.¹⁵ Far less attention was given to strikes by others on campus except for the 1984 clerical and technical strike at Yale University.¹⁶ The resurgence of strikes in the field of education over the past few years has led the National Center to resume collecting university and college strike data but with a wider aperture than before.¹⁷ Our strike data now includes all strikes by faculty, graduate assistants, clerical, maintenance, and service employees, and one lockout of faculty, on campuses and academic medical centers owned by universities over the seven year period from 2012 through 2018.

The article begins by tracing the history of strikes in higher education as well as union and associational no-strike policies prior to the 1960s. We then examine faculty strike data maintained by the National Center for the period 1966–1994 that has been supplemented by more recent research. The earlier dataset is then utilized as a baseline for comparison to the 2012–18

15. See Joel M. Douglas, *Professors on Strike: An Analysis of Two Decades of Faculty Work Stoppages—1966-85*, 4 LAB. LAW. 87, 88 (1988); Frank R. Annunizato, *Faculty Strikes in Higher Education: 1996–1994*, NAT'L CTR. FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUC. & THE PROFESSIONS NEWSLETTER (Sch. of Pub. Affairs, Bernard M. Baruch Coll., City Univ. of N.Y.), Nov./Dec. 1994, at 1, <https://thekeep.eiu.edu/cgi/viewcontent.cgi?article=1037&context=ncscbhep_newsletters>.

16. The 1984 Yale strike was the subject of a labor-management panel discussion at the National Center's thirteenth annual labor-management conference in 1985. Donald Kagan, *The Strike at Yale, D. A Faculty Perspective in Support of the University Administration*, 13 PROC. NAT'L CTR. FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUC. & THE PROFESSIONS 201 (1985), <<https://thekeep.eiu.edu/jcba/pre-2006/13/article.pdf>>; Linda Lorimer, *The Strike at Yale, B. The Administration Perspective*, 13 PROC. NAT'L CTR. FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUC. & THE PROFESSIONS 193 (1985), <<https://thekeep.eiu.edu/jcba/pre-2006/13/article.pdf>>; Jack McKivigan, *The Strike at Yale, C. A Faculty Perspective in Support of Local 34*, 13 PROC. NAT'L CTR. FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUC. & THE PROFESSIONS 197 (1985), <<https://thekeep.eiu.edu/jcba/pre-2006/13/article.pdf>>; John Wilhelm, *The Strike at Yale, A. The Union Perspective*, 13 PROC. NAT'L CTR. FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUC. & THE PROFESSIONS 188 (1985), <<https://thekeep.eiu.edu/jcba/pre-2006/13/article.pdf>>. Two years later, the National Center published an article by Richard W. Hurd and Gregory Woodhead analyzing strike data since 1970 involving clerical workers at large colleges and universities. Richard W. Hurd & Gregory Woodhead, *The Unionization of Clerical Workers at Large U.S. Universities and Colleges*, NAT'L CTR. FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUC. & THE PROFESSIONS NEWSLETTER (Sch. of Pub. Affairs, Bernard M. Baruch Coll., City Univ. of N.Y.), (Jul./Aug. 1987), at 1, <https://thekeep.eiu.edu/cgi/viewcontent.cgi?article=1069&context=ncscbhep_newsletters>. Hurd and Woodhead found that there had been only thirteen strikes on sixty-five large campuses with clerical unions during the period examined.

17. Herbert & Apkarian, *supra* note 9.

faculty strike data.¹⁸ Next, we discuss the faculty lockout at Long Island University (LIU) in 2016. Finally, we examine the full universe of strikes in higher education over the 2012–18 period.

II. A BRIEF HISTORY OF HIGHER EDUCATION STRIKES

Strikes in higher education are nothing new. A century ago, Bryn Mawr College Acting President Helen Taft made national news with a September 1919 address in which she advocated for faculty to unionize and to strike for greater compensation.¹⁹ In her speech to the school's alumni association, President Taft stated:

The wealthy men of the country certainly owe the professors a living... Maybe it is heretical for me to say this, being an acting college president, but I feel that [a faculty] strike would not be against the college executives, the college directors or trustees, but against the public, which ought to be made to pay for its education. I think they would be justified in striking and refusing to serve the country on the present financial terms because they have suffered more than any of the professions whose strikes we are now facing.²⁰

Helen Taft was no ordinary college president. She was the only daughter of former President and future Chief Justice William Howard Taft. Her father served on President Wilson's War Labor Conference Board and the National War Labor Board during World War I.²¹ Her mother, Nellie Taft, prior to becoming First Lady, gave a speech calling for government investigations into the working conditions of female workers.²² In contrast, Helen Taft's brother, Robert A. Taft, was a primary sponsor of the anti-union Taft-Hartley Act of 1947.

A few years before Taft's speech, the American Association of University Professors (AAUP) was formed as a professional organization to protect academic freedom and tenure protections. As Henry Reichman has

18. We have not considered the faculty strike data since 1997 summarized by a scholar in his 2017 dissertation because he did not identify his methodology or provide specificity with respect to his findings. See Shawn E. Mueske, *Finding Voice: A History of the Minnesota Two-Year College Faculty Union 104–09* (Mar. 2017) (unpublished D.Ed. dissertation, St. Cloud State University), <https://repository.stcloudstate.edu/hied_etds/11/>.

19. *Helen Taft Advises Professors' Strike*, PHILA. INQUIRER, Sept. 28, 1919, at 2.

20. *Drive Goal Raised to Two Millions*, 13 BRYN MAWR ALUMNAE Q., 110, 118 (1919), <<https://archive.org/details/brynmawralumnaeq1314bryn/page/n127>>.

21. See generally JOSEPH A. MCCARTIN, *LABOR'S GREAT WAR: THE STRUGGLE FOR INDUSTRIAL DEMOCRACY AND THE ORIGINS OF MODERN AMERICAN LABOR RELATIONS, 1912–1921* (1997).

22. DORIS KEARNS GOODWIN, *THE BULLY PULPIT: THEODORE ROOSEVELT, WILLIAM HOWARD TAFT, AND THE GOLDEN AGE OF JOURNALISM* 577 (2013).

stated, “the AAUP founders went to great lengths to reject the union label.”²³ An early critic of the AAUP’s aversion to trade unionism was writer and activist Upon Sinclair, who stated, “The first aim of the Association has apparently been to distinguish itself from labor unions, whereas the fact is that it is nothing but a labor union, an organization of intellectual proletarians, who have nothing but their brain-power to sell.”²⁴

In contrast, the American Federation of Teachers (AFT) had already embraced formal faculty unionization at the time of Taft’s speech with chapters formed at Howard University and the University of Illinois.²⁵ In April 1919, the AFT chartered city-wide faculty unions in Boston and New York City,²⁶ which were early antecedents of today’s metro-strategy for organizing contingent faculty.²⁷ As Timothy Reese Cain and Philip J. Wilkinson have explained, the early AFT faculty unionization efforts were aimed at improving educational conditions and standards on campus, attaining a greater faculty voice in decision-making, and aligning faculty with the labor movement.²⁸

The AFT had a policy against strikes, however, which it reaffirmed following the fallout from the 1919 Boston police strike. According to one scholar, the AFT’s anti-strike policy was “formulated in deference to the public sentiment that opposed work stoppages by public employees and in realization of the timidity of teachers.”²⁹ A 1934 AFT convention resolution to overturn the no-strike policy, which had been submitted by members from Commonwealth College, an Arkansas labor school, was rejected by convention delegates.³⁰ The AFT’s anti-strike policy was endorsed by American Federation of Labor President Samuel Gompers,³¹ as well as by his successor William B. Green, who also supported the AFT’s purging of militant left-led unions including New York’s College Teachers Union.³²

23. HENRY REICHMAN, *THE FUTURE OF ACADEMIC FREEDOM* 223 (2019); *see also* EVERETT CARLL LADD & SEYMOUR MARTIN LIPSET, *PROFESSORS, UNIONS AND AMERICAN HIGHER EDUCATION* 5 (1973) (“Yet from its inception until 1972, AAUP resisted the notion that it resembled a trade union and should engage in strikes or collective bargaining.”).

24. REICHMAN, *supra* note 23, at 223.

25. *See* TIMOTHY REESE CAIN, *CAMPUS UNIONS: ORGANIZED FACULTY AND GRADUATE STUDENTS IN U.S. HIGHER EDUCATION* 26-27 (2017); William A. Herbert, *The History Books Tell It? Collective Bargaining in Higher Education in the 1940s*, at 18-21, *J. COLLECTIVE BARGAINING IN ACAD.* (2017), <<https://thekeep.eiu.edu/jcba/vol9/iss1/3/>>.

26. Timothy Reese Cain, *The First Attempts to Unionize the Faculty*, 112 *TEACHERS COLL. REC.* 876, 890-91 (2010).

27. *See generally* Helena Worthen, *Organizing as Learning: The Metro Strategy and a Community of Practice for Faculty*, 18 *WORKING USA: J. LAB. & SOC’Y* 421 (2015).

28. Timothy Reese Cain & Philip J. Wilkinson, *Influence Without Bargaining: Unionization at the University of Wisconsin, 1930-1957*, *LABOR*, May, 2019, at 99, 103.

29. WILLIAM EDWARD EATON, *THE AMERICAN FEDERATION OF TEACHERS, 1916-1961: A HISTORY OF THE MOVEMENT* 144 (1975).

30. DAVID ZISKIND, *ONE THOUSAND STRIKES OF GOVERNMENT EMPLOYEES* 203-04 (1940).

31. *Id.*

32. Philip Kochman, *Teacher Organizations on Strikes*, 28 *PHI DELTA KAPPAN* 353, 354 (1947);

Even before formal faculty unionization, there were faculty strikes. In 1903, sixteen faculty members and the college president at New Mexico Normal University engaged in a strike,³³ and faculty joined students in a one-day strike in 1904 at the Still College of Osteopathy over institutional policies.³⁴ Faculty strike threats date back even further. In 1892, Lawrence University faculty in Wisconsin threatened to strike after university trustees reversed a faculty decision to dismiss a student.³⁵

For the next fifty years, there were sporadic strikes and strike threats on campus. A few months after Taft's speech, professors at the Carnegie Institute of Technology in Pittsburgh threatened to strike for higher salaries.³⁶ The following year, a group of faculty at Columbia College in South Carolina quit before the fall semester began in protest over the removal of the college president.³⁷ In 1926, the entire Georgetown University dental school faculty resigned to protest the lack of consultation in the selection of a new dean.³⁸

Unionization for purposes of collective bargaining on campus began in the 1930s and 1940s. During that period, over a dozen institutions, including the University of Illinois, voluntarily recognized and negotiated with unions representing campus service and maintenance workers, and faculty in a few instances.³⁹ In addition, non-academic unionized workers began to strike. There was an elevator operators strike at Columbia University in 1936.⁴⁰ In 1941, there was a one-day strike at Yale University involving close to 700 non-academic employees.⁴¹ A recognition strike was organized the following year by a union seeking to represent the University of Minnesota building service workers which included a picket line at a college sporting event.⁴²

Following World War II, United Public Workers of America (UPW), the CIO's public sector union, successfully organized and bargained for faculty and staff at the New School for Social Research, Howard University, and the Hampton Institute, the latter two being Historically Black Colleges and Universities.⁴³

see also, ANDREW FEFFER, *BAD FAITH: TEACHERS, LIBERALISM AND THE ORIGINS OF MCCARTHYISM* 122-28 (2019).

33. *The Entire Faculty on Strike*, NEWTON DAILY J. (Iowa), Feb. 19, 1903, at 1.

34. *Students and Faculty Strike*, CHI. TRIB., Jun. 19, 1904, at 10.

35. *The Faculty Will Strike*, ST. LOUIS POST-DISPATCH, May 24, 1892, at 12.

36. *Faculty Threaten Strike*, ALLENTOWN MORNING CALL (Pa.), Nov. 25, 1919, at 1.

37. *College Faculty Strike*, SUMTER WATCHMAN & SOUTHRON (S.C.), Sept. 11, 1920, at 6.

38. *Dental Faculty Resigns*, CIN. ENQUIRER, May 16, 1926, at 1.

39. Herbert, *supra* note 25.

40. *Id.* at 14.

41. *Id.* at 16.

42. *Picket Line Makes Bow at College Game*, WILKES-BARRE TIMES LEADER (Pa.), Oct. 3, 1942, at 11.

43. Herbert, *supra* note 25, at 26-36.

During the national strike wave in 1946–48, there were forty-eight public school strikes involving over 11,000 teachers.⁴⁴ Local affiliates of the AFT and the National Education Association (NEA) led strikes by primary and secondary school teachers in Norwalk, Connecticut; Hawthorne, New Jersey; St. Paul, Minnesota; and McMinnville and Shelbyville, Tennessee.⁴⁵ In the face of the growing strike movement on the local level, AFT reaffirmed its no-strike policy, and NEA adopted a resolution stating that “the strike is an unsatisfactory method of solving professional problems,” but urging action to eliminate the working conditions that lead to strikes.⁴⁶

UPW was also actively involved in the public school teacher strikes during the immediate post-World War II period.⁴⁷ Prior to UPW’s destruction during the domestic Cold War, it took the most expansive labor position on academic strikes, declaring the right to strike to be a component of academic freedom.⁴⁸ As historian Jon Shelton has noted, the post-World War II wave of teacher strikes “inflamed controversy over public-sector unions.”⁴⁹

It was not until the 1960s and early 1970s, that NEA, AFT, and AAUP began organizing faculty for purposes of collective bargaining. This was interrelated with the passage of state collective bargaining laws, and the NLRB decision to begin applying the NLRA to private universities.⁵⁰ It was during the same period that each organization began to support the right of college faculty to strike.⁵¹ The decades-long delay by all three national organizations to embrace faculty collective bargaining and strikes can be attributed to their fixed attachment to the construct of professionalism and the limitations of the law.⁵²

III. A LOOK BACK AT FACULTY STRIKE DATA, 1966–1994

Before analyzing recent work stoppage data in higher education, it is useful to first look back to the National Center’s faculty strike data and analysis for the period of 1966–1994, supplemented by our research for that period.

As University of Arizona Professor Gary Rhoades has noted “the strike

44. Bernard Yabroff & Lily Mary David, *Collective Bargaining and Work Stoppages Involving Teachers*, 76 MONTHLY LAB. REV. 475, 478 (1953).

45. John P. Lloyd, *Teachers’ Strikes*, in THE ENCYCLOPEDIA OF STRIKES IN AMERICAN HISTORY, *supra* note 8, at 252, 254-55; Yabroff & David, *supra* note 44, at 478–79.

46. EATON, *supra* note 29, at 145; Yabroff & David, *supra* note 44, at 477.

47. Yabroff & David, *supra* note 44, at 478–79.

48. Herbert, *supra* note 25, at 36–37.

49. SHELTON, *supra* note 3, at 30.

50. See Cornell University, 183 N.L.R.B. 329 (1970).

51. PHILO A. HUTCHENSON, A PROFESSIONAL PROFESSORIAT: UNIONIZATION, BUREAUCRAIZATION, AND THE AAUP 67-69, 84-86, 97-103, 112-25 (2000).

52. *Id.*; LADD & LIPSET, *supra* note 23, at 5–7.

is not an action that many unionized faculty have often pursued (although many readers may be surprised by the total numbers).⁵³ This accurate assessment contradicts an early prediction made by labor negotiators about the inevitability of faculty strikes at four-year colleges and universities.⁵⁴ Research indicates that structural and attitudinal factors contribute to public university faculty sentiment toward strikes, including faculty rank, ideology, productivity, departmental status, perceptions of empowerment, and alignment of goals with rewards.⁵⁵

Another factor is the law. While strikes are generally lawful under the NLRA, many state laws ban or limit strikes by public sector workers including faculty.⁵⁶ Administrative determinations like the 2019 NLRB decision in *Walmart Stores, Inc.*,⁵⁷ upholding the termination of low-wage workers for engaging in an intermittent strike against the corporate goliath, are reminders that certain strikes can be found to be unprotected activities under the NLRA. In addition, the right to strike can be limited by negotiated provisions prohibiting strikes and lockouts during the life of a contract.⁵⁸

History teaches that statutory prohibitions alone have not stopped public workers from striking. Between 1967, when New York's Taylor Law was enacted,⁵⁹ with severe penalties for public sector strikes,⁶⁰ and 1994, there were 327 reported strikes in the state involving almost 380,000 public workers.⁶¹ While legal prohibitions clearly increase risk, consequences,⁶²

53. GARY RHOADES, *MANAGED PROFESSIONALS: UNIONIZED FACULTY AND RESTRUCTURING ACADEMIC LABOR* 15 (1998).

54. David L. Graham & Donald E. Walters, *Bargaining Process*, in *FACULTY UNIONS AND COLLECTIVE BARGAINING* 44, 59 (E.D. Duryea et al. eds., 1973).

55. David H. Kamens & Gian Sarup, *Departmental Organization, Legitimacy, and Faculty Militancy: Structural Sources of Pro Union Sentiment in a Public University*, 13 *RES. IN HIGHER EDUC.* 243 (1980).

56. MILLA SANES & JOHN SCHMITT, *CENTER FOR ECONOMIC AND POLICY RESEARCH, REGULATION OF PUBLIC SECTOR COLLECTIVE BARGAINING IN THE STATES* 8 (2014), <<http://cepr.net/documents/state-public-cb-2014-03.pdf>>.

57. 368 N.L.R.B. No. 24 (July 25, 2019).

58. Stephen R. Porter, *The Causal Effect of Faculty Unions on Institutional Decision-Making*, 66 *ILR REV.* 1193 (2013).

59. Public Employees' Fair Employment Act, 1967 Laws of New York ch. 392 (codified as N.Y. CIV. SERV. LAW §§ 200–14 (McKinney 2019)).

60. N.Y. CIV. SERV. LAW § 210(1) (McKinney 2019) states: "No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall cause, instigate, encourage, or condone a strike."

61. Janet McEneaney & Robert P. Hebdon, *Public Sector Labor Law and Experience in New York State*, in *COLLECTIVE BARGAINING IN THE PUBLIC SECTOR: THE EXPERIENCE OF EIGHT STATES* 161, 182, tbl 7.7 (Joyce M. Najita & James L. Stern eds., 2001); see also Anthony Zumbolo, *The Acceleration and Decline of Discord: Collective Bargaining Impasses in New York State*, 36 *HOFSTRA LAB & EMP. L.J.* 163 (2018).

62. *E.g.*, *New York City Transit Auth. v. Transp. Workers Union*, 37 A.D.3d 679 (N.Y. App. Div. 2007) (affirming a \$2.5 million fine imposed on a transit union, and the suspension of dues deductions, as penalties for striking in disobedience of a preliminary injunction); *State of New York (State University of New York)*, 12 PERB ¶ 3092 (N.Y. 1979) (affirming the dismissal of a representation petition based on a finding that the union's strike against a public employer demonstrated that its no-strike affirmation in support of the petition was not sincere or had been abandoned).

and fear for all public workers, it is remarkable that only a handful of the 327 strikes in the period 1967–1994 involved faculty, and only at three community colleges: Niagara County Community College,⁶³ Ulster County Community College,⁶⁴ and Nassau Community College.⁶⁵ Unionized faculty at the State University of New York (SUNY) have not engaged in a strike in the six decades since being granted collective bargaining rights.⁶⁶

The comparatively low number of college faculty strikes in New York under the Taylor Law from 1967 to 1994 supports what Stanley Aronowitz has described as “faculty reluctance to strike or otherwise take direct action to win its demands.”⁶⁷ The actual reluctance of faculty to strike in New York is not consistent, however, with a 1978 Louis Harris showing that 70% of SUNY faculty and staff surveyed supported a right to strike for college employees, while only 54% supported a similar right for blue collar sanitation workers.⁶⁸ The general lack of faculty strike activity in New York might explain the absence of contemporary constitutional challenges to the Taylor Law’s anti-strike language, which on its face is a prior restraint on free speech.⁶⁹

63. Niagara Cty. Cmty. Coll. Faculty Ass’n, 9 PERB ¶ 3036 (N.Y. 1976), *pet. dismissed*, Niagara Cty. Cmty. Coll. Faculty Ass’n v. Helsby, 89 Misc. 2d 653 (N.Y. Sup. Ct. 1976), *aff’d*, 56 A.D.2d 735 (N.Y. App. Div. 1977).

64. Bd. of Trs. of the Ulster Cty. Cmty. Coll., 4 PERB ¶ 3088 (N.Y. 1971).

65. Annunzato, *supra* note 15; *see also* Cty. of Nassau v. Adjunct Faculty Ass’n, 100 A.D. 2d 924 (N.Y. App. Div. 1984), *aff’d*, 481 N.E.2d 254 (N.Y. 1985) (overturning a criminal contempt finding and \$10,000 fine against an adjunct faculty union for leading a four-day strike in 1982); Bliss v. Purcell, 16 PERB ¶ 7519 (N.Y. Sup. Ct. 1983).

66. *See* NUALA MCGANN DRESCHER ET AL., UNITED UNIVERSITY PROFESSIONS: PIONEERING IN HIGHER EDUCATION UNIONISM (2019). Faculty at the City University of New York did not strike either, although contract-related picketing in 1973 took place as a “dress rehearsal” for a strike. *See* Steven Matthews, *Why the Prof Is out There on the Picket Line*, DAILY NEWS, Apr. 1, 1973, at 28.

67. STANLEY ARONOWITZ, THE KNOWLEDGE FACULTY: DISMANTLING THE CORPORATE UNIVERSITY AND CREATING TRUE HIGHER LEARNING 95 (2006).

68. A Final, Pre-Election Study of Attitudes of SUNY Staff Toward Collective Bargaining and UUP Representation, by Louis Harris and Associates, Inc., 1978 November, Special Projects Records Group, NEA/NYEA Challenge, Box IVA.1.6, Folder 1, M.E. Grenander Department of Special Collections and Archives, University Libraries, University at Albany, SUNY.

69. Besides banning strikes, the Taylor Law prohibits public employees and their unions from causing, instigating, encouraging, or condoning a strike. N.Y. CIV. SERV. LAW § 210(1) (McKinney 2019). A union that files a representation petition must affirm that it “does not assert the right to strike against any government, to assist or participate in any such strike, or to impose an obligation to conduct, assist or participate in such a strike.” N.Y. COMP. CODES R. & REGS. tit. 4, § 202(4)(f)(1) (2019). These overbroad provisions are vulnerable to constitutional attack as unlawful prior restraints under First Amendment jurisprudence. *See* Janus v. AFSME Council 31, 138 S. Ct. 2448, 2447 (2017) (public sector union speech can be “overwhelmingly of substantial public concern”); *Bartnicki v. Vopper*, 532 U.S. 514, 519, 535 (2001) (speech concerning teacher negotiations and the timing of a strike “were unquestionably a matter of public concern”); *United States v. Nat’l Treasury Emps. Unions*, 513 U.S. 454, 468 (1995) (a public employer’s “burden [under the First Amendment] is greater with respect to this statutory restriction on expression than with respect to an isolated disciplinary action”). Significantly, a legal challenge by a transit union to the Taylor Law’s anti-strike provisions was successful in 2011 based on international freedom of association principles. *See* Transp. Workers Union of Am. AFL-CIO v. United States, Int’l Labour Office [ILO], No. 2741, at 184, ¶¶ 740–75, 362nd Report of the Committee on Freedom of Association Doc. GB.312/INS/9 (2011).

Nationally, the modern era of college faculty strikes began in 1966 with strikes at Henry Ford Community College, Charles Stewart Mott College, City Colleges of Chicago, and St. John's University. In comparison, there were thirty reported strikes that year by public school teachers.⁷⁰

Except for the lengthy strike at St. John's University, the 1966 strikes lasted only a few days. The St. John's strike was triggered by the December 15, 1965 decision of the Board of Trustees to terminate faculty members without due process.⁷¹ The strike began on January 4, 1966 and lasted 531 days.⁷² The strike at St. John's and the 1967 faculty strike at Catholic University involved issues of academic freedom and tenure.⁷³ Although there were only six faculty strikes in 1967, including the one at Catholic University, public school teachers engaged in job actions at 105 school districts that year.⁷⁴

According to the data in the National Center's 1994 report, 162 faculty strikes took place in the twenty-nine-year period beginning in 1966.⁷⁵ Our own Westlaw research of administrative and court decisions has identified ten additional faculty strikes that took place in the period 1966-1994.⁷⁶

70. SHELTON, *supra* note 3, at 35.

71. ROBERT SCIMECCA & ROLAND DAMIANO, CRISIS AT ST. JOHN'S: STRIKE AND REVOLUTION ON THE CATHOLIC CAMPUS 23, 37-40 (1967).

72. See Martin Gansberg, *St. John's Dispute To Be Arbitrated*, N.Y. TIMES, June 20, 1967, at 41; Dennis Hevesi, *Israel Kugler, Union Official Who Led Strike at St. John's, Dies at 90*, N.Y. TIMES, Oct. 8, 2007, at B6; *Striking Profs Charge St. John's Terrorism*, DAILY NEWS, Jan. 6, 1966, at 2 (Jan. 6, 1966); *Teachers Will Picket 2 St. John's U Campuses*, DAILY NEWS, Jan. 4, 1966, at 80. The 1994 National Center newsletter erroneously listed the duration of the strike as 150 days. This has been corrected for the purposes of our analysis.

73. REICHMAN, *supra*, note 23, at 230-31, 233.

74. SHELTON, *supra* note 3, at 35; Annunizato, *supra* note 15, at 2.

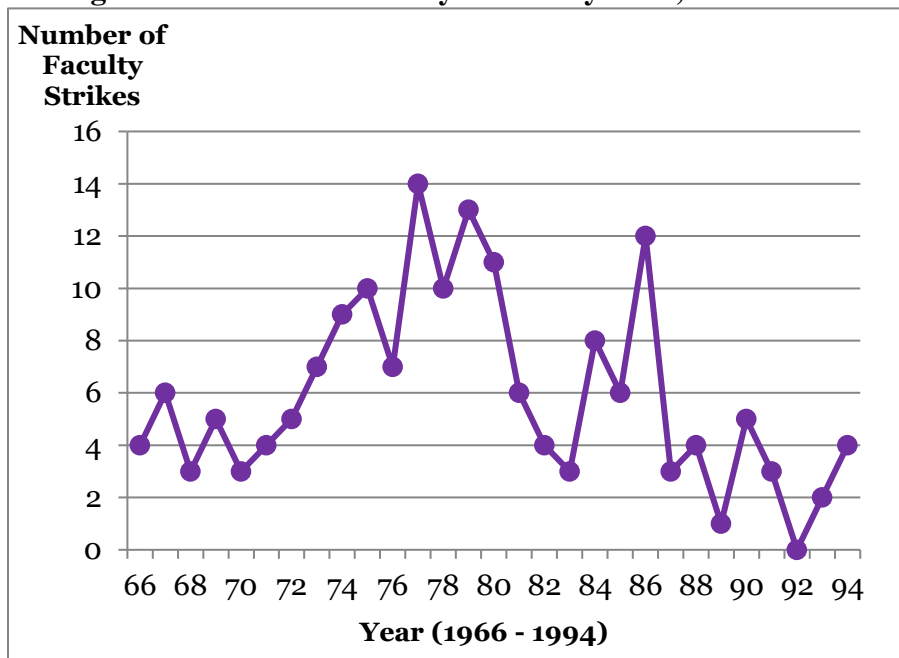
75. Annunizato, *supra* note 15, at 2. The report stated that there had been 163 strikes, but it double counted a strike at Berklee College of Music that included part-time and full-time faculty bargaining units. In addition, it mistakenly identified Monmouth College and Middlesex County College as being located in New York rather than New Jersey, and erred when it stated that there was only one strike by graduate student employees prior to 1994, a two-day strike in 1991 for recognition at the University of Massachusetts at Amherst in 1991. During that period, there were strikes by graduate assistants at the University of Wisconsin at Madison, Yale University, the University of California, Temple University, and probably other institutions. See Nathan P. Feinsinger & Eleanor J. Rose, *The University of Wisconsin, Madison Campus - TAA Dispute of 1969-70: A Case Study*, 171 WIS. L. REV. 229; Edward Moran & Darryl Lynette Figueroa, *Strikes Rally Temple Students*, PHILA. DAILY NEWS, Sept. 6, 1990, at 5; John Robinson, *Grad Student Strike Disrupts Campus: UCSC Rejects Union Recognition*, SANTA CRUZ SENTINEL, Nov. 24, 1992, at 1; *Yale Graduate Students Strike*, CHI. TRIB., Feb. 18, 1992, at 30; *Yale University: Graduate Students Strike for Union Recognition*, BALT. SUN, Dec. 5, 1991, at 17A.

76. *Universidad Central De Bayamon*, 273 N.L.R.B. 1110 (1984); *Fundacion Educativa Ana G. Mendez d/b/a Puerto Rico Junior Coll.*, 265 N.L.R.B. 72 (1982); *Stephens Inst., d/b/a Acad. of Art Coll.*, 241 N.L.R.B. 1603 (1979); *Allen v. Bd. of Trs. of Belleville Area Coll.*, Dist. 522, 494 N.E.2d 1168 (Ill. App. 1986); *Cty. of Nassau v. Adjunct Faculty Ass'n*, 100 A.D. 2d 924 (N.Y. App. Div. 1984), *aff'd*, 481 N.E.2d 254 (N.Y. 1985); *Rio Hondo Cmty. Coll. Dist.*, 7 PERC ¶ 14091 (Cal. 1983); *Thornton Cmty. Coll. Dist. #510 (Halkides)*, 3 PERI ¶ 1081 (Ill. 1987); *Joliet Junior Coll. Faculty Union*, 8 PERI ¶ 1011 (Ill. 1981); *Bd. of Trs. of Ulster Cty. Cmty. Coll. & Ulster Cty. Legislature*, 4 PERB ¶ 3088 (N.Y. 1971) (extreme employer provocation during negotiations relieved the faculty union of legal penalties for leading a strike); *Niagara Cty. Cmty. Coll. Faculty Ass'n*, 9 PERB ¶ 3036 (N.Y. 1976), *pet. dismissed*,

During that period, 132 (76.7 percent) of the strikes were at public colleges or universities and 40 (23.3 percent) were at private institutions. Most of the strikes, 103 (59.9 percent), took place at two-year institutions while 69 (40.1 percent) were at four-year institutions. The highest number of strikes took place in the 1970s, with an average of 8.2 strikes per year in that decade and the greatest numbers occurred in 1977 (14) and 1979 (13). Faculty strikes began to decline in the 1980s and early 1990s.

In Figure 1, we chart the rise and decline in faculty strikes over the three-decade period:

Figure 1: Number of Faculty Strikes by Year, 1966–1994⁷⁷

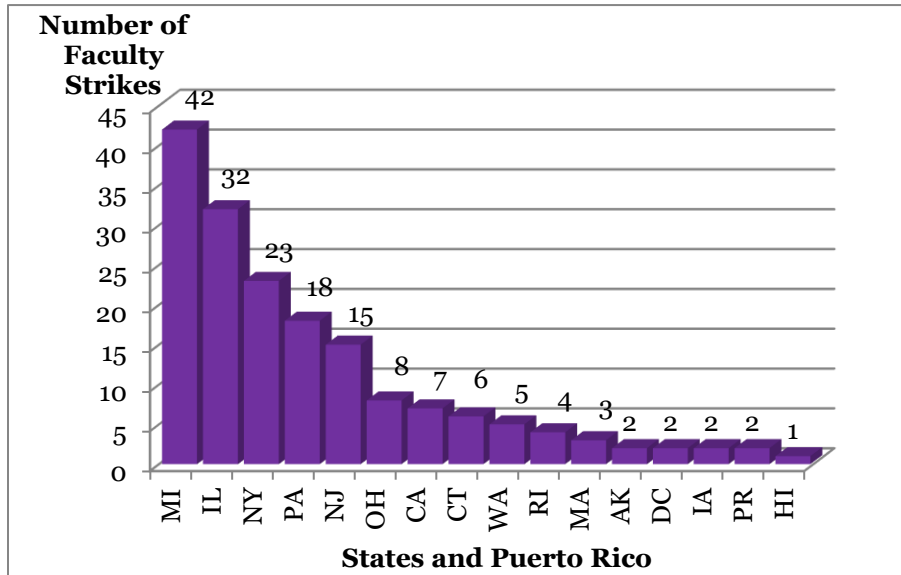


During the period 1966–1994, the greatest number of faculty strikes was in the Northeast and Midwest. Faculty strikes in Michigan, Illinois, New York, Pennsylvania, and New Jersey constituted over three quarters of the total number over the period. In Figure 2, we display the 1966–1994 faculty strike data by state.

Niagara Cty. Cmty. Coll. Faculty Ass’n v. Helsby, 89 Misc. 2d 653 (Sup. Ct. 1976), *aff’d*, 56 A.D.2d 735 (N.Y. App. Div. 1977).

⁷⁷ This chart is based upon Annunizato, *supra* note 15, at 8, tbl. 4 as modified with additional data from the authors' recent research.

Figure 2: Number of Faculty Strikes by State and Puerto Rico, 1966–1994

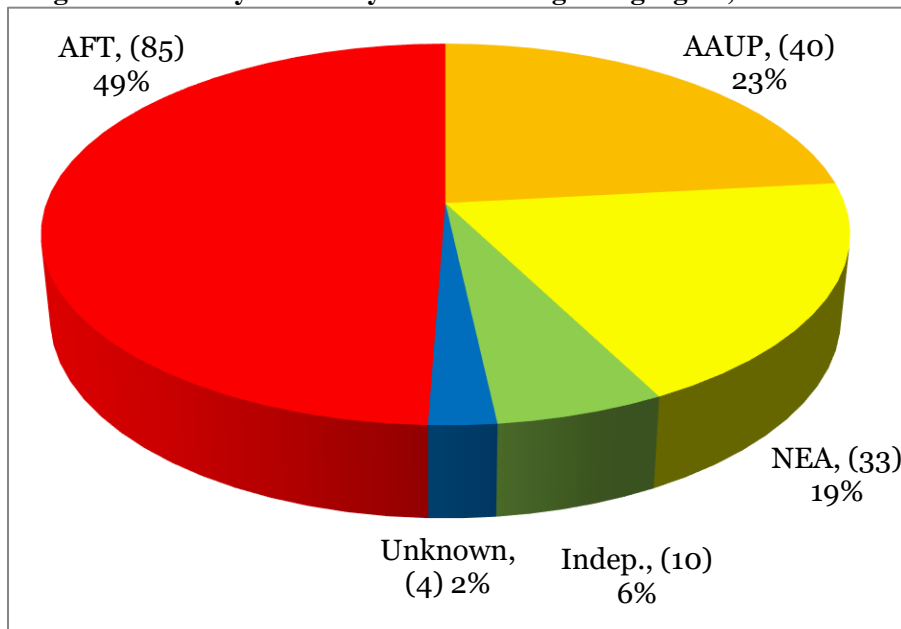


The 1966–1994 data demonstrates that AFT affiliated faculty units were involved in about one half of the faculty strikes and AAUP represented the units in just under one quarter of the strikes during the three-decade period.⁷⁸

In Figure 3, we break down the strikes by national bargaining agent based on the 1966–1994 data.

78. This constitutes a drop in the percentage of strikes by AFT affiliated units from the first decade of faculty strikes. A 1977 study found that in the period 1966–1976 “the faculty represented by the American Federation of Teachers were involved in almost four out of five faculty strikes, and constituted 90 percent of all faculty involved in strikes.” Bill Aussieker, *The Incidence and Impact of Faculty Union Strikes*, 28 LAB. L.J. 777, 780.

Figure 3. Faculty Strikes by National Bargaining Agent, 1996–1994⁷⁹



Over the three-decade period, the average duration of a faculty strike was 20.4 days, but this value is highly skewed by the St. John’s 1966-1967 strike and the University of Bridgeport strike of 1990-1992 (726 days). A more appropriate measure of central tendency is the median, which was nine days, and steadily declined across the period. The majority of strikes (96 or 56.5 percent)⁸⁰ were for ten days or less. See Figures 4 and 5.

79. Annunizato, *supra* note 15, at 7, tbl. 2.

80. The duration of the strikes at Morton College in 1984 and the University of Bridgeport strike in 1990–1992 were missing in the National Center 1994 report. *Id.* Through additional research, we have located these missing values. See Denis Collins, *The University of Bridgeport Faculty Strikes: Introduction to the Special Issue*, 1 J. ACAD. ETHICS 233 (2003); Jean Latz Griffin, *2 Suburb Teachers Strikes Growing Bitter*, CHI. TRIB., Oct. 2, 1984, at A5; Jean Latz Griffin, *Morton College Strike Reaches a New Impasse*, CHI. TRIB., Oct. 23, 1984, at A8; George Judson, *Strike by Professors Is Settled at the University of Bridgeport*, N.Y. TIMES, Aug. 29, 1992, at 25; Eileen Pech, *Drama in the Court: Judge Ends Morton College Strike in One Day*, THE LIFE (Berwyn, Illinois), Oct. 31, 1984, at 2.

Figure 4. Duration of Faculty Strikes, 1966–1994

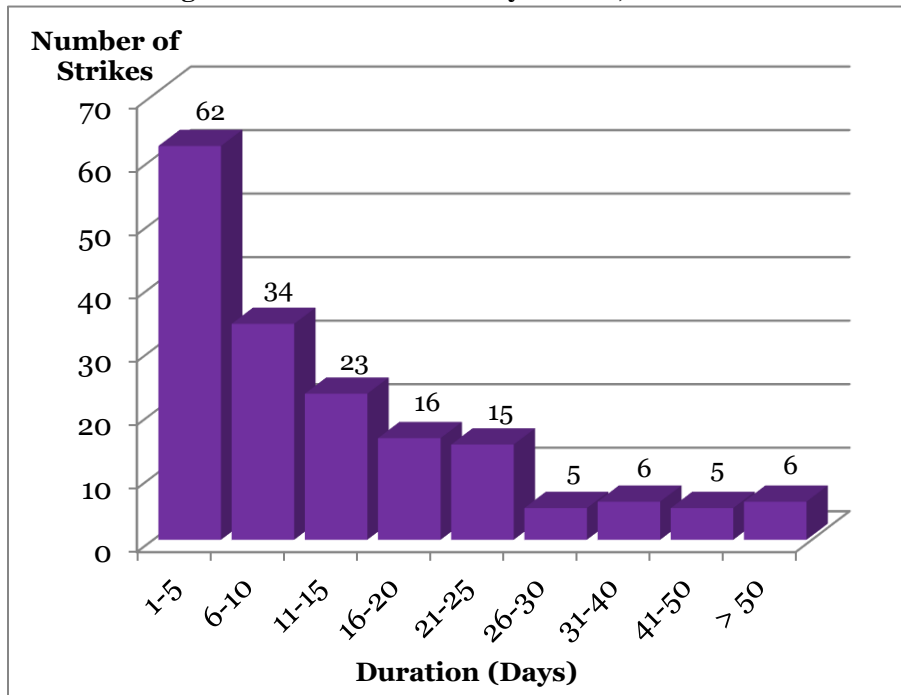
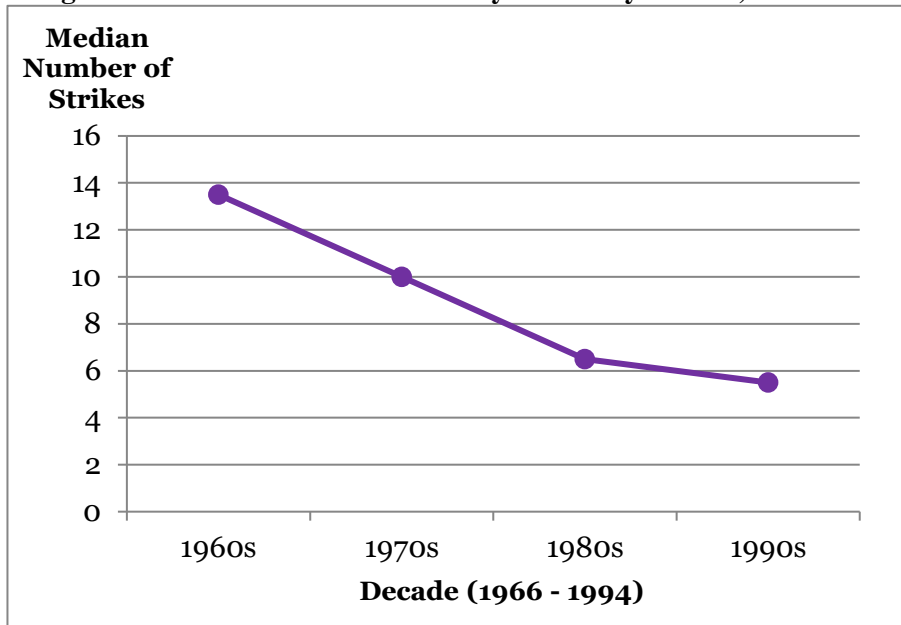


Figure 5. Median Duration of Faculty Strikes by Decade, 1966–1994

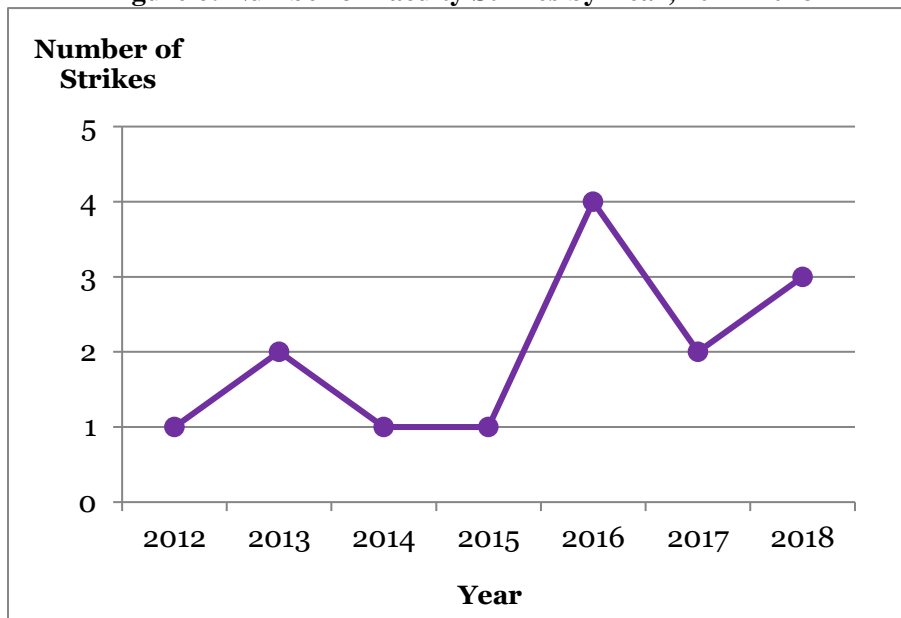


III. HIGHER EDUCATION FACULTY STRIKE DATA, 2012–2018

Next, we compare data concerning the fourteen faculty strikes and one lockout that took place in the period 2012-2018. During these seven years, twelve (85.7 percent) of the strikes were at public colleges or universities and only two (14.3 percent) were at private institutions. The sole lockout took place at LIU, a private institution.

A slight majority of the strikes, eight (57.1 percent), took place at four-year institutions while six (42.9 percent) were at two-year institutions. This contrasts with the earlier period where two-year institutions were in the slight majority. Regardless, the data shows consistency in the almost equal representation by two- and four-year institutions among faculty strikes in higher education. The highest number of faculty strikes took place in 2016 when there were four strikes.

Figure 6: Number of Faculty Strikes by Year, 2012–2018

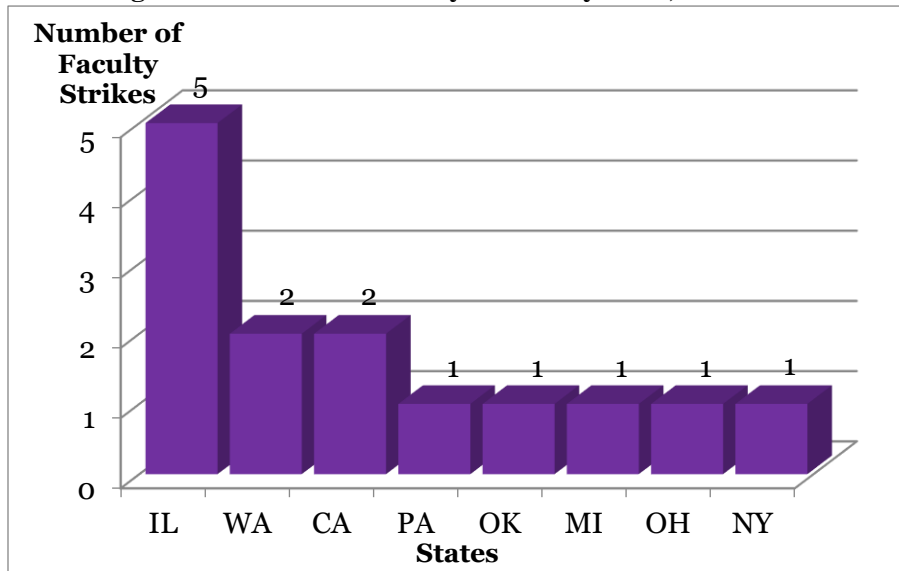


We can see from Figure 6 that the number of faculty strikes during 2012-2018 was relatively low, similar to the rate of the late 1980s and early 1990s, ranging from one to four strikes per year.

For the period 2012–2018, Michigan is no longer the state with the largest number of faculty strikes as it was in 1966-1994. In fact, there was only a single faculty strike in Michigan over the past seven years, at Ferris State University. Illinois, which had been second to Michigan in 1966-1994,

had the most faculty strikes (five) since 2012, followed by Washington (two) and California (two). The number of faculty strikes by state in 2012–2018 is displayed in Figure 7.

Figure 7: Number of Faculty Strikes by State, 2012–2018

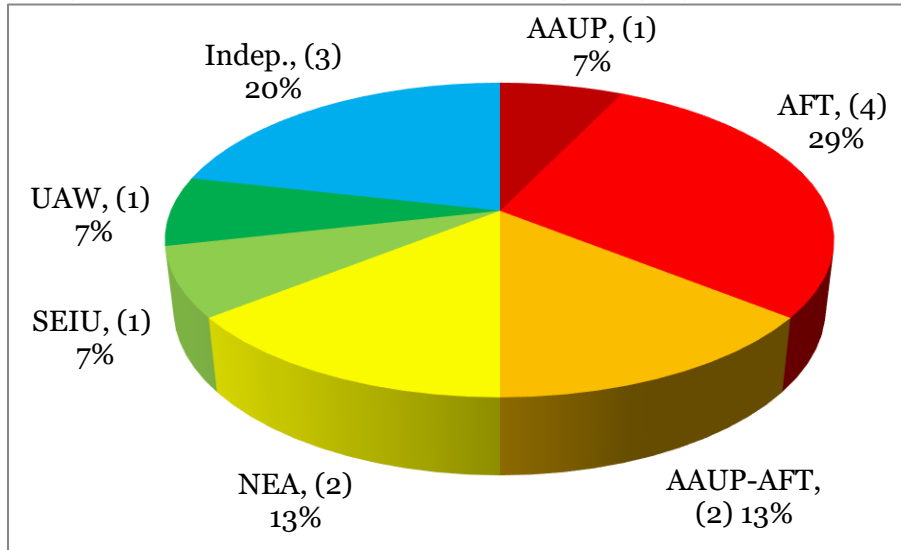


In 2012–2018, AFT affiliated units continued to play a leading role in faculty strikes. Faculty units affiliated solely with AFT participated in 29 percent of all faculty strikes during the period and an additional 13 percent of the faculty strikes involved units co-affiliated with AAUP and AFT. While SEIU has been the clear leader in organizing new private sector non-tenure track faculty units over the past seven years, only one SEIU represented faculty unit engaged in a strike during that period.⁸¹

The proportion of strikes carried out by independent unions grew dramatically, though this cannot be called a statistically significant change with a reasonable degree of certainty given the small number of strikes. In Figure 9, we chart the national affiliations of the unions involved in faculty strikes in 2012–2018.

81. See William A. Herbert, *The Winds of Changes Shift: An Analysis of Recent Growth in Bargaining Units and Representation Efforts in Higher Education*, 80 J. COLLECTIVE BARGAINING IN ACAD., (2016), <<https://thekeep.eiu.edu/jcba/vol8/iss1/1/>>.

Figure 8. Faculty Strikes by National Bargaining Agent, 2012–2018



The average duration of faculty strikes from 2012–2018 was 2.9 days with a median of three days. This is not surprising given the negative trend in duration by decade found in the strike data from the earlier period of study (see Figure 5).⁸² Notably, the 20-day faculty strike at Wright State University in 2019 was close to three times greater than the longest faculty strike during 2012–2018.⁸³

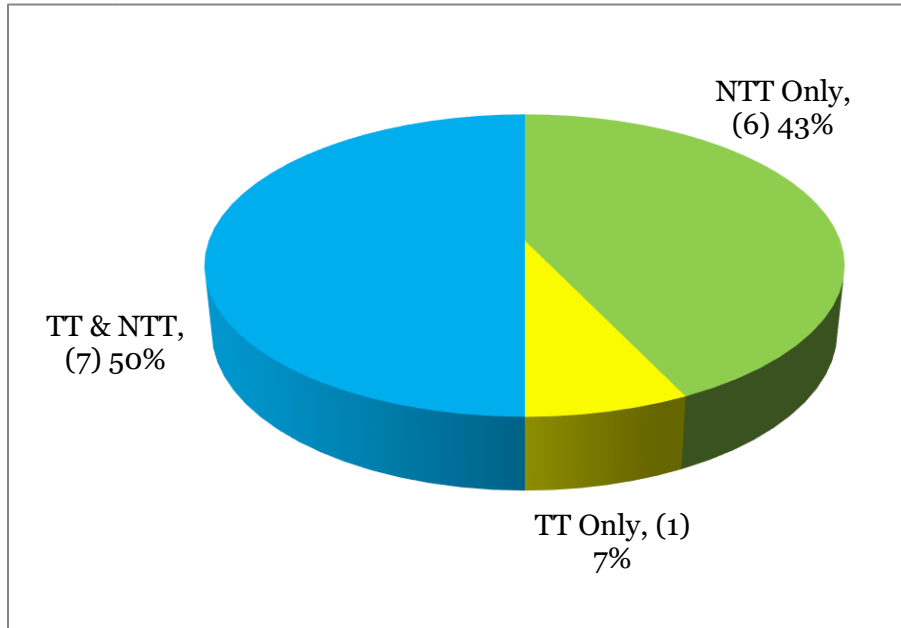
In the period from 2012–2018, we also tracked faculty strikes by tenure-track status. Figure 9 shows the breakdown of strikes by those that were exclusively tenure-track, exclusively non-tenure-track, and mixed tenure-track and non-tenure-track faculty strikes.⁸⁴ Half of all faculty strikes during the period involved tenure-track and non-tenure track faculty. In total, non-tenure track faculty were part of 93 percent of all faculty strikes during the period

82. Moshe Marvit at the Century Foundation found that, in general, lockouts lasted much longer than strikes between 2010 and 2014. See Marvit, *supra* note 13.

83. Colleen Flaherty, "Standing Up for What's Right," INSIDE HIGHER ED. (Feb. 13, 2019) <<https://www.insidehighered.com/news/2019/02/13/what-lessons-can-be-learned-wright-state-faculty-strike>>.

84. For purposes of our analysis, we have counted the strike by tenure-track and non-tenure track faculty at the University of Illinois, Chicago as one strike because the two units have the same bargaining representative.

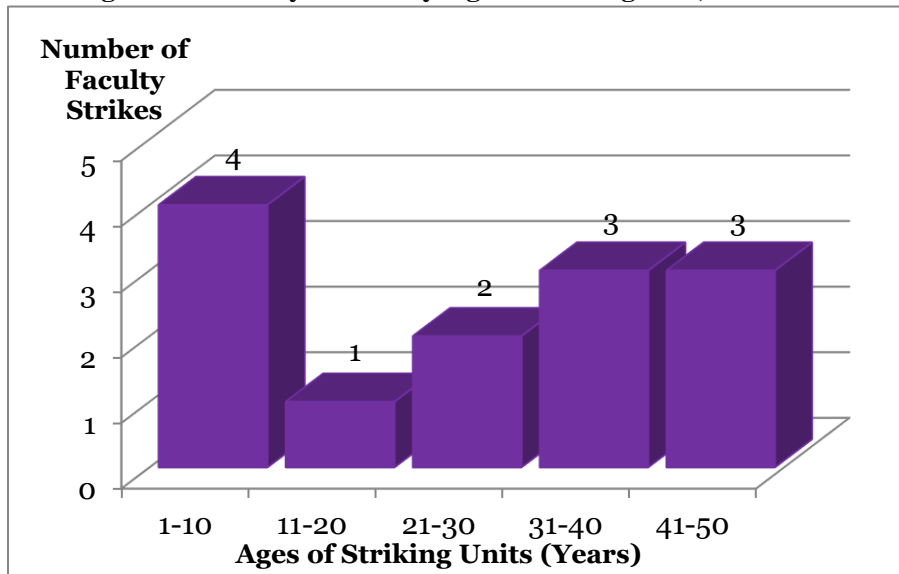
Figure 9. Faculty Strikes by Tenure-track Status, 2012–2018



Finally, we collected data on the age of each collective bargaining relationship at the time that the strike occurred to examine whether strikes involved newer or older units. As Figure 10 shows, the age range is broad and relatively evenly spread out. The average unit age at the time of strike was 24.4 years with a median of 28 years. The newest bargaining relationship was the non-tenure track unit at Loyola University Chicago which was only a year old at the time of their strike in April 2018. The oldest units were the units at Pennsylvania’s State System of Higher Education and Ferris State University, which were each 45 years old at the time of their respective strikes in 2016 and 2018.⁸⁵

85. The age of each collective bargaining relationship was calculated by taking the difference between the year the strike occurred and the year the unit was certified or recognized. Age data is missing for Spartan College of Aeronautics.

Figure 10. Faculty Strikes by Age of Striking Unit, 2012–2018



IV. THE LONG ISLAND UNIVERSITY FACULTY LOCKOUT

In September 2016, LIU took an unprecedented action for an educational institution in the United States by locking out the AFT-represented tenure track and non-tenure track faculty on its Brooklyn campus following the expiration of their collective bargaining agreement and during on-going negotiations for a new contract.⁸⁶

Faculty unionization at LIU dates back to 1970, when the United Federation of College Teachers, Local 1460, AFT, filed petitions with the National Labor Relations Board (NLRB) to represent faculty at the university’s Brooklyn and C.W. Post campuses.⁸⁷ The representation petitions resulted in some of the earliest NLRB decisions concerning faculty bargaining units.⁸⁸ The claim, however, by LIU union leaders that their

86. Alana Samuels, *An Unprecedented Faculty Lockout*, ATLANTIC (Sept. 7, 2016), <<https://www.theatlantic.com/business/archive/2016/09/an-unprecedented-faculty-lockout/499016/>>; Peter Schmidt, *Lessons from Long Island U.’s Faculty Lockout*, CHRON. HIGHER EDUC. (Sept. 20, 2016) <<https://www.chronicle.com/article/Lessons-From-Long-Island/237835>>. There is evidence that a twelve-day faculty lockout took place at Okanagan College in British Columbia, Canada in 1984. *Students Stage Sit-In Protest*, SASKATOON STAR-PHOENIX, Sept. 8, 1984, at 47. Four years later, Douglass College, located in the same Canadian province, issued a lockout notice to its unionized faculty just prior to a mediation session aimed at trying to resolve a contract impasse. *Faculty Gets Lockout Notice*, VANCOUVER SUN, May 19, 1988, at 1.

87. Long Island Univ. (Brooklyn Ctr.), 189 N.L.R.B. 909 (1971); C.W. Post Ctr. of Long Island Univ., 189 N.L.R.B. 904 (1971).

88. C.W. Post Ctr. of Long Island Univ., 200 N.L.R.B. 408 (1972); C.W. Post Ctr. of Long Island Univ., 198 N.L.R.B. 453 (1972); *Long Island Univ. (Brooklyn Ctr.)*, 189 N.L.R.B. at 909; see also *The Appropriate Faculty Bargaining Unit in Private Colleges and Universities*, 59 VA. L. REV. 492 (1973).

union “was the first” one at a private university is historically incorrect.⁸⁹ Two decades before the LIU unionization, faculty collective bargaining began at Howard University, the Hampton Institute, and the New School.⁹⁰

There has been a long history of faculty work stoppages at LIU. Between 1966 and 1994, there were four faculty strikes at the C.W. Post campus, and three strikes on the Brooklyn campus.⁹¹ The Brooklyn campus contract that expired in 2016 was reached only after another faculty strike, which lasted five days.⁹² What was new in 2016 was the LIU decision to use the economic weapon of a lockout against its faculty.

Over the Labor Day weekend, the university gave notice of the lockout and informed faculty of the suspension of their health insurance and e-mail access.⁹³ The lockout occurred during negotiations where the union wanted to end the substantial inequality in the level of full-time faculty salaries between the two LIU campuses, and LIU insisted that the union agree to cuts for part-time faculty to pay for the cost of salary parity.⁹⁴

There are two types of lockouts. A lockout can be a defensive employer tactic to respond to a threatened or potential strike,⁹⁵ or an offensive ploy aimed at placing severe pressure on the union and its members to accept the employer’s demands in negotiations for a new contract.⁹⁶ The timing of the LIU lockout strongly suggests that it was a pressure tactic in the negotiations, while a reported statement by the LIU indicates that its purpose was defensive.⁹⁷

The LIU lockout lasted twelve days, the second longest work stoppage in the 2012–2018 period. The end of the lockout came only after LIU students rebelled with a massive student walkout, refusing to be taught by replacement instructors.⁹⁸ The LIU students’ collective action is another

89. See Emily Drabinski, *An Organizer’s Tale: LIU Brooklyn’s Lockout and Union Contract Negotiation*, POLITICAL LIBRARIAN, Dec. 2017, at 9, <<https://openscholarship.wustl.edu/pollib/vol3/iss1/6/>>.

90. Herbert, *supra* note 25.

91. Annunizato, *supra* note 15, at 26.

92. Liz Robbins, *L.I.U.-Brooklyn Locks Out Professors Amid Contract Dispute*, N.Y. TIMES (Sept. 6, 2016) <<https://www.nytimes.com/2016/09/07/nyregion/LIU-brooklyn-locks-out-professors-amid-contract-dispute.html?searchResultPosition=2>>.

93. Scott Jaschik, *Labor Day Lockout*, INSIDE HIGHER ED (Sept. 6, 2016), <www.insidehighered.com/news/2016/09/06/LIU-brooklyn-campus-contract-dispute-faculty-union-tells-400-professors-they-will-be>.

94. Drabinski, *supra* note 88, at 9.

95. See *NLRB v. Truck Drivers Local Union No. 449*, 353 U.S. 87 (1957).

96. See *Am. Ship Bldg. Co. v. NLRB*, 380 U.S. 300 (1965).

97. Robbins, *supra* note 77. (quoting the LIU counsel as stating: “The last five out of six contracts, the faculty has gone on strike, and they have created chaos and virtually shut down the institution at the start of classes”).

98. Alexandra Leon, *Long Island University Faculty Lockout Spurs Mass Walkout by Students*, DNAINFO (Sept. 14, 2016), <<https://www.dnainfo.com/new-york/2016/09/14/downtown-brooklyn/long-island-university-faculty-lockout-spurs-mass-walkout-by-students/>>.

reminder of the historical role students have played in supporting faculty during strikes and negotiation impasses.⁹⁹

The LIU experience teaches that adoption of the hardball private sector labor tactic of a lockout by university administrators can backfire. As Kate Bronfenbrenner has noted, lockouts are rare in service-type industries because “[t]hey almost always backfired, and employers know not to do them.”¹⁰⁰ In higher education, students are more likely to side with the faculty they know from the classroom than administrators or replacement instructors. It is unlikely that administrators at public sector colleges or universities would try to emulate LIU because of the likely negative reactions from the public and students to the use of a faculty lockout.

V. STRIKE DATA FROM ALL OF HIGHER EDUCATION, 2012–2018: FACULTY, GRADUATE ASSISTANTS, AND NON-ACADEMIC WORKERS

We now examine faculty strikes in the context of all strikes in higher education based on current National Center strike data that looks beyond faculty and catalogs strikes by graduate student workers and non-academic employees as well.

During the period from 2012–2018, there were between three and thirteen strikes in higher education in a given year, with 2018 having the most (see Figure 11).

99. Bill Aussieker, *Student Involvement with Collective Bargaining*, 46 J. HIGHER EDUC., 533, 534-35 (1975).

100. Peter Schmidt, *Lesson of a Lockout: Think Twice Before Using Faculty Temps*, CHRON. HIGHER EDUC., Sept. 30, 2016, at A12.

Figure 11. Number of Strikes in Higher Education by Year, 2012–2018

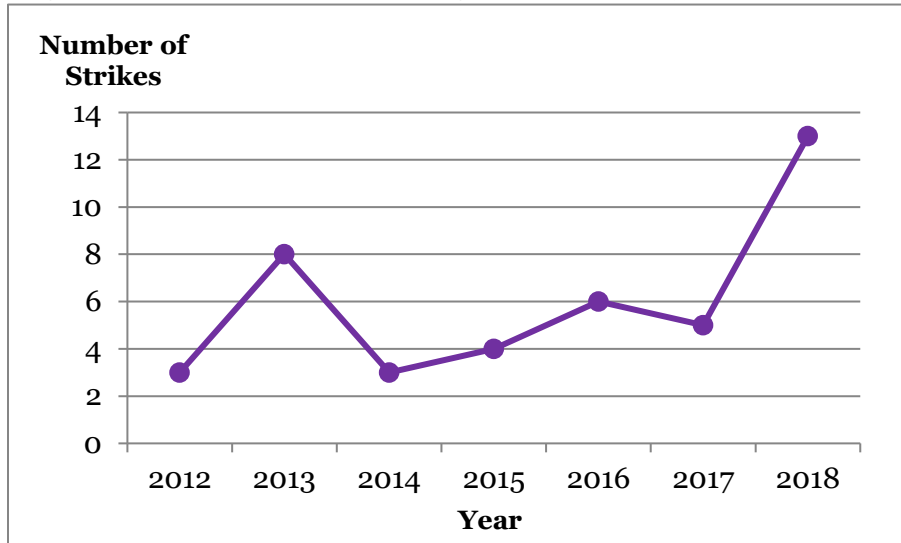


Figure 12 shows that exactly half of the forty-two strikes in higher education from 2012–2018 were by non-academic workers (e.g. service, patient care, clerical, skilled crafts, etc.). A third of the strikes during the period were conducted by faculty and one-sixth by graduate assistants.

Figure 13 shows the distribution of affiliated unions. AFSCME and UAW were the leaders among non-faculty strikes. AFSCME, the leader of all non-faculty affiliates, averaged one strike per year over the period.

Figure 12. Strikes in Higher Education by Unit Type, 2012–2018¹⁰¹

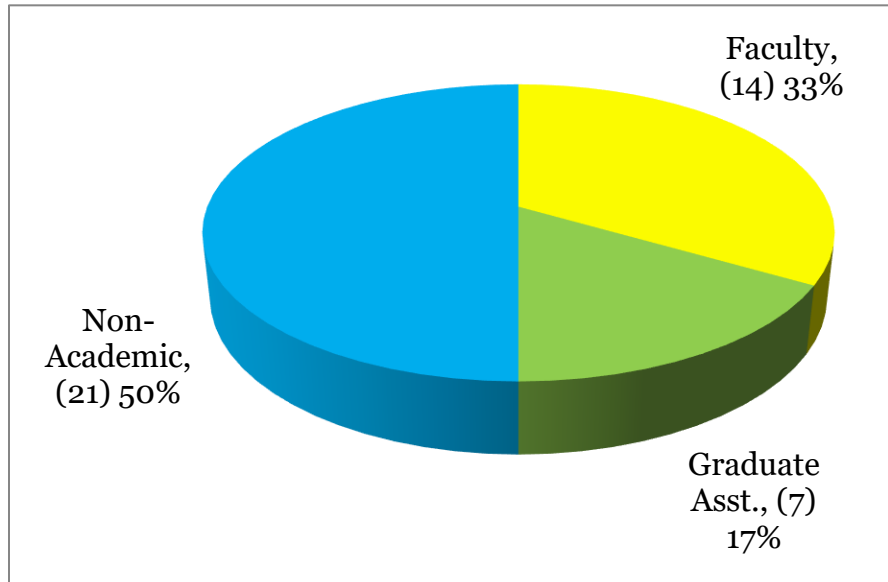
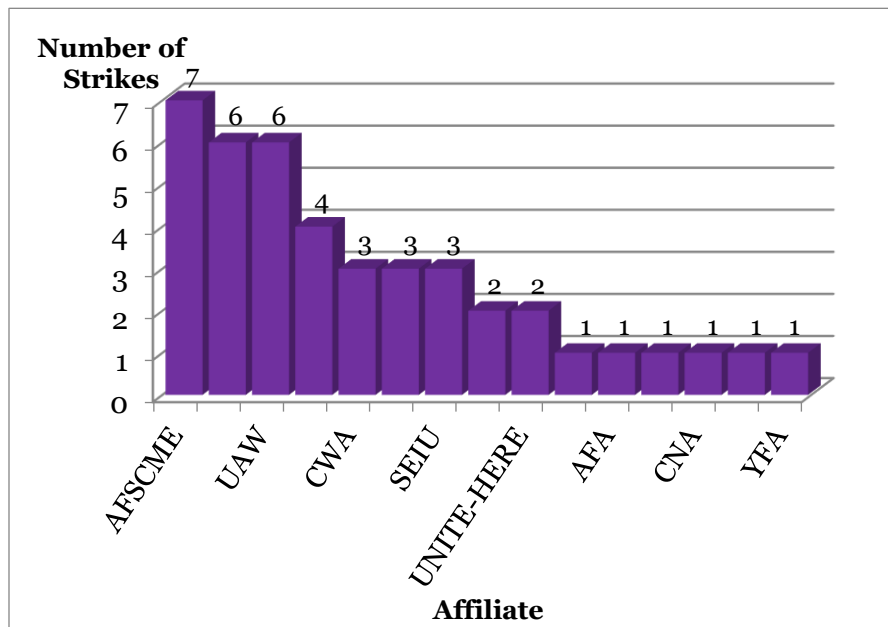


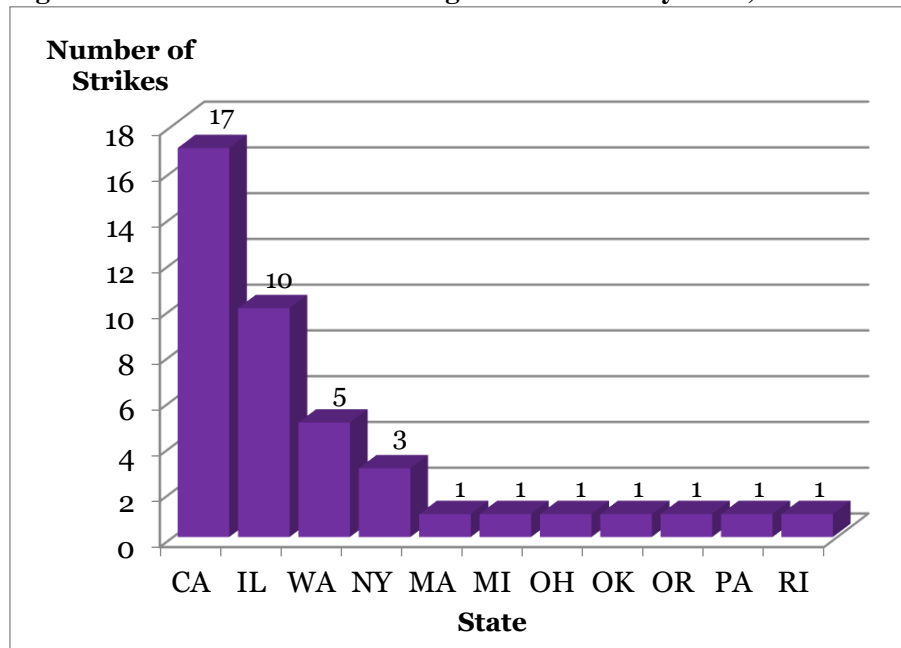
Figure 13. Strikes in Higher Education by Affiliate, 2012-2018



¹⁰¹. Note: AFA (Adjunct Faculty Association at Nassau Community College) and YFA (Yosemite Faculty Association) are independent faculty associations.

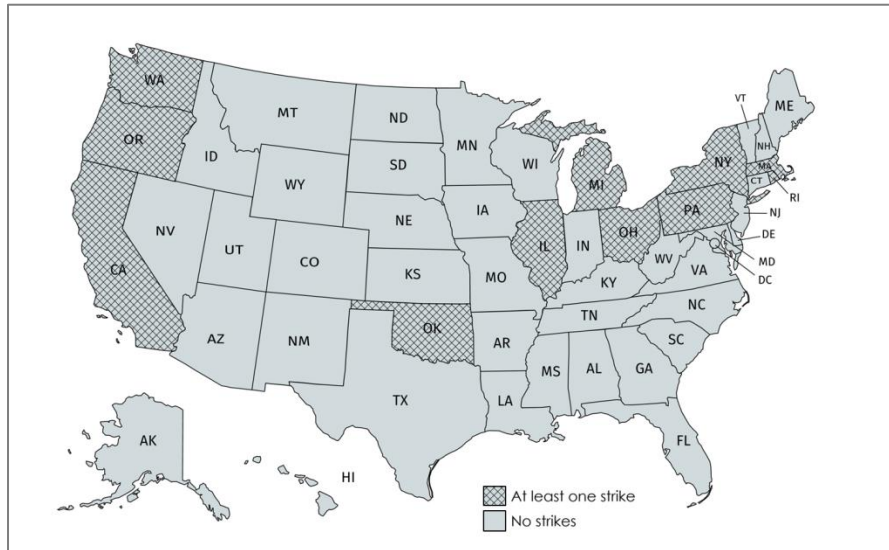
While Illinois had the highest number of strikes among states during the 2012–2018 period with five of the fourteen strikes, it is a distant second to California among all strikes in higher education during the period (see Figure 14). California, Illinois, and Washington were the states with the greatest number of strikes in higher education during the period which matches the trend among large work stoppages nationally.¹⁰² Figure 15 displays a map of the U.S. highlighting the states that have had at least one strike in higher education since 2012.

Figure 14. Number of Strikes in Higher Education by State, 2012-2018



102. According to BLS, California, Illinois, and Washington (in that order) were also the states with the greatest number of all work stoppages involving more than 1000 employees during 2012-2018. *Work Stoppages Involving 1000 or More Workers, 1993-2018*, *supra* note 12.

Figure 15. States with at least one strike in higher education, 2012–2018



VI. LOOKING AHEAD

Last year marked the hundredth anniversary of Bryn Mawr Acting President Helen Taft’s remarkable but little remembered speech calling upon faculty to strike as a means to bring attention to the underfunding of higher education. While critical commentary about the state of higher education continues to grow concerning the increased reliance on low-paid precarious faculty, the student debt crisis, and state austerity practices, National Center data demonstrates relatively few faculty strikes during the past seven years, and those strikes have been shorter than ones that took place in the 1970s and early 1980s. However, the Wright Strike University strike in 2019 might be a harbinger of lengthier faculty strikes in the future.¹⁰³

Notably, faculty strikes have been far more prevalent (93 percent) among units with non-tenure track faculty. This probably reflects the increased reliance on contingent faculty in higher education as well as the state of their wages, benefits, and overall working conditions. It remains to

103. There was a total of 13 strikes in higher education in 2019, which is the same number as in 2018. There was only one faculty strike, at Wright State University, and four graduate assistant strikes including a wildcat strike at the University of California, Santa Cruz. The graduate assistant strike at Harvard University, lasting 29 days, was the longest strike in higher education since 2012. National Center for the Study of Collective Bargaining in Higher Education and the Professions Newsletter (January 2020) <https://myemail.constantcontact.com/January-2020-Newsletter--News--Analysis--and-Updates.html?soid=1102372137664&aid=Rzj0_PNjz0>

be seen whether the treatment of these faculty members will result in a larger number of strikes and militancy in the coming years.

Strikes by student workers constituted 17 percent of all higher education strikes during the period studied. The likelihood of another shift in the legal landscape regarding the status of graduate assistants under the NLRA may result in future strikes and militancy to compel voluntary recognition by the institutions.¹⁰⁴

The 2018 spike in strikes in higher education, along with the much larger public school strikes, suggests that the frequency of strikes is growing. Successful strikes and strike threats are inspiring others to adopt those tools to obtain union recognition, to fight austerity, and to gain improvements in working and learning conditions on campus.

Another important development is the reemergence of social unionism, now known as bargaining for the common good.¹⁰⁵ This growing and militant movement that brings together unions and community allies has the real potential for increasing strike activity in higher education by expanding subjects of bargaining and connecting negotiations with broader social and economic issues on and off campus. The application of this approach might help avoid the type of backlash and divisiveness chronicled by Jon Shelton in his book on urban public school teacher strikes in the 1960s and 1970s.¹⁰⁶

To review, we have found that there were on average, two faculty strikes per year during the past seven years and that the majority of these (thirteen of fourteen) involve non-tenure-track units. AFT has continued to be involved in more faculty strikes than any other national union. But we also discovered that faculty strikes constitute only one-third of all strikes in higher education during the period. One-half of all strikes involved non-academic units and graduate assistants make up the rest. AFSCME is the major organizer of strikes for non-academics and UAW for graduate assistants. California had the most strikes in higher education in the past seven years with seventeen total, and the majority of these were at the University of California by non-academic units. Nationwide, strikes at public institutions in 2012–2018 were far more common than at institutions subject to the NLRA.

This article has analyzed data regarding actual strikes that took place in higher education. It did not examine the relative effectiveness of credible

104. See Hassan A. Kanu, *University of Chicago Graduate Student Workers Begin Strike*, DAILY LAB. REP. (BNA) (Jun. 3, 2019), <<https://news.bloomberglaw.com/daily-labor-report/university-of-chicago-graduate-student-workers-begin-strike>>.

105. See Marilyn Sniderman & Secky Fascione, *Going on Offense During Challenging Times*, NEW LAB. F. (Jan. 2018), <<https://newlaborforum.cuny.edu/2018/01/18/going-on-offense-during-challenging-times/>>.

106. SHELTON, *supra* note 3; see also STEVEN K. ASHBY & ROBERT BRUNO, A FIGHT FOR THE SOUL OF PUBLIC EDUCATION: THE STORY OF THE CHICAGO TEACHERS STRIKE (2016) (describing the use of social unionism in the successful September 2012 strike by the Chicago Teachers Union).

strike threats nor did it explore the specific circumstances that precipitated the strikes, employee and administrator opinions and perceptions, or the impact of the strikes on labor-management relationships. Future research will be needed to examine those issues to provide a better understanding of the causes and effects of strikes in higher education that can aid all stakeholders in developing strategies and tactics to improve working and learning conditions on campus.

APPENDIX

Summary of All Work Stoppages in Higher Education, 2012–2018

Institution	State	Union Affiliation	Year	Days	Unit Type
University of Illinois, Chicago	IL	SEIU	2012	3	Non-Academic
Cincinnati State Technical & Community College	OH	AAUP	2012	7	TT-NTT Faculty
Chicago State University	IL	UNITE HERE	2012	1	Non-Academic
University of Illinois, Urbana-Champaign	IL	SEIU	2013	3	Non-Academic
University of California	CA	AFSCME	2013	2	Non-Academic
University of California	CA	CWA	2013	1	Non-Academic
Evergreen State College	WA	AFSCME	2013	2	Non-Academic
Nassau Community College	NY	AFA	2013	4	NTT Faculty
Bellingham Technical College	WA	NEA	2013	4	NTT Faculty
University of California	CA	AFSCME	2013	1	Non-Academic
University of California	CA	UAW	2013	1	Graduate Asst.
University of Illinois, Chicago	IL	AAUP-AFT	2014	2	TT-NTT Faculty
University of California	CA	UAW	2014	2	Graduate Asst.
University of Oregon	OR	AFT	2014	8	Graduate Asst.
University of California	CA	AFSCME	2015	1	Non-Academic
Rhode Island School of Design*	RI	NEA	2015	5	Non-Academic
University of California	CA	AFSCME	2015	7	Non-Academic
Rock Valley College	IL	AFT	2015	4	NTT Faculty
University of Illinois, Urbana-Champaign	IL	AAUP-AFT	2016	2	NTT Faculty
City College of San Francisco	CA	AFT	2016	1	TT-NTT Faculty
Green River College	WA	AFT	2016	3	TT-NTT Faculty

Long Island University*+	NY	AFT	2016	12	TT-NTT Faculty
Harvard University*	MA	UNITE- HERE	2016	20	Non-Academic
Pennsylvania State System of Higher Education	PA	APSCUF	2016	3	TT-NTT Faculty
University of California, Los Angeles	CA	IBT	2016	1	Non-Academic
University of California, Los Angeles	CA	IBT	2017	5	Non-Academic
University of California	CA	IBT	2017	1	Non-Academic
University of Illinois, Springfield	IL	AFT	2017	4	TT Faculty
Spartan College of Aeronautics*	OK	UAW	2017		NTT Faculty
Bellingham Technical College	WA	NEA	2017	4	Non-Academic
University of Illinois, Urbana- Champaign	IL	AFT	2018	11	Graduate Asst.
Loyola University Chicago*	IL	SEIU	2018	1	NTT Faculty
Columbia University*	NY	UAW	2018	7	Graduate Asst.
University of California	CA	AFSCME	2018	3	Non-Academic
University of California	CA	CNA	2018	3	Non-Academic
University of California	CA	CWA	2018	3	Non-Academic
The New School*	NY	UAW	2018	4	Graduate Asst.
University of Washington	WA	UAW	2018	1	Graduate Asst.
Ferris State University	MI	NEA	2018	1	TT-NTT Faculty
University of California	CA	AFSCME	2018	3	Non-Academic
University of California	CA	CWA	2018	3	Non-Academic
University of Illinois	IL	INA	2018	4	Non-Academic
Yosemite Community College District	CA	YFA	2018	2	TT-NTT Faculty

* A private college or university.

+The work stoppage at Long Island University was a lock-out of faculty.