

**American Association of University Professors  
Capitol Hill Day  
June 11, 2009**

**Issue Brief: Collective Bargaining at Private Institutions**

In 1980, in its decision in *NLRB vs. Yeshiva University* the Supreme Court ruled against the right of full-time faculty to unionize through the procedures of the National Labor Relations Act. The decision, which applied to Yeshiva but has been interpreted more broadly to apply to private institutions since then, was made based on the argument that full-time faculty, because they have a stake in shared governance, are deemed “managerial employees” and not covered by the NLRA. Since that time, only part-time faculty at private institutions and faculty members at public institutions have been able to organize (albeit only in states where permitted), though their duties are fundamentally the same as those of their private-sector peers. The AAUP is deeply committed to a legislative solution to this problem, and is working to introduce legislation that would enable college and university employees in both the public and private sectors to organize and engage in collective bargaining.

In 1994, the Dunlop Commission examined the issue. The Commission was created in 1993 by the Secretaries of Labor and Commerce to examine the need for changes in labor laws, specifically: how to reduce workplace conflicts associated with unions, how to reduce the number of such conflicts that were referred to the courts, and how to improve labor-management cooperation. During this time, the AAUP and other faculty organizations advocated for a National Labor Relations Act amendment to address the *Yeshiva* issue. As found in AAUP testimony to the Commission, the proposed amendment language stated:

No professional employee or group of professional employees shall be deemed to be managerial or supervisory employees solely because that employee or group of employees participate in or implement collegial decisions or recommendations related to the nature of the profession, its standards and principles, and to the professional services offered.

The Commission agreed with the AAUP position in one of its final report findings.

**Talking points:**

- 1.) The idea that the duties of faculty members at public vs. private institutions are markedly different is completely erroneous. The barrier to faculty unionization at private institutions while their colleagues at public ones are free to do so is not only unfair but irrational by any definition.
- 2.) We reject the viewing of universities through a business-model lens. Just as students are not “consumers”, professors are not “managers”. While faculty should have substantial influence into the governance of their institutions, they are not “managing” the institution when do so; rather there are acting as the professional educators they are.

**Suggested background reading:**

[Testimony of Mary Burgan and James Perley before the Commission on the Future of Worker Management Relations](#) (1994)

[The Dunlop Commission on the Future of Worker-Management Relations - Final Report](#) (1994)