

Big Brother or Big Breitbart: Negotiating Evaluation in the Surveillance Age

By Kristine Anderson Dougherty, Gary Rhoades, and Mark F. Smith

Kristine Anderson Dougherty, former chief negotiator for the United Faculty of Florida, conducts searches and develops summaries from NEA's Higher Education Contract Analysis System for this chapter each year. After receiving her Ph.D. in sociology from the University of North Carolina, Chapel Hill, she taught at Florida Atlantic University. Dougherty is currently a research manager in Florida.

*Gary Rhoades heads the Department of Educational Policy Studies and Practice at the University of Arizona, where he is also is professor and director of the Center for the Study of Higher Education. His research focuses on the restructuring of academic labor and institutions. Rhoades is the author of *Managed Professionals: Unionized Faculty and Restructuring Academic Labor* (State University of New York Press, 1998) and co-author (with Sheila Slaughter) of *Academic Capitalism and the New Economy: Markets, State, and Higher Education* (Johns Hopkins University Press, 2004).*

Mark F. Smith is a senior policy analyst-higher education for the National Education Association. He advocates the policy goals of the association and its affiliates on behalf of college and university faculty and staff. Smith previously served as an NEA organizational specialist in higher education. He holds a B.A. in history and political science from the University of Wisconsin, and an M.A. in government from Johns Hopkins University. Prior to joining NEA, he served as director of government relations at the American Association of University Professors. He is a member of the American Historical Association and the American Political Science Association.

External evaluations of classroom instruction have long been a feature in both higher and K-12 education. While this tradition has benefits for all involved in educational endeavors, the ubiquity of electronic devices now allows for a different kind of monitoring—more correctly characterized as surveillance—and disturbing developments, both

institutional and individual, have taken place. This new scrutiny challenges the academic freedom of faculty in their classrooms (and more broadly), with clear implications for educational quality.

At the institutional level, state and federal governments continue to monitor and demand greater productivity for public spending in

colleges and universities. Such oversight functions are important and legitimate, but can also compromise or even violate academic freedom and the role of professional peers in evaluation (as well as in curriculum decision making and governance). The ongoing requirement for accountability also presses on the instructional role of academic employees in ways that can threaten academic freedom and educational quality. An overriding emphasis on “completion” and efficiency in graduating students as measures of productivity can threaten educational quality, and the academic freedom of faculty to ensure certain quality standards. Such metrics can affect not just colleges but also individual academic employees, who may be sanctioned for being too tough in their grading, or for having student complaints about the demands in class.¹

In addition to administrative oversight, political activists in a hyper-charged ideological arena have taken to surveillance and harassment of individual faculty members, typically via websites and social media. Professor Watchlist and Campus Reform are two organizations providing a foundation for this new trend. The former, a project of Turning Point USA, indicates on its homepage that “TPUSA will continue to fight for free speech and the right for professors to say whatever they wish; however students, parents, and alumni deserve to know the specific incidents and names of professors that advance a radical agenda in lecture halls.”² The latter, which similarly addresses “liberal bias” on college campuses, has, as one of its featured examples, the case of a post-Las Vegas shooting class discussion in a “Casino Management” course. The “article” relates the view of one of the students in the class, in addition to some video that they took (embedded in the story is another story about a professor at another university, whose comments after the shooting were videotaped).³

The potentially chilling effect of classroom interactions being posted on websites and social media can compromise the free and open

expression not just of faculty but also of students in those classes. In such a context, it is no wonder that evaluation policies for faculty have become more controversial, and these developments point to the significance of focusing on contract language about surveillance and electronic recording of classes, not just by the administration, but also by students.

In this chapter, we examine the NEA Higher Education Contract Analysis System searchable database for language related to surveillance and evaluation. The database includes about 80 percent of all faculty collective bargaining agreements nationally, including contracts negotiated by bargaining units affiliated with the leading academic unions and the Service Employees International Union. Before turning to the contract analysis, we turn to NEA policy statements related to these matters.

NEA POLICIES

NEA believes that education employee evaluations can serve useful purposes in enhancing education at all levels, from pre-kindergarten through graduate school, but need to be carefully crafted “to assure the competency of all education employees in their respective fields.”⁴ In addition, NEA “believes that its higher education members must be allowed to determine through the collective bargaining process the methods by which they are evaluated and promoted.”⁵ These resolutions speak to the formal faculty evaluations conducted by colleges and universities. The outside surveillance and harassment issues may involve other policies surrounding evaluation, academic freedom, and intellectual property, as part of faculty governance. Amidst the current battles, of course, we would do well to remember that they are but today’s articulation of longstanding tensions and hostilities between the academy and various structures.

NEA reviews its policies annually at the Representative Assembly. The *Resolution on Education Employee Evaluation* was revised in 2017, and reflects conclusions from a more formal

Policy Statement on Teacher Evaluation and Accountability adopted in 2011. The *Policy Statement* stresses “that teachers are accountable for high quality instruction that advances student learning.” To ensure that accountability, the Association believes that “teachers have the right to a safe and supportive working environment including ongoing non-evaluative feedback on their practice that supports teachers’ efforts to innovate and the right to regular, confidential evaluations.” Furthermore, “teachers have the right to increased autonomy over instructional practices, time during the school day for collaboration with colleagues, [and] a decision-making role in professional development.” Professional development opportunities must also be available “in both non-evaluative feedback and in evaluations.”⁶

The *Resolution on Education Employee Evaluation* goes on to say “that evaluations of teachers must be comprehensive, based on multiple indicators providing teachers with timely feedback and support to enhance their practice. Components of effective evaluation must include indicators of teacher practice, teacher contribution and growth, and contribution to student learning, growth, and development.”⁷ In terms of higher education, while NEA supports the traditional triad of academic work—teaching, research, and service—the Association “affirms the importance of teaching in institutions of higher education and believes that research and publication should not be the only criteria on which higher education faculty are evaluated and/or promoted.”⁸ Finally, it should be noted that the Association asserts that “by participating in an evaluation process, an education employee shall not waive his or her right to due process in any subsequent contractual or legal proceeding.”⁹

The policy statements and resolutions quoted above represent NEA’s stance on the development of formal structured evaluation systems that should be set forth in collective bargaining contracts or college and university handbook policies. They reflect standard

principles of academic governance such as the Association’s *Resolution on Faculty-Staff Governance in Higher Education*, which gives “primary responsibility for determining curricula, methods of instruction, and subject matter; establishing requirements for earning degrees and certificates; reviewing institutional budgets; and making recommendations on financial issues that impact academic programs” to the faculty. In addition, the resolution states that “faculty and staff should participate in the selection and evaluation process and determine the status of colleagues and administrators, especially appointments, reappointments, and tenure...[and] it is the primary responsibility of faculty and staff, where appropriate, to establish procedures relative to promotions, sabbaticals, and research support.”¹⁰

As noted earlier, we are seeing a resurgence in examples of surveillance and harassment of individual faculty members. These incidents not only run counter to the fundamental principles of academic freedom, but violate formal resolutions on the topic. NEA’s *Resolution on Academic and Professional Freedom*, articulates the Association’s belief:

...that academic freedom is essential to the teaching profession. Academic freedom includes the rights of teachers and learners to explore and discuss divergent points of view. Controversial issues should be a part of the instructional program when, in the judgment of the professional staff, the issues are appropriate to the curriculum and to the maturity level of the student. A teacher shall not be fired, transferred, reassigned, removed from his or her position, or disciplined for refusing to suppress the free expression rights of students.¹¹

Throughout its existence, the NEA has stressed the professional nature of the academic profession. A 1928 document titled, “Freedom of the Teacher” tied the concept of academic freedom to the professional status of teaching.¹²

NEA has stood by these policies as it has defended academic freedom against external political assaults such as loyalty oath controversies, accuracy in academia, and the so-called Academic Bill of Rights, and will continue to defend faculty and staff exercising their rights in the future. This includes contingent faculty who do not have the protections of tenure, but must be able to exercise the rights of academic freedom to do their jobs and provide the highest quality instruction to students. For it to be otherwise would “threaten the job security vital to academic and intellectual freedom.”¹³ This freedom is indispensable for maintaining the quality of the education and the learning conditions of students.

SURVEILLANCE

Several contracts featured language related to surveillance, ranging from workplace rights to evaluation to academic freedom to privacy to intellectual property. Sometimes the placement of the provisions says something about the focus of the protections. For the most part, though, we are focused on language that addresses whether and under what conditions there can be some form of surveillance or electronic recording of classes.

The strongest language, found in a small number of contracts, indicates that there cannot be surveillance without written permission of the faculty member. For instance, Youngstown State University’s contract reads:

Surveillance may never be used for evaluating teaching performance, attendance, or any other behaviors related to an employee’s job description. Exceptions to this policy require written permission from all faculty members who are being recorded.

Similarly, in a section on evaluation, Mt. San Antonio College’s contract reads:

In the evaluation process, faculty shall be free from any and all forms of electronic or other listening or recording devices, except with his/her express and non-continuing consent.

In the case of Owens Community College’s contract, the provision is in an article on “privacy,” a heading found in a number of provisions.

The College shall not listen in on, capture, transcribe or record in any fashion the content of the conversation in the telephone calls of Association members. The College will not unreasonably invade the privacy of bargaining unit members with surveillance equipment such as: video and audio surveillance, electronic mail, voice mail, keystroke monitoring, web-browsing records, or any other enhanced workplace technology.

Mid-Plains Community College has a related clause, specifically about e-mail privacy: “Unless the administration actively asserts a reasonable cause request to retrieve and monitor a faculty member’s e-mail messages, all faculty member’s mail shall remain private.” Similarly, Treasure Valley Community College has a clause on privacy that reads:

The College shall not use any recording devices without the written mutual agreement of the College and Association member being recorded. The privacy of the Association and the individual member’s mailbox, office, e-mail, phone, computer, and personal material shall be respected. No information from these sources shall be gathered, stored or exchanged without the expressed written permission of the member.

And Palomar Community College District’s contract has a clause on monitoring of the workplace that provides protections from “eavesdropping devices.”

In some contracts, there is reference to security cameras for safety. But in the “Use of Facilities” section of the Massachusetts State Colleges contract, the language reads:

The Board shall maintain reasonable security for instructional equipment, libraries and offices. The Board shall honor unit members’ expectation of privacy in campus areas such as their offices, the offices of the Association, restrooms and locker rooms, and shall not use surveillance technology in such areas except as necessary for criminal investigations and in accordance with judicial standards. Additionally, no surveillance technology shall be used in classrooms, studios, laboratories, or meeting rooms except as necessary for criminal investigations and in accordance with judicial standards.

Autonomy is not to be sacrificed to public safety.

At the center of concern about use of technology for surveillance or electronic recording is the issue of evaluation. A longstanding standard embedded in many contracts is the requirement that teaching observations be approved ahead of time by the faculty member. Washtenaw Community College’s contract for part-time faculty offers a good example:

All monitoring or observation of the work performance of an instructor shall be conducted openly with his/her full cooperation. The use of eavesdropping, closed circuit television, public address or audio systems, and similar surveillance devices shall be strictly prohibited.

The declarative terminology of “shall be strictly prohibited” is strong.

Some language clarifies that standard in the case of distance education as well. In the Kern Community College District, the evaluation articles (one each for full-time and for part-time faculty) read:

Information shall not be obtained through the use of sources such as electronic media, listening or recording devices without the written permission of the faculty member. The evaluation of faculty teaching on-line, telecourse, and distance learning classes shall be the result of direct observation of the faculty member during the performance of his/her duties and shall not include any covert surveillance mediated by any technological devices.”

Similarly, Rider University’s contract states,

Any recording of a Distance Learning course will occur only with the permission of the instructor and will remain the property of the instructor. Neither the instructor nor the University shall sell the recording to a third party for use outside the University’s academic curriculum.

Notably, and understandably, the analytical focus of such language is about the relationship between faculty and administration over control of the evaluation process or of intellectual property. Concerns about electronic recording are not centered on the sort of cases described in opening this chapter—a student recording material and communicating it to an external watchdog group. And herein lies a challenge for bargaining units. Certainly, there could be some good reasons for students recording a class. One of these that comes up in a handful of provisions is the need for students with particular disabilities to do so. For instance, the contract of Chemeketa Community College reads,

Except for students receiving an accommodation through Disabilities Services, the college will recognize the right of instructors to prohibit students from electronically recording their classes without the permission of the instructor.

As is evident in some contracts, there is a broader potential conflict here, between the interests of faculty for privacy and intellectual property (as well as of academic freedom), versus of students for access to material for educational quality. The language of the Community College of Beaver County makes this clear:

Faculty members shall own all rights to materials prepared as part of their regular College teaching assignments for classroom, educational or professional purposes and shall be exclusively entitled to the benefit of any royalties derived therefrom. This would include but not be limited to classroom lecture notes, lecture files, and related materials. For personal educational purposes, students may record classroom lectures or other presentations, using tape recorders or other electronic or mechanical devices, unless the Faculty Member denies permission for such recording. Permission shall not be denied when the student requires such devices as the result of a physical disability. Under no circumstances will evidence derived from such electronic reproductions be allowed for consideration in any disciplinary proceeding against a faculty member.

The focus on students' educational needs appears in a few other contracts as well. Burlington County College's contract reads:

The administrative use of a recording device during the meeting of class shall be permitted only with the prior approval of the unit member concerned. Upon request by a student for permission to use a recording device, sign interpreter, or other instructional aid designed to facilitate or enhance the learning process during the meeting of the class, such permission shall ordinarily be granted and it should not be unreasonably denied.

And Highline Community College's contract captures the internal contradiction in its provision:

In protecting academic freedom and promoting learning, it shall be the policy of the College that administrators, faculty, students, or others shall not install in any classroom or bring into the classroom on a temporary basis, a mechanical or electronic device for listening to or recording any class session without consent of the faculty member involved. Faculty members are encouraged to promote student learning by permitting recording for personal study use.

Two apparently competing principles are the academic freedom of the faculty member and the student's educational interest in having access to the class material and conversation.

Florida International University's provision points to possible educational problems and privacy concerns for students as well as faculty due to the recording of classes.

If an employee teaches courses in a room equipped for recording of class lectures and discussions, the University will make reasonable efforts to ensure that the recording of the lecture or discussion does not interfere with classroom instruction. Such efforts will include insuring that equipment used for recording is unobtrusive...and that students in the classroom are informed in advance by the University that lectures and discussions will be recorded and distributed online. No one who is not enrolled in the section(s) being recorded will be granted access to recorded lectures and discussions in that class except as approved by the employee.

Distinctively and insightfully, the contract language points to the importance of student privacy and freedom from observation in the classroom. And it provides the solution in

regard to privacy by clarifying that no one outside the class should receive the recordings. What the language underscores is that students as well as faculty have an interest in privacy, in not being surveilled by a totalitarian administration or by a tyrannical external political group that might try to censor or sanction certain views and conversations.

EVALUATION CONTRACT LANGUAGE

Faculty protection from threats to academic freedom and quality can be found in many articles of the collective bargaining agreement. Perhaps the most central is faculty evaluation. Some contracts provide only strong statements of management rights, such as for the adjunct unit for the University of Alaska:

Bargaining unit members' performance may be evaluated at the sole discretion of the University. Any written evaluation of a faculty member's performance shall be made available to the affected bargaining unit member in a timely manner. The bargaining unit member shall have the right to file a rebuttal to the evaluation, which rebuttal shall be appended to the evaluation.

Language in these strong management rights contracts—unless balanced by language in other articles—could even allow evaluation based on social media posts, anonymous complaints, electronic surveillance, bias, or political influence.

Stronger evaluation articles contain clear procedures and criteria that have been developed through bargaining and shared governance, appeal or grievability of decisions, and multiple appropriate sources of input to the evaluation, including peer and student evaluations. We focus on the use of administrator or peer course evaluations, and student evaluations of courses, dimensions most relevant to concerns about academic freedom in a politicized climate.

Student Evaluations

While student evaluations are part of almost all evaluation procedures, some have stronger language to guard against limitations of standard student evaluations. One concern is bias from students. For example, Peter Schmidt, *Chronicle of Higher Education* senior writer, notes that “the practice of using students' anonymous course evaluations to judge faculty performance has long been controversial, with a growing body of research finding that students' assessments are biased by race, gender, age, and factors such as personal attractiveness.”¹⁴

One way to ensure appropriate use of student evaluations is to have faculty input into the evaluation instrument. Miami Dade College's contract states that:

Because the Student Feedback Instrument directly impacts the faculty performance review, the Student Feedback Instrument will be agreed to by both parties. The Student Feedback Instrument used for classroom faculty will be modified by the parties as appropriate for Faculty Librarians and Alternate Learning courses.

Southern Illinois University Edwardsville's contract ensures that student evaluations are only used as one aspect of an evaluation:

All monitoring or observation of the work of each member shall be conducted in person by the immediate supervisor or designee and with the full knowledge of the member. Student evaluations which may be used from time to time as one factor in the evaluation of a member's work performance will not be included in the member's official personnel records without the member's agreement. Summary comments from the immediate supervisor or designee regarding student evaluations may be included in the evaluation record.

The Youngstown State University contract also limits how many courses are evaluated and allows the faculty member to put the material in context.

During the first year of the evaluation process, the faculty member will administer at least one student evaluation for each preparation. A detailed summary of the student evaluations, including a tally of the ratings and a sampling of written comments, will be prepared by the faculty member and submitted as part of the Self-Evaluation Report to the division dean.

Administrator/Peer Teaching Evaluations

Youngstown State University provides for the ability of the faculty member to select the peers, use of a team rather than a single peer, and the ability of the faculty member to write up the results and put the observations in context.

During the second year of the evaluation process, the faculty member will select a peer evaluation team. The peer evaluation team will include a minimum of two faculty members selected by the individual faculty member being evaluated. Those faculty will be responsible for classroom visitations which will be completed during the second year of the evaluation process. A summary of the classroom visitations will be prepared by the faculty member and submitted as part of the Self-Evaluation Report to the division dean.

Miami Dade College provides a clear process for use of administrator classroom observation, even though this is unannounced and the faculty member does not have input into who will do the observation.

A minimum of one unannounced classroom visitation each year will be conducted by the Chair for each full-time faculty member in the department. Faculty Librarians will have

one unannounced visitation scheduled in the same manner. Additional announced and unannounced visitations will be at the discretion of the Chair. The process for faculty visitation will include (1) a pre-visit discussion between the Chair and faculty member, (2) the classroom or library visitation, and (3) a post-observation conference, if requested by the Chair and/or the faculty member. During the post-observation conference, the faculty member may request an additional classroom visitation. Such additional visitations will be factored into the performance review. Results of classroom observations will be provided to the faculty member within ten (10) working days of the observation. Because the Observation Instruments used for both classroom faculty and faculty librarians directly impact the annual faculty performance review, such instruments will be agreed to by both parties.

Due Process in Evaluation

A final key element in protecting academic freedom for faculty is a clear process including the ability to file an appeal or grievance. The minimum protection found in contracts is the ability of the faculty member to include a rebuttal of a negative evaluation or observation in their file. The University of Vermont contract includes such language:

Annual reviews shall include a formal meeting between the evaluator and the faculty member at least every other year, except for probationary faculty for whom annual meetings are required. However, either party may request a meeting in any given year. Faculty who are on Sabbatical or Professional Development Leave or any leave, paid or unpaid, during any Spring semester will submit a report of annual activities. The evaluator's final assessment must be made in writing and will be placed in the faculty member's Academic Record File, with a copy provided to the faculty member by May 15. A faculty

member has the right to rebut his or her evaluator's assessment not later than ninety (90) days following the issue of the evaluator's written evaluation, and any such rebuttal shall be placed in the faculty member's Academic Record File.

Miami Dade College includes the ability to file an appeal of an evaluation and potentially receive an amended evaluation.

Any alleged false, misleading, or omitted information for the performance review will be examined by the Dean upon written request of the faculty member within ten (10) working days of the faculty receiving the performance review. Within ten (10) working days of receiving the appeal, the Dean will determine if such information is false or misleading. The performance review will be modified, if appropriate, and returned to the faculty member for signature and processing. If omitted information is determined by the Dean to be relevant to the performance review, such information will be added. The Dean has authority to change the final rating under any circumstances. The decision of the Dean is final. No dispute over an interpretation of "false," "misleading," or "omitted information" will be subject to the grievance procedure.

While almost all contracts state that the content of an evaluation is not subject to a grievance (though violations of process are), some do at least provide for grievances over use of untrue or inaccurate materials. For example the University of Vermont contract provides that:

Faculty may in writing request the Dean to remove from the Academic Record file any document that the faculty member alleges to be factually untrue or inaccurate. The faculty member shall have sixty (60) days to make such a request following the time that he or she became aware or reasonably should

have been aware of the existence of the document. Should the Dean deny the request, the faculty member may file a grievance over whether the document is factually untrue or inaccurate.

CONCLUSION

In this chapter, we have reviewed examples of contract language that helps ensure academic freedom and educational quality, protecting faculty and classrooms from secret surveillance, and ensuring that evaluation is grounded in professional due process. Yet there are too few such stipulations in most contracts. The contract language featured here can provide benchmarks not of what to start with as initial proposals at the bargaining table, but of what to aim to achieve at the end of deliberations. It can also serve as language that may help mobilize existing members and even attract new members. Academic employees value professional autonomy and due process. The language we have detailed can be an organizing tool to show how collective bargaining can help defend academics and classrooms from the surreptitious surveillance of Big Brother or of Big Breitbart and their allies.

At the same time, it is important for bargaining units to look beyond their members and even the academy in their negotiations. That means, for instance, consistently articulating the connection between the working conditions of academic employees and the learning conditions of students. Bargaining units should be able to clarify for students and for various external constituencies the value in a democracy of open and free expression in classrooms, for students as well as for faculty. It should not be hard to appeal to these stakeholders about the importance of classrooms being a space in which students and instructors feel unencumbered by concerns about public opinion to pursue difficult and challenging topics and conversations. It should also not be hard to help these stakeholders see the connection between these aspects of in-depth, challenging, questioning, pursuit of topics and quality education

that involves and yields the critical thinking that is at the heart of our ideals about academe and democratic society.

In short, as bargaining units pursue their aims at the table, they should also be thoughtfully involved in organizing negotiations around both member building and building public support. Such a stance is at the heart of framing the negotiations of academic employees in the ways that the most successful campaigns of adjunct faculty and graduate employees have done: as public-interest-based bargaining given the connection between academic employees' working conditions and students' learning conditions.¹⁵ Thus, negotiating surveillance and evaluation language is not just about protecting faculty interests, but also about addressing the privacy concerns of students, the freedom of other students in the class, and the interests of educational quality in a democracy.

NOTES

¹ Rhoades, "Bargaining Quality in Part-time Faculty Working Conditions: Beyond Just-in-Time Employment and Just-at-Will Nonrenewal."

² ProfessorWatchlist.org.

³ Perisic, "UNH Prof Tells Class that U.S. Should Ban all Guns."

⁴ NEA, *Resolution on Education Employee Evaluation*.

⁵ NEA, *Resolution on Evaluation and Promotion in Higher Education*.

⁶ NEA, *Policy Statement on Teacher Evaluation and Accountability*.

⁷ NEA, *Resolution on Education Employee Evaluation*.

⁸ NEA, *Resolution on Evaluation and Promotion in Higher Education*.

⁹ NEA, *Resolution on Education Employee Evaluation*.

¹⁰ NEA, *Resolution on Faculty-Staff Governance in Higher Education*.

¹¹ NEA, *Resolution on Academic and Intellectual Freedom*.

¹² NEA, *Proceedings of the Sixty-Sixth Annual Meeting, July 1–6, 1928*.

¹³ *Ibid.*

¹⁴ Schmidt, "When Students' Prejudices Taint Reviews of Instructors."

¹⁵ Rhoades, "What Are We Negotiating For?: Public Interest Bargaining."

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