PROTECTING ACADEMIC FREEDOM

The Collective Bargaining Agreement (CBA), which went into effect on July 1, 2010, includes the first academic freedom provision in the country negotiated since new legal threats to faculty speech emerged in 2006.

Article II of the CBA provides contractual force to aspects of academic freedom that include teaching, conducting research and scholarly activity, publishing and disseminating the results of research and creative activity, public speech regarding any social, economic, political or other interest, and "the right to address any matter of institutional policy or action whether or not as a member of an agency of institutional governance." A full-time faculty member of the bargaining unit subjected to punitive or disciplinary actions by an administrator of the University of Delaware that violates her/his academic freedom now has a contractual right to initiate a grievance through the Grievance Procedure specified in Article VIII of the CBA.

Our academic freedom provision comes in the wake new limits on the speech rights of public employees by the United States Supreme Court in Garcetti v. Ceballos (2006) and lower court cases that have extended these limits to faculty members at public institutions. In Garcetti, the Supreme Court determined that when public employees make statements "pursuant to their official duties," they are not protected by the First Amendment. Several cases involving faculty speech at public institutions, including a case involving a faculty member at Delaware State University, applied Garcetti to faculty speech in ways that limit the First Amendment rights of faculty to criticize institutional policies and administrators. This seriously undermines academic freedom by limiting meaningful participation of faculty members in shared governance.

In the face of these threats, our AAUP chapter initiated a dialogue with the University Administration. With Provost Apple, we co-sponsored a University Forum on Academic Freedom that included talks by Lawrence White, Vice President and General Counsel for the University of Delaware, and Rachel Levinson, Senior Counsel for national AAUP. Based on a report issued by a subcommittee of the Academic Freedom and Tenure Committee of national AAUP and advice from Robert O’Neil (chair of the subcommittee) and others, we determined that in the new legal climate, academic freedom is best protected through collective bargaining and contractual language. The provision in our CBA was vetted by national experts on
academic freedom and has been widely publicized and discussed at national AAUP meetings and in a variety of higher education venues. The academic freedom provision is a proud accomplishment of the UD/AAUP and the University of Delaware Administration that gives contractual force to the core value of academic life.

REPORT ON SPECIAL SALARY ADJUSTMENTS, 2009-2010

Article 12.8 of the Collective Bargaining Agreement (CBA) provides for special salary adjustments by the University under three situations: (a) when a salary adjustment is necessary to correct a gross inequity including, but not limited to, situations of salary inversion and compression; (b) when a salary adjustment is necessary to retain a faculty member at the University; and (c) when salary disparities occur, relative to market demands, which adversely affect the quality of an academic unit. In addition, Article 5.12 of the CBA require the University to give an annual report to the AAUP that summarizes special salary adjustments awarded during the preceding year.

For the year 2009-2010, the University provided $221,570 in special salary adjustments. For reasons of gross inequity, $16,342 was provided to five faculty members. The adjustments ranged from $1,000 to $5,000. For reasons of retention, $70,775 was provided to seven faculty members. The adjustments ranged from $4,000 to $31,736. For reasons related to disparities relative to market demand, $134,453 was provided to 46 faculty members. The adjustments ranged from $1,000 to $12,144.

SALARY DISPARITIES AND SALARY ADJUSTMENTS

The Collective Bargaining Agreement (Article 12.10) requires a salary disparity analysis for all bargaining unit members be conducted by the Office of Institutional Research and Planning once during the term of the contract. Once the analysis is completed, the results are to be sent to deans for review and discussion with department chairs. Based on their analysis of the data, deans and chairs make recommendations to the Provost for salary adjustments. The Provost then reviews the recommendations and "make every effort to approve the recommended salary adjustments."

While the contract requires that the AAUP be notified of recommended salary adjustments, individual faculty members have the right to information from their chairs regarding their status on the eligibility list for salary adjustments. A salary disparity does not necessarily mean that there is an inequity, and an inequity does not necessarily require a salary adjustment. Under the existing contract, there is a great deal of discretion on the part of the Administration on these matters. This discretion includes the amount of funds available to resolve inequities.

Continued on page 3
Since we are at the beginning of a new contract, a salary disparity study will be conducted before the next contract is negotiated in 2013. The AAUP leadership will notify the entire faculty when the salary disparity is completed, and we urge faculty members to exercise their rights to gain information about their individual statuses on eligibility lists at the appropriate time after the salary disparity is conducted. This will be the only path to information about gaps between eligibility for salary adjustments and the actual distribution of such adjustments at least for the duration of the current contract.

COMMITTEES ON CONTRACT ISSUES

The Collective Bargaining Agreement has four letters of understanding in which the AAUP and the University agree to establish four committees to focus on a variety of issues that were too complex to resolve during contract negotiations. The goal of these committees is to provide forums for sharing ideas and resolving some longstanding problems without the time constraints of collective bargaining. The AAUP and the Administration have each appointed three members to the following committees:

Workshops for Chairs and Deans
The purpose of this committee is deepen the knowledge of policies and procedures in the CBA and how best to implement them. AAUP members of the committee include Gerry Turkel (Sociology), David Smith (Biological Sciences), and Brian Ackerman (Psychology). Administration members include J.J. Davis (Vice President for Finance and Administration), Dean Bobby Gempesaw, and Interim Dean Joe Pika.

Merit Pay Committee
This committee is charged with making policy recommendations for the distribution of salary increases that facilitate academic values, equity, and the educational and scholarly missions of the University. AAUP members include Gerry Turkel (Sociology), Calvin Keeler (Animal and Food Sciences), and Leslie Reidel (Theatre). Administration members include J.J. Davis, Dean Michael Chajes, and Dean Nancy Targett.

Categories of Instruction and Assigned Workload
This committee is charged with examining different types of instructional activities that are employed on campus and how each should be credited in determining annual assigned workload. AAUP members include David Smith, Fred Hoffstetter (Education), and Alan Fox (Philosophy). Administration members include Dean Goerge Watson, Dean Bobby Gempesaw, and Paul Head (Chairperson of the Music Department).

Reconciliation of Faculty Handbook with CBA
Affirming that, should there be conflicts between the CBA and the Faculty Handbook, the CBA prevails, this committee is charged with resolving such conflicts, including standards of promotion. AAUP members include David Smith, Michael Gamel-McCormick (Human Development and Family Studies, and Joan DelFattore (AAUP President, English and Legal Studies). Administration members include Tom LaPenta, Acting Associate Provost Maggie Andersen, and Dean Bobby Gempesaw. Faculty Senate representatives include Jack Baroudi (B&E Accounting and MIS), Martha Buell (Human Development and Family Studies), and Thomas Kaminski (Kinesiology and Applied Physiology).
JOIN THE AAUP

Your AAUP chapter has accomplished a great deal over the course of the past year. A contract was negotiated by the AAUP leadership and ratified by the membership that provides cutting edge protection for academic freedom and enhances the economic status of UD faculty. The committees established through Letters of Understanding with the University will provide important direction for realizing our commitments to academic values.

AAUP activities depend on an active and concerned faculty membership. The more faculty who join and participate in the AAUP, the greater is the strength of our organized efforts on behalf of faculty interests and values. If you are not an AAUP member, visit the AAUP web site and click "membership" and join. (www.udel.edu/aaup)