

March 3, 2022

VIA ELECTRONIC MAIL

Dr. Abel Bult-Ito
President
United Academics AAUP–AFT (UNAC)
University of Alaska Fairbanks

Dear Professor Bult-Ito:

You and your UNAC colleagues have asked the staff of the American Association of University Professors to review the January 13, 2022, memorandum on the “Role of Faculty in Decision-Making” written by University of Alaska general counsel Matthew Cooper and addressed to “chancellors, provosts, and faculty governance.” You have invited us to comment specifically on the memorandum’s statements concerning the relationship between collective bargaining and academic governance, with particular reference to their consistency with AAUP-supported principles and standards of academic governance.

As you are aware, these principles and standards—commonly referred to as “shared governance”—are set forth in the AAUP’s enclosed *Statement on Government of Colleges and Universities*, jointly formulated with the American Council on Education (ACE) and the Association of Governing Boards of Universities and Colleges (AGB). The *Statement on Government* calls for “adequate communication” and “joint planning and effort” by the governing board, administration, and faculty for effectively carrying out the wide variety of complex tasks that institutions of higher education must perform. Joint effort, according to the statement, means that “(1) important areas of action involve at one time or another the initiating capacity and decision-making participation of all the institutional components and (2) differences in the weight of each voice, from one point to the next, should be determined by reference to the responsibility of each component for the particular matter at hand.” In other words, no decision with major ramifications for the institution should be made without involving the board, administration, and faculty, and the degree of involvement by each group should depend on each group’s responsibilities.¹

¹ Regarding the applicability of the principles of shared governance to multi-campus systems, footnote 3 of the *Statement on Government* states: “Traditionally, governing boards developed within the context of single-campus institutions. In more recent times, governing and coordinating boards have increasingly tended to develop at the multi-campus regional, systemwide, or statewide levels. As influential components of the academic community, these supra-campus bodies bear particular responsibility for protecting the autonomy of individual campuses or institutions under their jurisdiction and for implementing policies of shared responsibility. The American Association of University Professors regards the objectives and practices recommended in the *Statement on Government* as constituting equally appropriate guidelines for such supra-campus bodies and looks toward continued development of practices that will facilitate application of such guidelines in this new context.”

The governing board's "primary responsibilities" include "relating the likely needs of the future to predictable resources; . . . husbanding the endowment; . . . obtaining needed capital and operating funds"; paying "attention to personnel policy" "in the broadest sense of the term"; insisting on "the development of long-range planning by the administration and faculty"; and "when ignorance or ill will threatens the institution or any part of it," serving as the institution's "champion" while making clear that its protection "is, in fact, a fundamental defense of the vested interests of society in the educational institution."

The administration, and particularly the chief executive officer, is primarily responsible for the day-to-day management of the institution; long-range planning; "representing the institution to its many publics"; defining and attaining institutional goals; maintaining effective communication between institutional components, and especially between the governing board and the faculty; seeing to it that "the standards and procedures in operational use . . . conform" to board policy and to the "standards of sound academic practice"; maintaining existing institutional resources and creating new resources; and promoting "public understanding" of the institution and its activities. As the statement summarizes, "in these and other areas," the responsibility of the administration is "to plan, to organize, to direct, and to represent."

The fifth section of the *Statement on Government* outlines the "primary responsibilities" of the faculty in institutional decision-making. "The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process." "Faculty status" includes "appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal."

The faculty's primary responsibility for these matters derives from "the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues."

The chief means by which the faculty exercises its primary responsibility for academic matters is through faculty governance bodies. Thus, "agencies for faculty participation in the government of the college or university should be established at each level where faculty responsibility is present." Critically, "an agency should exist for the presentation of the views of the whole faculty." At most larger institutions that agency is the faculty senate, whose members "should be selected by the faculty according to procedures determined by the faculty."

With respect to collective bargaining and academic governance, from the very beginning of the AAUP's involvement in collective bargaining in the 1960s, our Association has regarded formal bargaining as a means of achieving and supporting sound systems of shared governance.² The AAUP's enclosed *Statement on Collective Bargaining*, first adopted in 1973, therefore "affirms

²Cf. *Statement on Government*, footnote 5: "The American Association of University Professors regards collective bargaining, properly used, as another means of achieving sound academic government. Where there is faculty collective bargaining, the parties should seek to ensure appropriate institutional governance structures which will protect the right of all faculty to participate in institutional governance in accordance with the *Statement on Government*."

that faculties at both public and private institutions are entitled, as professionals, . . . to engage in collective bargaining in order to ensure effective faculty governance.” And it encourages AAUP chapters entering into collective bargaining to “seek to . . . maintain and enhance within the institution structures of representative governance that provide full participation by the faculty.”

The Association’s 1988 *Statement on Academic Government for Institutions Engaged in Collective Bargaining* (enclosed) affirms that collective bargaining “should not replace, but rather should ensure, effective traditional forms of shared governance.” It does so, the statement explains, by (1) improving “communication between the faculty and the administration or governing board”; (2) securing “consensus on institutional policies and procedures that delineate faculty and administrative participation in shared governance”; and (3) ensuring “equitable implementation of established procedures.” In short, under AAUP-supported standards, collective bargaining and faculty governance work hand in glove.

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There is nothing objectionable in the factual overview of system and accrediting agency policies in the first three sections of the general counsel’s memorandum (“Legal Authority and Responsibility for University Decision-Making,” “Accreditation Requirement Considerations,” “UA’s Shared Governance Policies”). Most of the cited rules are consistent with, and some are derived from, AAUP-supported academic governance standards.

In the section that follows, “Separation of Union and Governance Roles,” however, fact is abandoned for unsubstantiated opinion, and the author makes several novel assertions sharply at odds with the above-cited principles and standards, not to mention evidence and logic. Chief among these is the claim that, because “participation by union leadership in governance roles would create a structural conflict of interest whenever governance matters affect union interests,” a faculty union “has no role in governance.” The underlying argument, as best as we can make it out, is that faculty members cannot participate both in academic governance and in their faculty union because governance decision-making areas may overlap topics subject to bargaining, such as terms and conditions of employment.

This argument is flawed in numerous respects. First, it misunderstands or misapplies the term “governance,” equating it with “administration.” As noted above, the common understanding of governance (as exemplified in the policies the author cites in the first three sections of the memorandum) is academic decision-making in which the administration is merely one component. Second, by erroneously making governance synonymous with administration, it reaches the odd conclusion that faculty governance and the faculty senate are part of the administration. Third, in one egregious sentence, it incorporates two unacceptable claims as premises: “Governance cannot both set academic standards on behalf of the employer and participate in bargaining the terms and conditions impacted by those standards.” Under no legitimate conception of the academic profession or shared governance does the faculty “set academic standards on behalf of the employer.” Similarly, no widely accepted conception of academic governance includes the notion that faculty senates “participate in bargaining the terms and conditions” of employment.

The argument exemplifies the logical fallacy of equivocation, since “union” is employed to mean both UNAC and its individual members. This misuse of the word union blurs the important distinction between the collective bargaining chapter and individual union members. Those union members have a duty, in their capacity as faculty members, to exercise a primary role in academic decision-making.

An even more serious flaw is the argument’s assumption that a bright line can be drawn between the kinds of academic decision-making in which the senate participates and the “working conditions” that the union addresses. In reality, many issues can be appropriately addressed by both the senate and the union (one need only glance at a typical CBA table of contents and compare it to a typical list of senate policies). On most collective bargaining campuses, few matters fall under the exclusive purview of either the senate or the union. As former AAUP staff member Michael Mauer has pointed out, “It’s always the case that some topics of concern to faculty are solely in the union’s bailiwick and others under the jurisdiction of the senate. So, for example, it may be the case that salaries and benefits are completely within the purview of the union contract, while more purely academic matters, like course offerings, are handled exclusively by the senate.” Typically, however, a significant degree of overlap exists. “So, for example, the faculty functioning through their governance mechanisms might determine standards for promotion and tenure, while the faculty in their union capacity might establish the procedural aspects of the process, including applicable time frames and the functioning of appeal mechanisms.”³

The general counsel’s argument contains factual errors as well. For example, the memorandum states that “the union has no role in governance” because it “must represent the interests of all employees.” In reality, the union is charged with representing the interests of *some* employees, not all, making it one voice among several that must be heard. In fact, the union does not represent even all faculty, only the subset of faculty who are in the statutorily defined bargaining unit.

The memorandum’s characterization of unions as “external entities” is also incorrect. The faculty union at the University of Alaska exists solely by virtue of a state law that establishes unions as representatives of employees within state agencies. This is made clear in the Public Employment Relations Act’s “Declaration of Policy” (AK Stat § 23.40.070 [2020]):

The legislature finds that joint decision-making is the modern way of administering government. If public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work, to provide a rational method for dealing with disputes and work stoppages, to strengthen the merit

³ Michael Mauer, Esq., “Protecting Shared Governance through Collective Bargaining,” *Journal of Collective Bargaining in the Academy* 8, no. 1 (2016): article 7, <http://thekeep.eiu.edu/jcba/vol8/iss1/7>.

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principle where civil service is in effect, and to maintain a favorable political and social environment. The legislature declares that it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government.

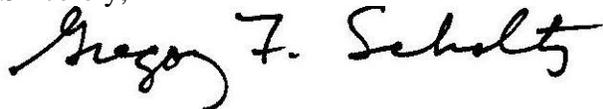
Does this describe Alaska's public unions as external entities?

But the fundamental defect of the memorandum's conclusion—a union's participation in academic governance presents "a clear conflict of interest"—is that it flows from the mistaken premise that every governance entity performs only one function. That is no more true of the faculty than it is of the administration and governing board. If it were true, then no member of the administration could participate both in negotiating the collective bargaining agreement and in the governance of the institution.

As we noted earlier in this letter, under AAUP-recommended governance standards, collective bargaining and shared governance work hand in glove. The fatally flawed argument in the general counsel's memorandum seems designed to exclude a faculty union from performing its role of supporting a sound system of academic governance and, apparently, even to prevent individual union members from fulfilling their responsibility to participate in shared decision-making. This is a position completely at odds with the AAUP's understanding of the relationship between collective bargaining and academic governance and, if put into effect, would eviscerate shared governance in the University of Alaska.

We hope these comments will prove useful to you and your colleagues. Please do not hesitate to contact us if you should have any questions.

Sincerely,



Gregory F. Scholtz, Director

Department of Academic Freedom, Tenure, and Governance

Enclosures by email attachment

Cc: Professor Julie "Jak" Maier, Chair, System Governance Council; Chair, Faculty Alliance
Professor Gokhan Karahan, President, Faculty Senate, University of Alaska Anchorage
Professor Sandra Wildfeuer, President, Faculty Senate, University of Alaska Fairbanks
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