

Shared Governance and Collective Bargaining

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- 1) **AAUP Policy:** The AAUP 1973 *Statement on Collective Bargaining* (Redbook, 259) affirms that: "The basic purposes of the American Association of University Professors are to protect academic freedom, to establish and strengthen institutions of faculty governance, to provide fair procedures for resolving grievances, to promote the economic well-being of faculty and other academic professionals, and to advance the interests of higher education. *Collective bargaining is an effective instrument for achieving these objectives.*" (Italics added.)
 - a) The statement continues: "The presence of Institutions of faculty governance does not preclude the need for or the usefulness of collective bargaining. On the contrary, collective bargaining can be used to increase the effectiveness of those institutions by extending their areas of competence, defining their authority, and strengthening their voice in areas of shared authority and responsibility."
 - b) The Association elaborated on this issue in the 1988 *Statement on Academic Government for Institutions Engaged in Collective Bargaining* (Redbook, 261) with the caveat that "*Collective bargaining should not replace, but rather should ensure, effective traditional forms of shared governance.* [Italics added.] The types of governance mechanisms appropriate to a particular college or university are dictated by that institution's needs, traditions and mission. Since those basic factors are not necessarily affected by the emergence of collective bargaining at a campus, bargaining does not necessarily entail substantive changes in the structure of shared governance appropriate for that institution."
- 2) **The Legal and Political Foundations for Co-existence of Shared Governance and Faculty Collective Bargaining:** As early as 1977 researchers had concluded that collective bargaining did more to enhance than to detract from shared governance: As James Garbarino wrote in an essay for the Carnegie Council at that time: "In theory faculty unionism would be expected to take over the representation function, ousting the senates from the decision-making process. In fact, up to this time, there appears to be a consensus that the senate system has been strengthened by the advent of faculty unionism in more instances than it has been weakened." (Faculty Bargaining in Public Higher Education, 61). This observation was echoed in the same work volume by David Feller and Matthew W. Finkin who (citing Kemerer and Baldrige, Unions on Campus, 1975) observed that: "The limited experience of the last few years suggests strongly that, given the appropriate statutory environment, and sometimes even in the absence of that environment, collective bargaining and the traditional form of academic governance can coexist." (p. 78) This coexistence is grounded both in law and practical necessity.

- a) The legal framework for public sector collective bargaining has provided an important foundation for the subsequent continued co-existence and often mutual reinforcement of shared governance and collective bargaining. To over-simplify for a moment, the “scope of bargaining” (that is, the issues subject to bargaining) is legally defined in a way that requires management to negotiate in a good faith with the union only with regard to “mandatory issues defined as “terms and conditions of employment” (such as salary and benefits). Management may lawfully refuse to resolve or even to discuss “permissive” issues which include even those matters of academic policy that typically involve faculty participation through shared governance (such as curriculum, academic program review, degree requirements, and admissions requirements). Permissive issues, unlike a third category of forbidden issues, may, however, be discussed and even negotiated if management agrees.
 - i) The benefits of this legal foundation were not initially obvious. Feller and Finkin were understandably concerned at the time that legal regulations limiting the scope of mandatory bargaining to terms and conditions of employment might prevent faculty from compelling bargaining to protect shared governance and other academic decision-making bodies and procedures. Note: They did not fear *union* encroachment but rather that unions lacked the legal basis to prevent the *administrative* centralization and encroachment that you have experienced at UIUC in the Hogan years.
 - ii) This danger has not proved to be the case because in most states (New Jersey is an exception), academic decision-making, although not a mandatory subject of bargaining is a permissive subject of bargaining. Moreover, the “impact” of academic decisions on terms of employment (e.g., the impact of student evaluation on salary and retention or the impact of program evaluation on lay-offs) is a mandatory subject of bargaining. Consequently, unions have been able to insist on faculty participation in such decisions and to ensure due process in the application of decisions as a condition of accepting the impact on the personnel decisions themselves.
 - iii) Nonetheless the fact that collective bargaining is legally limited by the distinction between “terms and conditions of employment” and “academic policy” has worked to discourage unions from substituting the union negotiations or “meet and confer” for shared governance procedures. Rather the limitations on the scope of bargaining have encouraged a symbiotic relationship between unions and shared governance consistent with AAUP policy. That is, since the unions cannot legally compel the administration to bargain on matters of academic policy, they need to preserve and strengthen senates and other faculty committees as a way to ensure a faculty role in decisions of critical importance to any faculty union.
- (1) Although a few matters may seem, at first glance, clearly distinguishable (e.g, salaries are terms of employment and curriculum is academic policy) most issues of concern involve an overlap between terms of employment or impact on terms of employment,

on the one hand, and academic policy on the other. So, for example merit pay, promotion, tenure, student course evaluation, program retrenchment and professional duties all involve both terms of employment and academic judgment or policy.

- (2) The practical consequence is that unions typically negotiate procedures that require faculty participation in making key academic decisions from merit pay to program review, but unions do not directly involve themselves in the decision-making process - not only due to legal limitations on the union role and academic good sense, but due to the political concerns I discuss below.
- b) The political framework for academic bargaining reflects in part the legally grounded necessity that unions seek to influence key personnel matters and maintain and enhance faculty senates and committees. But unions and senates, as well as administrations, also find cooperation politically useful.
- i) Faculty union and senate cooperation is politically likely because, in the words of long term management negotiator Caesar Naples in 1989: "Both collective bargaining and senate consultation are different forms of the same thing: faculty involvement in institutional decision-making. A faculty interested in enhancing its role in governance through collective bargaining is more likely to seek all possible forums for its expression than to reduce them. This is precisely what, in my experience, has happened."
 - ii) Secondly, unions seek to avoid direct involvement in specific academic decisions—from individual personnel decisions to matters of curriculum and program for the obvious reason that such issues are often divisive. A union can unite its members on the need to protect collegial decision-making and individual due process by negotiating carefully balanced procedures, but it cannot unite its members by intervening in disputes over specific appointments, student course distribution requirements or program closures.
 - iii) Thirdly, administrations often turn to and enhance the role of the senate and faculty committees as a counterforce to the union on those matters of academic policy where the union is viewed as insensitive to university academic priorities. Unions accept often welcome such administration maneuvers for both the reasons stated above—to enhance the faculty role and avoid divisive issues.
 - iv) The union role is likely to become more important over time as the states continue to cut back on higher education funding and to demand evermore compliance with state policy. The union role is also more critical because fewer individual faculty, in fewer disciplines, retain the individual market power to protect themselves and their colleagues as they have in the past.

3) How Faculty Contracts Depend Upon and Sustain Academic Shared-Governance: The integration of collective bargaining and shared-governance is not primarily a matter of union and senate cooperation. Where the collective agreement specifically establishes decision-making procedures involving academic judgment, rather than simply referencing previously established procedures as is often the case, then the agreement typically incorporates and depends upon collegially elected faculty committees at the departmental and college as well as the university level. Moreover, it is these collegial committees, not the union, that continue to provide the faculty voice in academic decision-making regarding matters such as merit salary, academic appointments, and departmental and college academic policies, as well as senate issues. A few examples of the over-lapping responsibilities of unions and shared-governance include:

- a) On routine personnel issues, research university agreements generally retain or establish procedures similar to those at UIUC. The union role is limited to assuring the collegial role in establishing and conducting evaluations and supporting individual grievance appeals in the event of a substantial failure to follow established procedure or discrimination or violation of academic freedom. Even these grievances typically involve an appeal procedure that precludes committees or an arbitrator from substituting their academic judgment for that of the collegial or administrative decision-makers. If a substantial error is found then the typical remedy is reconsideration by an appropriate academic body and/or the academic administration.
- b) The union has a more substantial role in negotiating salary increases and negotiable benefits but most research university agreements either provide directly for merit increments (often through faculty committees) or permit the administration to make merit awards as well as to meet competitive offers and make market adjustments either from a negotiated salary pool or from university funds additional to the pool. Contracts also involve independent faculty committees, not the union itself, in assessing or distributing equity increases, awarding sabbaticals or university research grants, and reviewing matters such as the distribution of university grant overhead revenue
- c) Unions can force negotiations on salary give-backs or payless days, such as you recently experienced, and may have clauses requiring that the university observe various procedures and afford hearing procedures prior to layoffs pursuant to financial stress or financial exigency. But agreements usually assign program reviews to the colleges and faculty senate and require such reviews prior to any consequent lay-offs during the term of appointments.
- d) Faculty senates generally retain their historic role in matters relating to admissions, curriculum, degrees, programs and so forth. Contracts may, however, guarantee those senate roles—for example, faculty participation on presidential search committee or administrative reviews. Where, moreover, an administration usurps these traditional senate functions in the absence of contractual protections, the union may seek to use “impact” bargaining (that is the effect on faculty in the affected programs) to compel negotiation to re-establish the senate role.

4) **AAUP recommends and supports academic collective bargaining.** We do not require our members to support it. We are, however, involved in this particular organizing effort because we do believe it will benefit the faculty here and in other public research-intensive universities in an era in which public universities face adverse political conditions.

- a) The best evidence for the successful integration of faculty bargaining and shared governance can be found by reading collective agreements from research universities. None of them are at universities as academically strong as UIUC. If, however, universities with weaker faculty have negotiated contracts that protect academic shared governance, why would one not expect that UIUC would do even better?
- b) If the current UIUC administration is more supportive of faculty governance, why not lock in good procedures now rather than waiting to start over in more adverse circumstances when the next Hogan comes along?
- c) Finally, if you are concerned that the UIUC union may for some reason be less protective of governance than other academic unions (though after working with many local leaders I find it difficult to see why this would be the case), then why should not AAUP members in particular support and help shape the union effort in order to pursue the policies that AAUP has long recommended?