

## Protecting Academic Freedom Through Collective Bargaining: An AAUP Perspective

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# Protecting Academic Freedom Through Collective Bargaining: An AAUP Perspective

Michael Mauer, Esq.<sup>1</sup>

## Introduction: AAUP's Impetus for Pursuing Collective Bargaining

For over five decades following its founding in 1915, the American Association of University Professors carried out its mission outside of the realm of collective bargaining. The organization formulated policy on a constantly evolving range of issues of concern to higher education and worked to have those policies adopted by individual institutions and state public higher education systems. The primary mechanisms employed consisted of encouraging faculty to use their participation in shared governance to work towards policy adoption. The AAUP also interacted directly—including in the initial formulation of policy pronouncements and in joint endorsements—with organizations representing the interests of administrators and trustees. Finally, it carried out visible “enforcement” activities (primarily investigations leading to censure and sanction, arising from violations of academic freedom and shared governance, respectively.)

Beginning in earnest in the late 1960's, the means by which policy matters of concern to faculty were effectuated at the campus and system levels was expanded in a fundamental way by those performing teaching and research. The new dimension of faculty influence came about as faculty began to acquire collective bargaining rights. At first, unionization was carried out under the auspices of the American Federation of Teachers and the National Education Association. After a good deal of internal deliberation, though, the AAUP eventually abandoned its historical opposition to bargaining on the part of professionals in higher education and began organizing aggressively on both public and private sector campuses. Today, some 80 AAUP collective bargaining agreements serve to advance the interests of tenured, tenure-track, and nontenure-track faculty, both full-time and part-time, and of graduate student employees, postdocs, and academic professionals of various types. The institutions with active unionized chapters range from two-year schools to research universities.

AAUP's turn to collective bargaining grew out of a more expansive view of unionization than is typical for American labor unions. The mission of the AAUP incorporates addressing economic matters, as does the purpose of unions generally. Thus the declaration that the AAUP “is committed to protecting...the economic well-being of faculty and other academic

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professionals.”<sup>2</sup> But lying at the heart of AAUP’s 1973 formal endorsement of collective bargaining was the belief that collective bargaining could be an effective means of achieving the AAUP’s other objectives, most notably “to protecting academic freedom [and] the institutions of faculty governance.”<sup>3</sup>

The key practical question arises, then, of how faculty can most effectively utilize collective bargaining in tandem with shared governance to translate AAUP policies into binding provisions of campus life. Some of the content of the *Redbook* (2015) is more readily adaptable to contract language than other parts. Many AAUP pronouncements address only in broad terms the principles that should determine how institutions of higher education conduct themselves. Other AAUP documents, though, (most notably the Recommended Institutional Regulations on Academic Freedom and Tenure<sup>4</sup>) are more easily translatable into binding contractual documents, since they are more direct in setting forth specific procedures that ought to be in place on each campus.

This paper’s intent is to serve as a guide to utilizing collective bargaining to strengthen academic freedom protections. This begins with an overview of the framework of collective bargaining and the interrelationship between shared governance and faculty unionism. What follows is discussion of how to conduct a thorough preparation for bargaining a contract. Then there is an examination of the specific ways in which collective bargaining agreements deal with academic freedom (as well as with related issues of professional concern to faculty).

### **Preliminary Considerations for Bargaining**

#### **Negotiability**

The first question in negotiating academic freedom is what limits are set by the applicable bargaining law on the union's ability to negotiate over academic freedom. The assertion by an administration that since academic freedom is not a “mandatory subject of bargaining”<sup>5</sup> it will as a result refuse to address this topic at the table is usually—and properly—seen as the beginning of a conversation, not the last word. Union responses to such an expression of unwillingness to

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<sup>2</sup> AAUP Statement on Collective Bargaining:  
<https://www.aaup.org/AAUP/pubsres/policydocs/contents/statementcolbargaining.htm>

<sup>3</sup> Ibid.

<sup>4</sup> Recommended Institutional Regulations on Academic Freedom and Tenure:  
<https://www.aaup.org/report/recommended-institutional-regulations-academic-freedom-and-tenure>

<sup>5</sup> Collective bargaining topics fall into one of three categories: “mandatory subjects”, which must be bargained at the request of either party; “permissive subjects”, which may be bargained by mutual consent; and “unlawful subjects”, over which the parties are not permitted to bargain.

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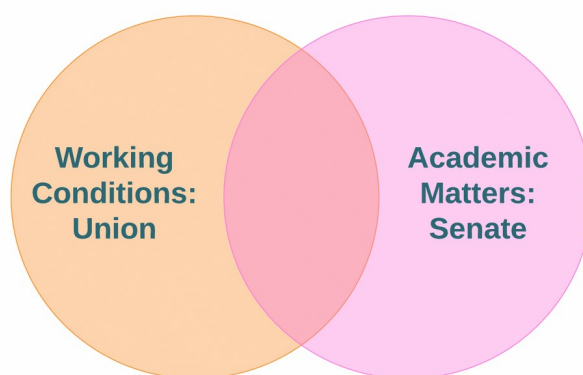
engage on a topic at the bargaining table typically incorporate some combination of legal and political arguments. The specifics will vary by jurisdiction and the particular circumstances, but may include:

- That any protections or restrictions on how a faculty member teaches and conducts research are aspects of working conditions, and that they therefore are indeed a mandatory subject of bargaining; and
- That even assuming *arguendo* that the contours of academic freedom are a permissive subject of bargaining, and that a party therefore are not required to negotiate at the request of the other party, pursuant to the law in almost every jurisdiction parties are *permitted* to incorporate permissive subjects into collective bargaining agreements. And the importance of academic freedom is such that it behooves the parties to define its parameters and to include appropriate protections in the collective bargaining agreement.

### Dealing with the Division of the Faculty Voice

Since academic freedom has elements of both academic decision making and job security, a necessary starting point is determining the division of responsibility between the senate and the union. Only once it is clear which body is responsible for which matters can union negotiators turn to the question of how to bargain helpful provisions into a collective bargaining agreement, and can senate leaders devote their efforts to dealing with these matters.

It's easy—deceptively so—to state in very broad strokes what the allocation of responsibilities is between a faculty union and a senate. It's always the case that some topics of concern to faculty—those fundamental to the terms and conditions of employment—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.



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In the academy, the typical arrangement illustrated by the above Venn diagram would have the darker area of overlap be quite large, with each faculty body having some responsibility. So, for example, faculty functioning through their governance mechanisms might determine an institution-wide academic freedom policy, while the faculty in their union capacity take the lead on establishing some specific related procedural aspects, including applicable time frames for challenging personnel actions and for the functioning of appeal mechanisms.<sup>6</sup>

In general, the greater the extent to which issues at the bargaining table address professional concerns, as opposed to pure “bread and butter” matters, the greater the probable overlap between the functions of the faculty union and the senate. Precisely because there is so often considerable overlap—indeed, a genuine lack of clarity as to which body has “jurisdiction” over a particular issue—the greatest success occurs on campuses where the union and the senate have found a way to be in sync regarding how to handle matters of professional concern. As a matter of “offense”, if the two see eye-to-eye they can maximize the faculty’s ability to exert primacy in this decision making. As a matter of “defense”, a union’s position at the bargaining table will be weakened if resistance to its proposals comes not only from the administration but also from the faculty as “organized” through governance mechanisms. And of course the senate’s effectiveness is hampered if the administration is given the opportunity to reject a senate’s urgings on the ground that “the union contract wouldn’t permit this.”

It behooves the union and the senate, then, to be active partners (and not just during the period of time when the union is at the bargaining table.)

- During the life of a collective bargaining agreement, the two faculty bodies should work hand in hand. This can be accomplished both on an individual level—by having union activists seek positions on the senate—and on an organizational level – such as having a “union report” as a standing item on the senate’s business meeting agenda, and providing the senate an equivalent forum at union meetings. A prerequisite for this is educating colleagues (as well as the administration and the governing board of the institution) that an individual’s involvement in both governance and union activities

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<sup>6</sup> Making even an initial determination of what lies in the respective bailiwicks of the union and the senate is tremendously complicated by the fact that the composition of a senate is never identical to that of a bargaining unit. Confounding this further is that the senate’s composition may be over-inclusive or under-inclusive. This will depend on whether a faculty senate’s composition encompasses a narrow definition of “faculty” (which may well exclude some with teaching and research responsibilities) or an expansive definition, as used in some university senates (that can include employees with responsibilities other than teaching or research.) Of particular importance and concern is the status accorded to those in the increasing ranks of contingent faculty. This group of academic workers, even if fully included in a *formal* sense in a senate’s activities, often as a *practical* matter have a diminished voice. (While beyond the scope of this paper, for a discussion of approaches taken by faculty unions to enhance the role of contingent faculty in governance, see: Mauer, Michael Esq. (2016) "Protecting Shared Governance Through Collective Bargaining: Models Used by AAUP Chapters," *Journal of Collective Bargaining in the Academy*: Vol. 8 , Article 7.)

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does not constitute a conflict of interest. Rather, it is an illustration that the responsibilities of a faculty member encompass a variety of professional tasks.

- In the runup to bargaining, as the union acquires information and formulates its bargaining agenda, an active dialog with senate leaders should be taking place. And draft union proposals should be reviewed by knowledgeable senate activists, to ensure that the draftsmanship accurately reflects the joint goals on issues of mutual concern.
- During the bargaining process, the senate and the union should seek opportunities to make it clear to the administration that their goals are congruent. So the senate might adopt a resolution supporting the union's position on academic freedom at the bargaining table (or opposing the administration's position), or a senate leader might be invited by the union to speak at the table, in order to make clear the senate's position on proposals under discussion.

### **Researching and Setting the Bargaining Agenda**

Bargaining a contract requires a lot of work on the front end. And the project of producing a collective bargaining agreement from scratch is a particularly formidable one, much more involved than merely sorting out what parts of an existing contract might be modified. But for both a first contract and a successor agreement, the parties' starting point is not blank paper. There are a number of different sources to be consulted and analyzed at the outset. This next section offers some guidance on first steps: where to look and how to evaluate the relevance of what already is in place as a preliminary step in constructing a bargaining program that can build on that, modifying as needed.

By way of a preliminary precaution: there is no one right way to address a given issue at the bargaining table. The context in which particular negotiations take place will determine, in significant measure, what goals make sense for a particular bargaining agenda. The myriad factors that will influence what constitutes a sufficiently aggressive yet realistic bargaining agenda include the strength of the union at and away from the table, and the need to balance the needs of various constituent groups within the bargaining unit.

### **Surveying the Landscape**

The starting point for formulating an agenda for bargaining must be determining what rules and practices already are in place at a particular institution. These may emanate from a variety of sources, including:

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**Terms set forth in existing collective bargaining agreements.** These can be found in a current contract, if there is one, for the faculty bargaining unit. But contracts negotiated by other unions with an employer will be highly relevant as well.

**Statutes, regulatory guidelines, and case law.** Statutes at the federal, state or local level (counties or cities) may govern a range of matters that will have bearing on bargaining a faculty contract. Most obvious of these is whatever statute—the National Labor Relations Act in the private sector, or a public employment law—creates the applicable framework for labor-management relations. Either by means of a general description or the delineation of specific topics, a bargaining statute likely sets forth topics that must, may and may not be negotiated, as well as a host of other matters related to the substance and procedure of negotiations.

A variety of other laws can also shape what is possible to achieve at the bargaining table in other areas. Laws governing discrimination, for example likely will establish a starting point for content in a collective bargaining agreement, as well as offering a forum other than grievance/arbitration that might be used to seek relief.

In addition, corresponding regulations often flesh out what is set forth in a more bare bones way in a statute. And in all likelihood a rich body of case law will shed light on the real-life application of rights and responsibilities laid out in a statute. Two external documents are of particular note:

- **Relevant Handbook Provisions and Institutional Rules.** The terminology varies from campus to campus. But whether it's a "constitution and bylaws," institutional "regulations," "personnel policies" or a "handbook," there are always documents that address a variety of aspects of faculty employment. These may set a floor or a ceiling that may be difficult to alter at the bargaining table regarding academic freedom protections.
- **Appointment Letters.** Individual faculty members routinely are issued appointment letters, which may be for a semester, an academic year, or longer. They address core aspects of employment, including salary, benefits, and workload. All of these specifics, of course, may bear on academic freedom rights. It should be kept in mind that aside and apart from covering these matters in the collective bargaining agreement, the content of institutional governing documents and individual appointment letters may well be legally enforceable as a matter of state law.

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### **Altering the landscape**

Unions maximize their chances of success in negotiations by utilizing what pressure can be brought to bear outside of the bargaining room. The preliminary step in this regard is to identify potential allies, including:

- Other faculty, and other campus workers or unions;
- Labor unions external to campus, as well as community, business, and religious groups;
- Alumni organizations; and
- Students.

It's only once the lay of the land is established that a faculty union can devise the most fitting approach to pursue academic freedom rights at the bargaining table.

### **Establishing Priorities**

The overall project of negotiating a collective bargaining agreement requires the setting of priorities. So the usual mechanisms for taking the faculty pulse in the runup to bargaining—surveys, department meetings, individual discussions, and so on—are essential if the resulting agenda is to be one that will accurately address the faculty's needs and garner the members' support.

Learning what members want is not the end of the inquiry, of course. Depending on the degree of diversity within a bargaining unit (both tenure-track and non-tenure eligible faculty? full-time and part-time faculty? etc.) it may well be a formidable task to balance the real and perceived competing interests of various groups.

And given that the scope of what a faculty union may be seeking to address extends far beyond that of unions outside of our "craft", it's important not only to acquire information, but to transmit it as well. Part of the spadework for bargaining is doing needed educational work among bargaining unit members and potential allies, to build a realization that collective bargaining can be a means of addressing academic policy.

Even at the preliminary stages, it is important to keep in mind that in addition to providing information to members and allies, the project includes working to mobilize them to take action in support of contract negotiations. Organizing in this context is called a contract campaign. It is rare that a good contract is achieved in the absence of a well-organized membership and a strategic "away from the table" approach.



## Researching Contract Language

There's seldom a need to reinvent the (collective bargaining) wheel. For almost any of the union's issues of concern, there will be already-existing collective bargaining language in place elsewhere. So having such language as a starting point is an efficient way to go about the task of writing proposals. But perhaps more importantly, being able to point to existing contract provisions elsewhere can be a powerful arguing point at the table.

For AAUP chapters, a primary source for learning what contract language is in place elsewhere is the contract database maintained by the AAUP.<sup>7</sup> This is an easy-to-search database that identifies provisions in contracts using a simple Google search tool. The database includes bargaining units that run the gamut: public sector and private sector, tenured and contingent faculty as well as postdocs and academic professionals, and just about any other configuration you can imagine. Some *caveats* are in order.

**One should not assume the language in another chapter's contract tells the whole story.** It may be that the parties' practice doesn't in fact conform to the words on the page, or it may be that what looks good on paper hasn't panned out in practice. So contract language researchers are well advised to communicate directly with colleagues elsewhere to learn about the real-life experiences at other institutions.

**Different institutions utilize different terminology.** For example, "adjunct" in one contract may consist of a very different group than "adjunct" in another. (The list of anomalies is virtually endless. There is one unionized university, for example, where "full-time" means appointments at 88% time.) The lesson: again, talk to colleagues elsewhere to find out exactly what the lay of the land is.

**Different jurisdictions will have different legal frameworks for bargaining.** In particular the scope of "negotiability" in one jurisdiction may be broader or narrower than that in which another chapter operates. So that might mean that it would be impractical or impossible to insist on something found in another contract, since the chapter that bargained the other contract language might have fewer legal constraints.

**It's not sufficient to see what contractual rights are accorded to faculty in a contract.** It is necessary to determine, as well, what the applicable enforcement mechanisms are. If a procedure is put in place for protecting academic freedom, for example, but the administration's failure to abide by the contract's terms is not something that the chapter can pursue through the

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<sup>7</sup> Access to the database is via a members-only login at: <https://www.aaup.org/chapter-resources/contract-database>. But a simple google search can locate relevant collective bargaining agreement language as well.

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grievance procedure or to arbitration, that's significant. And in addition to relevant contract language, a search should include relevant AAUP policy pronouncements, which can serve to further bolster arguments at the bargaining table.

### **Models Establishing the Relationship Between Collective Bargaining Agreements and Governance Documents**

Negotiated contractual protections never stand alone. There are always other applicable non-collectively bargained institutional rules that address policy matters, and thus consideration must be given to how to integrate the two. This certainly is the case with the topic of academic freedom, since, by AAUP's lights, a healthy institution requires mutually dependent and complementary governance and collective bargaining forums for addressing all matters of concern to the academic profession.

One contractual approach is to deal comprehensively with *Redbook* (2015) topics solely in the collective bargaining agreement. This has the advantage of being as direct as is possible, with no ambiguity about the reach of the contract. But other considerations, including how the lines of authority between the union and the senate are most logically drawn, almost always impels a more nuanced approach.

Thus, another approach—far more common—is to have the collective bargaining agreement enshrine existing institutional constitutions or bylaws, or a faculty or university senate's own rules or practices. This can be accomplished very comprehensively:<sup>8</sup>

#### Article 3. Term of Agreement

Further, this agreement, along with its companion document, the Faculty Handbook, will constitute the Master Agreement between FAC and the University and will supersede any previous regulations, faculty contracts, previous practices or policies.

(University of Scranton)

#### Article 3. Faculty Statutes and Faculty Process Series

##### 3.2 Parties Bound by FS and FPS.

The provisions of the FS and FPS are binding upon the parties unless modified by or in conflict with this Agreement, in which case this Agreement will control, and the FS and FPS are hereby incorporated by reference into this Agreement.

(Hofstra University)

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<sup>8</sup> All citations to collective bargaining agreements are accurate as of the preparation of this paper. Readers may wish to check for any revisions in more recent versions of the contracts.

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### Article VI – Governance

#### Section 6.1 Faculty By-laws

The parties recognize and accept the By-Laws of the Lincoln University Faculty, as amended (“Faculty By-Laws”), and as such Faculty By-Laws may be further amended by the faculty and approved by the Trustees from time to time, as the legal instrument defining the role of the faculty in the governance of the University. A copy of these Faculty By-Laws is attached hereto and incorporated herein as part of this Agreement as Exhibit "B." (Lincoln University)

This approach provides indisputably strong protections, since it incorporates *in toto* provisions formulated by other bodies. It also offers the advantage of having the faculty union defer, in part, to faculty governance bodies on matters of consequence to faculty in their role as formulators of academic policy.

It should be noted that essentially the same level of protection is obtained by granting the grievance/arbitration procedure of the collective bargaining agreement full authority to address alleged violations of handbook provisions:

### **GRIEVANCE PROCEDURE**

B. Definitions. A grievance is an allegation by either a faculty member or the AAUP that there has been a breach, misinterpretation, or improper application of the terms of this agreement, or of the Faculty Handbook.  
(Bard College)

A related structural relationship is for a collective bargaining agreement explicitly to cede initial decision making authority over academic matters to the existing governance structure, but to establish contractual oversight or protection of these processes in some manner. This can be accomplished, for example, by having the collective bargaining agreement specify that governance changes may not be made without the express approval of the union:

#### Article 3. Faculty Statutes and Faculty Process Series

##### 3.3. Amendments to FS or FPS.

During the term of this Agreement, no amendments to the FS or FPS or any University practice which would void, alter or in any way modify any provision of this Agreement will be enacted or effectuated without the consent of the AAUP.  
(Hofstra University)

Similarly, contract language may protect the institutional integrity of governance bodies:

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### Article 1, Recognition

#### 1.07 This Agreement and University Governance

During the term of this Agreement, the Administration will not alter the organizational structure and responsibilities of the University Senate or the Faculty Councils within the bargaining unit without the consent of the AAUP-FA.

(St. John's University)

Less effective, of course, are collective bargaining agreements that simply acknowledge the existence of other policies, without limiting them or providing any effective enforcement mechanism:

### Article 27 Governance of the University

27.2.6 The parties to this Agreement recognize the Faculty Senate and Student Senate, and the by-laws which govern their relationship with the University.

(University of Cincinnati)

As can be seen by these variations in how the work of faculty collective bargaining agents and faculty governance bodies may intertwine, in order to fully assess the degree of protection accorded professional concerns one must factor in both the extent to which the contract itself contains provisions that comport with Redbook (2015) policies, and the extent to which the contract supplements institutional policies found elsewhere.<sup>9</sup>

## Contract Language Issues <sup>10</sup>

### Definitions

How academic freedom is defined is of great importance. Many contracts' strong affirmations of the importance of academic freedom derive directly from the AAUP's 1940 *Statement on Principles of Academic Freedom and Tenure*<sup>11</sup> and explicitly cite that and other foundational AAUP Statements. (The standing of AAUP policy in the academic

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<sup>9</sup> For a fuller discussion of how faculty governance participation has been protected by provisions in collective bargaining agreements: Mauer, Michael, "Protecting Shared Governance Through Collective Bargaining: Models Used by AAUP Chapters," *Journal of Collective Bargaining in the Academy*: Vol. 8 , Article 7 (2016). Available at: <http://thekeep.eiu.edu/jcba/vol8/iss1/7>

<sup>10</sup> For a useful overview of how academic collective bargaining agreements deal with the range of issues of professional concern, see: Ernst Benjamin's "The Collective Agreement: Negotiating Redbook Principles" in *Academic Collective Bargaining*, Ernst Benjamin and Michael Mauer, editors, (American Association of University Professors/Modern Language Association, 2006).

<sup>11</sup> <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>

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community is demonstrated by the fact that this is very commonly the case not only in AAUP chapter collective bargaining agreements but in those negotiated by other unions as well.)<sup>12</sup>

It is highly advantageous for collective bargaining agreements to specifically cite and incorporate AAUP policy statements for a number of reasons. These include that doing so incorporates by reference “case law” as it has been developed by the AAUP over the years, for example in censure and sanction cases. Specific references to AAUP policies also permits the argument that the content of derivative AAUP policies, including any that came into existence over the life of the contract by AAUP at the national level, can be read into the contract. And locking in AAUP policy pronouncements creates “a living document”, so that any changes adopted by the AAUP automatically revise the terms of the collective bargaining agreement.

Some examples of explicit contractual endorsement of the 1940 Statement:

### Article 2: Academic Freedom

2.1 The Union and College agree to use the AAUP 1940 Statement on Academic Freedom (Emerson College Los Angeles)

### Article VII, Academic Freedom

7.2 Academic freedom has been defined and codified in a statement of principles that was prepared by representatives of the American Association of University Professors and the Association of American Colleges. Adopted by both organizations in 1941 and later endorsed by many other professional and learned societies, it is known as the "The 1940 Statement of Principles on Academic Freedom and Tenure." The Board and the University of Rhode Island unconditionally endorse the 1940 Statement...

(University of Rhode Island, full-time unit; *see also* identical language in part-time unit contract, Article 5.2

### Article IV Tenure and Academic Freedom

C. All teachers (whether faculty or not) will enjoy academic freedom as set forth in the Association of American Colleges - American Association of University Professors' 1940 Statement of Principles on Academic Freedom and Tenure, and in no case will dismissal be used to restrain their exercise of academic freedom or other rights of American citizens.

(Bard College)

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<sup>12</sup> A recent study conducted by AAUP Senior Program Officer Hans-Joerg Tiede found that almost three-quarters of institutions with a tenure system (73 percent) base their academic freedom policy directly on the 1940 Statement, and that more than half cite the AAUP as the source of their policy. Moreover, the prevalence of academic freedom policies attributed to the 1940 Statement has increased in recent years while the number of institutions without an academic freedom statement has decreased. *See*, <https://www.aaup.org/report/policies-academic-freedom-dismissal-cause-financial-exigency-and-program-discontinuance>

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### Article XI, Academic Tenure

#### Section 11.1 1940 Statement of Principles

Both parties incorporate by reference the 1940 Statement of Principles on Academic Freedom attached to this agreement...

(Lincoln University)

### Article 2 The University Mission and Educational Philosophy

#### 2.02.a Academic Freedom

The parties incorporate by reference the 1940 Statement of Principles on Academic Freedom and Tenure of the American Association of University Professors in accordance with the endorsement of the Board of Trustees of the University...

(St. John's University)

Note, however, that explicit citation to the 1940 Statement is sometimes expressed with language that leaves room for an interpretation that the Statement is not to be applied exactly as written:

#### APPENDIX B, Academic Freedom and Responsibility

The University, *in general*, subscribes to the following AAUP statement in [sic] Academic Freedom. Academic freedom is essential to the free search...[emphasis added]

(Fort Hays State University)

### Article 3, Employee Rights and Responsibilities

3.54 Academic Freedom. The following excerpt is taken from the AAUP's 1940 Statement of Principles on Academic Freedom and Tenure: "Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition. Academic freedom is essential to these purposes and applies to both teaching and research... Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning."

(Kalamazoo Valley Community College)

There are numerous examples as well of contracts that explicitly cite not only the 1940 Statement but the 1970 *Interpretive Comments*<sup>13</sup> as well:

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<sup>13</sup> The *Interpretive Comments* are now included as footnotes in the 1940 Statement of Principles on Academic Freedom and Tenure.

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Art. 6, Academic Freedom and Responsibility

6.3 The University of Alaska and United Academics endorse the “1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments,” issued by the American Association of University Professors and the Association of American Colleges...

(University of Alaska)

ARTICLE XX, Rights of the Faculty

Section 1. Academic Freedom. The Chapter subscribes to the AAUP 1940 Statement of Principles and the Interpretive Comments of 1940 and 1970...

(Indian River State College)

5.3 Academic Freedom.

The University subscribes to the 1940 and 1970 statements and interpretive comments on academic freedom of the American Association of University Professors...

(University of Scranton Faculty Handbook, incorporated by reference into the collective bargaining agreement)

Less ideally, numerous collective bargaining agreements adopt verbiage that mirrors AAUP’s. This often is done without explicitly referencing the applicable AAUP policy, and the extent to which the verbiage in the 1940 Statement is modified can vary greatly:

ARTICLE II, PURPOSE

The purpose of this Agreement is to promote harmonious relationships between the faculty and the administration of the University, to improve the quality of education, and to maintain the high standards of excellence at the University of Delaware, and is the sole and exclusive embodiment of all agreements between the University and the AAUP covering wages, benefits and conditions of employment. It is agreed and understood that the intent and purpose at all times shall be the improvement and maintenance of the education, research and related programs of the University and the welfare of the student body. In the furtherance of the purpose of this Agreement, the parties agree to adhere to the following Statement on Academic Freedom.

Academic freedom is the freedom to teach, both in and outside the classroom, to conduct research and other scholarly or creative activities, and to publish or otherwise disseminate the results. Academic freedom also encompasses the freedom to address any matter of institutional policy or action whether or not as a member of any agency of institutional

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governance. Faculty have the freedom to address the larger community with regard to any social, political, economic, or other interest. The freedoms enumerated in this policy apply without institutional discipline or restraint save for statements or actions that demonstrate disciplinary incompetence, or that violate the University's Professional Ethics Statement (as edited on February 12, 1999), or the University's standards pertaining to disruptive behavior (as adopted on June 1, 1970). Alterations to these statements made subsequent to the signing of this Agreement do not affect the freedoms enumerated in this Article unless ratified by the UD-AAUP. Academic responsibility implies the faithful performance of professional duties and obligations, the recognition of the demands of the scholarly enterprise, and the candor to make it clear that, when one is speaking as a citizen on matters of public interest, one is not speaking for the institution.

(University of Delaware)

### Article VI, Professional Responsibilities

6.4.1 The Board and the Association subscribe to the following statement which sets forth principles of academic freedom and associated responsibilities of individual faculty members:

The faculty member is entitled to full freedom in research and or other scholarly or creative activities and in the publication or presentation of the results, subject to adequate performance of the faculty member's other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

The faculty member is entitled to freedom in the classroom in discussing the course subject, but the faculty member should be careful not to introduce into the teaching controversial matters which have no relation to the course subject. Academic freedom also encompasses the freedom to address any matter of institutional policy or action whether or not as a member of any agency of institutional governance. Faculty have the freedom to address the larger community with regard to any social, political, economic, or other interest. In relations with the public, they should make it clear at all times whether they speak as private citizens, as experts on the subject in question, or as institutional spokesperson. Both within and outside the classroom, the faculty should exhibit the accuracy, restraint, and respect for the opinions of others appropriate to educators and persons of learning.

(Northern Michigan University)



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Somewhat less helpful still are contracts that deal with such policy matters by referencing AAUP policy or academic freedom in general, or having the collective bargaining agreement generally endorse or “subscribe to” the concept of academic freedom. For example:

### Article I, Preamble

Both parties agree with and support the following statement on academic freedom...  
(D’Youville College)

### Article 5, Academic Freedom

5.1 Central State University, because of its history and its mission, is unequivocally committed to the concept of academic freedom. The parties reaffirm adherence to the principles of academic freedom in faculty instruction and research as a right that can be neither denied nor abridged. The parties will continue to recognize and protect full freedom of inquiry, teaching, and research in the classrooms, publications, reports of research activities, and all professional and academic forums.

(Central State University)

### Article VII, Academic Freedom.

The University and the Union subscribe to the following principles of full academic freedom for all members of the University community.

- a. Academic freedom is the right to engage in research, scholarship and other creative work and in the publication of the results, subject to the adequate performance of his/her academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
- b. The faculty member is entitled to freedom in the classroom in teaching and discussing his/her subject, but he/she should be careful not to introduce into his/her teaching controversial matter that has no relation to his/her subject.
- c. The college or university teacher is a citizen, a member of a learned profession, employed in an educational institution. When he/she speaks or writes as a citizen, he/she should be free from institutional censorship or discipline, but his/her special position in the community imposes special obligations. As a person of learning and an educator, he/she should remember that the public may judge his/her profession and his/her institution by his/her utterances. Hence he/she should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to

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indicate that he/she is not an institutional spokesperson.

(Adelphi University)

Article 9, Academic Freedom

1.1 The parties subscribe to the 1940 Statement on Principles of Academic Freedom and Tenure, as issued by the American Association of University Professors (AAUP).

(Bowling Green State University)

Least helpful are explicit statements (in this case, in a footnote) that the collective bargaining agreement, although it references AAUP policy, does not incorporate such policy:

2/ As referred to in the 1940 AAUP Statement of Academic Freedom and Tenure. This footnote does not incorporate by reference the 1940 Statement and the Interpretive Comments thereto.

(Connecticut State University)

### **Scope of Coverage of Contractual Protections**

Collective bargaining agreements can rectify a failing too often found in institutional academic freedom policies: limitations on who is entitled to the protections of academic freedom. AAUP policy recognizes that academic freedom is essential for all those who engage in teaching or research activities. Collective bargaining contracts can ensure an appropriately expansive definition of those who are entitled to academic freedom, so that institutional protections are not limited, for example, to tenure-eligible faculty, or to full-time faculty, or to only those faculty with teaching responsibilities, and also that academic freedom rights are not denied to graduate teaching and research assistants, academic librarians, or others.

Sometimes, the scope of coverage is implicit. Every union contract, by definition, applies only to members of a specified collective bargaining unit. Thus, even if the contract itself does not specify who is protected by academic freedom, the absence of any stated exclusion would indicate that all bargaining unit members are covered. In this circumstance, individuals whose entitlement to academic freedom protections might be challenged are clearly covered by a collective bargaining agreement's protections.

But it is often the case that the contract explicitly states who is and is not covered by academic freedom protections. This may take the form of clarifying that those protections apply to all bargaining unit members, or identifying any subsets of those covered by the collective bargaining agreement that are or are not covered by the academic freedom protections.

## Protecting Academic Freedom Through Collective Bargaining

### Preamble

WHEREAS, CUNY and the PSC seek to maintain and encourage, in accordance with law, full freedom of inquiry, teaching, research and publication of results, the parties subscribe to Academic Freedom for faculty members. The principles of Academic Freedom are recognized as applicable to other members of the Instructional Staff, to the extent that their duties include teaching, research and publication of results, the selection of library or other educational materials or the formation of academic policy.

(Professional Staff Congress–CUNY)

### Article 4, Professional Rights and Responsibilities

4.2.1 Academic freedom is the principal right that allows faculty to perform the responsibilities in Article 4.1.1.1. Tenure is the main mechanism to assure academic freedom. Because part-time faculty cannot be tenured, care must be taken to assure their academic freedom.

(Connecticut State University)

### Article 5, Professional Services

5.89, Applicability of Agreement. The following sections of the Agreement are not applicable to Educational Professionals: 3.54, Academic Freedom...

(Kalamazoo Valley Community College)

## **Enforcement Issues**

Ideally, a faculty collective bargaining agreement preserves full grievance and arbitration rights to challenge any actions that abridge whatever rights are enshrined in the collective bargaining agreement. And ideally this ability to challenge alleged contract breaches should extend equally to matters of professional concern as well as the traditional bread and butter issues addressed in the contract.

And indeed, some contracts state explicitly that adherence to academic freedom protections is a required component of specified actions, such as imposition of discipline. Absent any restriction elsewhere in the contract as to what constitutes a grievance, such allegations may be processed through the grievance/arbitration procedure:

### Article 4, Academic Freedom

3. A lecturer who believes he/she was disciplined or not reappointed or had his or her teaching impaired as a result of the exercise of his/her academic freedom may file a

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grievance in accordance with Article 14, Grievance Procedure and Arbitration.  
(Suffolk University, lecturers bargaining unit)

### Art. 12: Discipline

12.1 Adequate Cause Requirement...Discipline will not be used to restrain bargaining unit members in their exercise of academic freedom or other rights of American citizens.  
(Hofstra University)

### Art. 14: Discipline

14.1 In determining whether or not to impose discipline and the severity of such discipline the University shall consider the severity of the Bargaining Unit Faculty Member's conduct and his or her disciplinary record, and the provisions in Article 5, "Academic Freedom and Professional Responsibilities."  
(Wright State University; tenured/tenure-track and nontenure-track bargaining units)

Special provisions may apply to certain aspects of the grievance/arbitration of disputes concerning academic freedom, such as the qualifications of arbitrators:

#### Article 3, Academic Freedom

3.4 The parties agree that grievances involving alleged violations of this Article that are pursued to arbitration will only be heard by arbitrators who are from an academic community of higher education.  
(University of New Hampshire, lecturers)

Commonly, contract language permits the processing of such complaints through the grievance/arbitration procedures, but restricts the remedial authority of an arbitrator. With such language, an arbitrator's award may not be capable of fully addressing any allegation of an infringement of academic freedom or other rights, even if a contract violation of such matters is found.

#### Article 20, Complaint, Grievance and Arbitration Procedure

20.5 Special Arbitration Provisions (b) For purposes of this sub-paragraph, "academic judgment" shall mean the judgment of academic authorities including faculty, as defined by the Bylaws, and the Board (1) as to the procedures, criteria and information to be used in making determinations as to appointment, reappointment, promotions, and tenure and (2) as to whether to recommend or grant appointment, reappointment, promotions and tenure to a particular individual on the basis of such procedures, criteria and information. In the

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arbitration of any grievance or action based in whole or in part upon such academic judgment, the Arbitrator shall not review the merits of the academic judgment or substitute his or her own judgment therefor, provided that the Arbitrator may determine (i) that the action violates a term of this agreement or (ii) that it is not in accordance with the Bylaws or written policies of the Board, or (iii) that the claimed academic judgment in respect of the appointment, reappointment, promotion or tenure of a particular individual in fact constituted an arbitrary or discriminatory application of the Bylaws or written policies of the Board.

(Professional Staff Congress, CUNY)

And although some contracts generally preclude resort to the grievance procedure in certain instances (primarily matters involving appointment/reappointment/promotion and tenure decisions), they make an exception to that limitation if violations of academic freedom are alleged, particularly as to procedural matters:

### Article X. Academic Freedom

C. A faculty member who believes that they do not enjoy the academic freedom which is the policy of the University to maintain and encourage shall be entitled to a hearing on written request before the Committee on Academic Freedom and Tenure of the campus Senate. Such hearing shall be conducted in accordance with established rules of procedure. The Committee shall make findings of facts and recommendations to the President and, at its discretion, may make an appropriate report to the Senate. The several committees may from time to time establish their own rules of procedure.

D. Any substantive dispute under this Article shall be resolved under Article X, Section 2 (d), of the University of Illinois Statutes.

E. Any procedural dispute under this Article under the control of a party to this Agreement shall be resolved under the Grievance and Arbitration procedure in this Agreement, and any such grievance decision thereunder shall be limited to providing a remedy correcting a process error.

(University of Illinois - Chicago, tenured/tenure track and non-tenure bargaining units)

### Article 14, Appointments and Evaluation of Faculty

14.9 A faculty member who is denied reappointment, promotion or tenure...shall only have the right to grieve...on the following alleged grounds:...c. violation of the candidate's Academic Freedom...

(University of Vermont, full-time bargaining unit; see also 15.7 of the part-time faculty contract for similar provisions)

## Protecting Academic Freedom Through Collective Bargaining

### Article 14, Termination of Employment

14.1.4 A faculty member may not grieve the non-reappointment decision under this Agreement except on the basis of alleged procedural violations, or alleged violations of the non-discrimination, academic freedom or faculty rights articles.

(University of New Hampshire, tenured/tenure-track)

### Article X. Academic freedom

C. A faculty member who believes that they do not enjoy the academic freedom which is the policy of the University to maintain and encourage shall be entitled to a hearing on written request before the Committee on Academic Freedom and Tenure of the campus Senate. Such hearing shall be conducted in accordance with established rules of procedure. The Committee shall make findings of facts and recommendations to the President and, at its discretion, may make an appropriate report to the Senate. The several committees may from time to time establish their own rules of procedure.

D. Any substantive dispute under this Article shall be resolved under Article X, Section 2 (d), of the University of Illinois Statutes

E. Any procedural dispute under this Article under the control of a party to this Agreement shall be resolved under the Grievance and Arbitration procedure in this Agreement, and any such grievance decision thereunder shall be limited to providing a remedy correcting a process error.

(University of Illinois Chicago, tenured/tenure track and non-tenure bargaining units )

At the other end of the spectrum, there are academic freedom or other Redbook-related topics being addressed in the collective bargaining agreement, but with the contract specifying that the grievance/arbitration procedure simply does not encompass allegations of academic freedom violations:

### Article 3, Academic Freedom

3.2 This article on academic freedom is a statement of intent and policy and is not subject to the Contractual Grievance Procedure.

(University of Connecticut)

### Article 12, Academic Freedom and Governance

Section 3.(a) ... Sections 1 and 2 of this Article [“Academic Freedom and Governance”] are statements of intent and policy and are not subject to Article 28 (RESOLUTION OF

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DISPUTES) of this Agreement.  
(Portland State University)

But even in the absence of any resort to grievability/arbitrability under the collective bargaining agreement, many contracts establish alternative dispute resolution procedures, often quite detailed:

### Article 4, Professional Rights and Responsibilities

#### 4.2.3 Claims of Violation of Academic Freedom

The following procedure shall constitute the sole and exclusive method for processing claims of violations of academic freedom:

##### 4.2.3.1 Academic Freedom Panel

Within thirty (30) days of the effective date of this Agreement, the Administration and CSU-AAUP shall each name four (4) representatives (one from each university) to act on academic freedom matters. The two representatives on each university [sic] shall constitute the Academic Freedom Panel which shall be responsible for the implementation of Article 4.2.3.2.

4.2.3.2 Allegations of violation of academic freedom shall be framed with reasonable particularity, signed, and dated, by the complainant and further indicate whether the complainant or CSU-AAUP shall represent the complainant. Allegations of violation of academic freedom shall be filed with the two campus members of the Academic Freedom Panel within thirty (30) days of the incident giving rise to the allegation. The campus panel members shall provide copies of the allegations and attachments to persons named as respondents to the complaint. Any additional materials submitted by either side at any stage of the complaint must also be provided to the opposing side at the time submitted. The Panel shall mediate and investigate the complaint in order to effect a mutually acceptable resolution to the matter. Within thirty (30) days of receipt of the complaint, the Panel shall issue written findings and may offer a written recommendation to the complainant and the respondents. These parties shall have fifteen (15) days from receipt of the findings/recommendation of the Academic Freedom Panel to agree to any recommendation by so notifying the Panel in writing. If either party fails to agree, the complainant may initiate further action by forwarding the complaint within seven (7) additional days to the CSU-AAUP President and the BOR President or designee who shall also obtain a copy of the findings and any recommendation.

When the above time limits fall within intersession, during weeks when classes are not in session or outside the member's work year, an initial written request for extension by the complainants, the Panel or the respondents, if any, shall be granted automatically for up

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CSU-AAUP Collective Bargaining Agreement 2016-2021 to four (4) weeks or until classes have been in session two (2) weeks, whichever occurs first.

### 4.2.3.3 Academic Freedom Committee

The CSU-AAUP President and the CSU BOR President shall jointly convene an Academic Freedom Committee within twenty-eight (28) days of receipt of the complaint and shall provide them with the Panel findings and any recommendation. This Committee shall consist of those individuals identified in Article 4.2.3.1 who are not employed at the University from which the allegation arises.

4.2.3.4 At any point in its deliberations, the committee may decide to seek the advice of an expert. If the committee is deadlocked, it shall call upon an expert, who shall advise the Committee, and/or cast the deciding vote if the deadlock cannot be resolved by the Committee members. If an expert is needed, the Committee shall call upon the co-conveners to select one of the following experts: William Berlinghoff; Julius Getman; Walter Metzger; John Moon; Carol Simpson Stern; Victor Stone; Judith J. Thomson; Kerry Grant

The selection method shall be as follows: The two co-conveners shall alternately strike one name from the list of experts, until only one name remains; a toss of a coin shall determine who strikes the first name. In the event the expert selected by this process is not available within thirty (30) calendar days, the expert who was stricken last shall be sought. Any costs incurred by the Committee pursuant to resolving an academic freedom allegation shall be divided equally between CSU-AAUP and the Board except when the complainant chooses self-representation. In such a case, costs shall be divided equally between complainant and the Board.

4.2.3.5 The Committee shall solicit and be provided with relevant information. Such information shall be offered to the Committee subject to the rule of relevancy as determined by the Committee. Any such information submitted to the Committee by either side must also be provided to the opposing side at the time submitted. A hearing may be conducted by the Committee at its own discretion. Within sixty (60) days of filing at the CSU level, unless an extension is ordered by the Committee with the consent of the co-conveners, a written decision shall be rendered to the affected individuals, CSU-AAUP, and the Administration.

4.2.3.6 The Committee shall have the power to adjudicate substantive issues and to direct a remedy. A remedy may not be retroactive beyond the date of the incident that gave rise to the violation. The Committee's decision shall be final and binding upon all Parties.

(Connecticut State University)



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Article X. Academic Freedom C. A faculty member who believes that he or she does not enjoy the academic freedom which it is the policy of the University to maintain and encourage shall be entitled to a hearing on written request before the Committee on Academic Freedom and Tenure of the campus senate. Such hearing shall be conducted in accordance with established rules of procedure. The committee shall make findings of facts and recommendations to the president and, at its discretion, may make an appropriate report to the senate. The several committees may from time to time establish their own rules of procedure.

(University of Illinois Chicago, tenured/tenure track and non-tenure bargaining units )

### Article 3, Terms and Conditions of Employment

3.6.1.1.b, Hearing Procedure: If the attorney files a complaint with the UNO Academic Freedom and Tenure Committee [relating to the termination of a faculty member on a special appointment, tenure track, or tenured], the Committee shall conduct a hearing in accordance with the “Policies and Rules of Procedure for the UNO Academic Freedom and Tenure Committee”...

(University of Nebraska at Omaha)

It is important to note that even in the absence of full grievability and/or arbitrability rights, alternative forums enshrined in the collective bargaining agreement for airing or adjudicating professional concerns may accord similar protections to those found in contractual binding arbitration procedures. So, for example, the contract may establish that the decisions of these other bodies, either contractually-created or not, have the same finality as collectively-bargained arbitration:

### Article 4, Professional Rights and Responsibilities

4.2.3.3 Academic Freedom Committee. The CSU-AAUP President and the CSU Chancellor shall jointly convene an Academic Freedom Committee... This Committee shall consist of... individuals ...who are not employed at the University from which the allegation arises.[...]

4.2.3.6 The Committee shall have the power to adjudicate substantive issues and to direct a remedy. A remedy may not be retroactive beyond the date of the incident that gave rise to the violation. The Committee’s decision shall be final and binding upon all parties.

(Connecticut State University)

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### VII. Grievance Procedure

D. If a faculty member or the AAUP alleges...that his or her nonreappointment constitutes a violation of academic freedom...a grievance under this Article, paragraph D will be accorded on request...The decision of the [joint administration/chapter] Committee shall be binding on both parties.

(Bard College)

### **Addressing Specific Application of Academic Freedom Protections**

#### **New technologies**

Collective bargaining agreements are living documents, and as a result contract language on academic freedom has adapted and expanded to accommodate the rise of new teaching modes and communications technologies. Specifically, a great many agreements now specify that the protections of academic freedom encompass these more recent instructional modes:

#### Article 9, Academic Freedom, Rights, and Responsibilities

Section 2... The principles of academic freedom and freedom of inquiry shall be interpreted to include freedom of expression in both traditional print and newly emerging electronic formats such as the creation of digital images, web sites, or home pages.

(University of Akron)

#### Article IV, Academic Freedom and Professional Responsibility

Section 2... The principles of academic freedom and freedom of inquiry shall be interpreted to include freedom of expression in both traditional print and newly-emerging electronic formats such as the creation of digital images, web sites, or homepages...

[Members of the unit] are entitled to freedom in the classroom (including the virtual classroom)...

(Kent State University; tenure-track and lecturer bargaining units)

#### Article 30, eLearning

30.3 Academic Freedom. Faculty members engaged in eLearning shall have academic freedom in discussing their subject.

(Western Michigan University)

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### Article 9, Academic Freedom

#### 2. Rights and Responsibilities

2.5 The principles of academic freedom and freedom of expression apply to traditional forums and media, as well as to newer electronic media such as digital images, web sites, and social media.

(Bowling Green State University)

### Article 5, Faculty Rights and Responsibilities

5.1.2 Members are entitled to full freedom in both the physical or virtual classroom in preparing their courses, and discussing their subject...

University of Toledo, tenured/tenure track and lecturer bargaining units)

### Article 6, Academic Freedom and Responsibility

6.5 Full freedom in research and in the publication of the results applies to the use of electronic media for the conduct of research and the dissemination of findings and results, as it applies to the use of more traditional media.

Teaching may occur in any location, real or virtual, in which instruction occurs. In all these different types of classroom locations, the protections of academic freedom shall apply.

(University of Vermont, full-time and part-time bargaining units)

## **“Rights and responsibilities”**

One issue to be alert to is the inclusion of contract language delineating professional responsibility that can be read as undercutting language protecting academic freedom. The substance of language addressing “rights and responsibilities” of faculty members is, ironically enough, often drawn directly from AAUP pronouncements, such as the admonition found in the 1940 Statement that faculty “should at all times be accurate, should exercise appropriate restraint should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.” For example:

Faculty are citizens, members of a learned profession, and officers of the College. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence, they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of

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others, and should make every effort to indicate that they are not speaking for the University.  
(Emerson College Los Angeles)

While the above passage was never intended to curtail academic freedom (see footnote 4 of the 1940 Statement)<sup>14</sup>, it can be applied out of context in attempts to limit faculty expression. Thus, every effort should be made at the bargaining table to resist such language appearing in the contract in inappropriate ways. Arguments to consider using include:

- That such language is intended to be a counsel of prudence, rather than an absolute requirement; and
- That such guidelines are more appropriately included in institution-wide policies, rather than in a document that establishes rules that may lead to disciplinary action.

### **Unsettled Aspects of the Right to Expression: *Garcetti v. Caballos*, and “Free Speech” Protections**

Finally, it is important to have contract language that clarifies the still unsettled area of law arising out of the U.S. Supreme Court’s 2006 decision in *Garcetti v. Caballos*, in which the Court ruled that when public employees speak “pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”

The *Garcetti* case did not deal directly with the rights of faculty members and in fact, Justice Souter’s dissenting opinion expressed his hope that the decision “does not mean to imperil First Amendment protection of academic freedom in public colleges and universities...” But *Garcetti* did open the door to possible significant restrictions of the scope of faculty speech that enjoys legal protection. To date, federal court decisions have not resolved the question of how restrictive an effect *Garcetti* and subsequent rulings will have on faculty speech. So unless and until this matter is resolved decisively and favorably in the courts, collective bargaining agreements should specifically protect faculty speech relating to institutional academic matters and governance. Existing examples of such protective language include:

#### Article 5, Academic Freedom, Free Speech and Faculty Responsibility

Preamble. This policy establishes a robust view of academic freedom and freedom of speech in order to ensure that faculty have the freedom to conduct research, to teach, to engage in internal criticism, and to participate in public debate.

<sup>14</sup> “The intent of this statement is not to discourage what is “controversial.” Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject.”

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(University of Oregon)

Article 2, Purpose.

*Academic freedom also encompasses the freedom to address any matter of institutional policy or action whether or not as a member of any agency of institutional governance.”*

(University of Delaware)<sup>15</sup>

Article 5, Academic Freedom and Professional Responsibilities

5.1.3 Academic freedom is the freedom to teach, both in and outside the classroom; to conduct research and to publish, display or perform the results of those investigations; and to address any matter of institutional policy or action whether or not as a member of an agency of institutional governance.

(Wright State University, tenured/tenure-track and non-tenure bargaining units)

A common administration claim at the bargaining table is that general “First Amendment free speech protections” are all that are needed to protect faculty speech. This assertion should be rejected on a number of grounds, not limited to the *Garcetti* considerations noted above. There is, for example, the lack of direct applicability of First Amendment protections in the private sector. Thus, explicit contractual protections for academic freedom are essential elements of academic collective bargaining agreements. (The fact that such provisions may be supplemented by provisions encompassing statutory or constitutional protections is all to the good, of course.)

### **A Final Note on Strategy**

There can be a desire on the part of negotiators—an understandably strong one—to rectify all past injustices and to use the current round of bargaining to fix everything that’s broken. But sometimes the most practical and smartest strategy is a long-term one. One excellent illustration of this is the experience at Western Michigan University. The WMU story is one of how a multi-bargaining cycle strategy can be used to fully achieve a long-term solution to a problem. The chapter at WMU initially held bargaining rights for faculty with appointments greater than 50%. In one round of bargaining, they acceded to an administration request to create a new classification of academic professionals, outside of the bargaining unit. Part of the deal, though, was restrictions on numbers of those in this new classification. In the next round of bargaining, the administration agreed to move this classification into the contract, though the chapter was not able to get full contractual protections. In particular, these colleagues weren’t granted faculty

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<sup>15</sup> For an account of how the chapter negotiated these protections, see: <https://www.aaup.org/article/defending-academic-freedom-age-garcetti>)

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status, and accordingly didn't have tenure protections. The chapter did, however, bargain for a probationary status of six years, after which "continuous appointments" were given. Then, in the third round of bargaining, the administration agreed to a nomenclature change that gave these colleagues formal faculty status. At this point, the job security protections matched the language that already covered the tenure-eligible faculty; the chapter had reached the finish line.<sup>16</sup>

### **Postscript**

It remains to be seen to what extent the affiliation of the AAUP with AFT will affect, as a practical matter, the effectiveness of academic unions in protecting academic freedom. As detailed in footnote 12, above, the reach of AAUP policy formulations already far exceeds the extent to which AAUP chapters hold bargaining rights at a particular institution. But the affiliation with AFT will surely enhance communication and cooperation among players in the unionized higher education environment. And this may well facilitate the further adoption of AAUP policy in higher education collective bargaining agreements, through the various mechanisms discussed in this paper.

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<sup>16</sup> For a full press account, see: <https://www.chronicle.com/article/Some-Adjuncts-at-Western/7773>

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