
Academic Freedom and Tenure: Northeastern Illinois University¹

(DECEMBER 2013)

I. Introduction

The subject of this report is the June 2012 decision of Dr. Sharon K. Hahs, president of Northeastern Illinois University, to deny tenure to Dr. John P. Boyle, assistant professor of linguistics, despite uniformly favorable recommendations by all previous reviewers and against the background of a faculty vote of no confidence.

Northeastern Illinois University is a public, four-year institution in Chicago, founded in 1867 as a teachers' college. Since 1961 the university has been accredited by what is now the Higher Learning Commission of the North Central Association of Colleges and Schools. It currently enrolls a diverse student population of over eleven thousand students. The institution offers more than eighty undergraduate and graduate programs in the arts, sciences, business, and education. Representing the faculty in collective bargaining is the University Professionals of Illinois (UPI), a statewide local of the American Federation of Teachers (AFT), with Ms. Elinor "Ellie" Sullivan as its current president. Dr. Hahs became president of NEIU in February 2007, having previously served as provost

and vice chancellor for academic affairs at Southern Illinois University Edwardsville. Professor Boyle joined the Northeastern Illinois faculty in 2006 as an instructor of linguistics and, after receiving his PhD in linguistics in 2007 from the University of Chicago, continued at the rank of assistant professor in an appointment probationary for tenure.

II. Disputes between Faculty Members in Linguistics and Teaching English as a Second Language (TESL)

At the time of Professor Boyle's initial appointment in 2006, there were ongoing professional disagreements among the linguistics faculty, disagreements that became increasingly acrimonious during Professor Boyle's probationary period. Faculty members reported to the undersigned investigating committee that the appointment of Professor Boyle into a position requiring traditional linguistics credentials was a point of contention, with some members of the linguistics faculty having favored a candidate with credentials more appropriate to TESL instruction.

In 2006, the linguistics program was organized as a single unit of nine faculty members within the Department of Anthropology, Philosophy, and Linguistics and offered an MA in linguistics, an MA in linguistics with a TESL concentration, and an undergraduate linguistics minor. Upon the request of five linguistics faculty members who contended that they could no longer work with the other linguistics faculty and who wished to develop an independent TESL master's degree, Provost Lawrence Frank called in 2007 for a vote on separating linguistics into two distinct programs. Professors Judith Kaplan-Weinger, Shahrzad Mahootian, Richard Hallett, and Boyle,

1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association's staff and, as revised with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report was subsequently sent to the administration of Northeastern Illinois University; to the officers of the AAUP chapter, of the faculty union, and of the faculty senate; and to other persons directly concerned. This final report has been prepared for publication in light of the responses received and with the editorial assistance of the staff.

whose appointments would remain with linguistics in the event of a split, stated their preference to work out professional differences and remain a single unit, but a five-to-four vote to separate the disciplines resulted in TESL professor Lawrence Berlin's being appointed chair of the new Department of Anthropology, Linguistics, Philosophy, and TESL and in Professor Kaplan-Weinger's being named coordinator of linguistics within that department.

The agreed-upon reorganization included the development of a new master's degree in TESL. Members of the linguistics faculty stated, however, that Professor Berlin initiated and Provost Frank approved curricular actions in 2008 to create a new undergraduate TESL minor by dropping certain undergraduate offerings as linguistics courses and designating them instead as TESL courses, without the linguistics faculty's knowledge and without the levels of review required under a shared governance process. Of the nine signatures ordinarily required, a December 2, 2008, curricular action form deleting the linguistics courses carried only two signatures, those of Professor Berlin and Provost Frank. It fell to Professor Boyle to represent the linguistics faculty's governance concerns in open meetings of the College of Arts and Sciences Academic Affairs Committee (CAAC).

In a March 9, 2009, letter to curriculum committees, academic deans, and the president, Professor Berlin asserted that the courses in question had previously been approved as linguistics courses and therefore required no formal action when they were deleted from the linguistics curriculum and added to the TESL curriculum. The letter also offered his explanation of the TESL faculty's vote to separate the two programs, accusing the linguistics faculty of waging "an ongoing smear campaign" against TESL faculty by discrediting TESL faculty with students and other colleagues while portraying themselves as "the only legitimate members of an elite club." He characterized the actions of the linguistics faculty, whom he repeatedly referred to as "the four," as a "malicious underground campaign" to discredit the TESL program in order to advance the linguistics program.

The reorganization of the curriculum and the development of an undergraduate minor in TESL resulted in ongoing disputes between the two faculties that would directly involve Professor Boyle in his role as undergraduate adviser for linguistics. New course designations in the now-competing minors in linguistics and TESL created confusion for students and an apparent turf war between the programs to attract

undergraduate minors. Charges and countercharges of providing students misinformation about the requirements of the minor programs and their relationship to state of Illinois ESL endorsement were not uncommon. Over the course of the next three years, individual TESL faculty members would accuse Professor Boyle of attempting to attract linguistics minors and of undermining the TESL minor by unfairly advising students of the benefits of a linguistics minor.

The relationship between the linguistics and TESL faculties continued to deteriorate until, in fall 2011, as Professor Boyle's tenure application was in process, the linguistics faculty requested that Provost Frank and President Hahs approve the program's removal from the Department of Anthropology, Linguistics, Philosophy, and TESL. Approval was granted, and, as a temporary measure, the program was to report directly to Dr. David Rutschman, the associate dean of arts and sciences, who also assumed the position of interim chair of linguistics. During Professor Boyle's terminal academic year, 2012–13, the linguistics program was housed in the Department of English.

III. Issues of Shared Governance and Votes of No Confidence

In fall 2009, Professor Boyle's linguistics colleague, Professor Kaplan-Weinger, began a two-year term as chair of the elected NEIU faculty senate. Having experienced what Professor Kaplan-Weinger and her linguistics colleagues perceived as violations of governance policies regarding curricular matters in their department, she proposed a campuswide survey by the faculty senate during the 2009–10 academic year to identify the extent of faculty concern about shared governance and academic freedom at NEIU. After interviewing faculty members across campus, the senate identified issues of concern and presented those in a bill of particulars to President Hahs, Provost Frank, and the faculty.

Based on that bill of particulars, the faculty senate took a vote of no confidence in President Hahs and Provost Frank on November 23, 2010. In addition to Professor Kaplan-Weinger, Professors Mahootian and Hallett—the other two tenured members of the linguistics faculty—were serving on the senate at the time and voted with the majority to express no confidence. With President Hahs and Provost Frank present, twelve of nineteen senators cast votes orally and individually for no confidence in President Hahs, and eleven of nineteen cast votes orally and individually for no confidence in Provost Frank. Professor Boyle

and other non-senate members attended the session, but Professor Boyle did not speak at that meeting. During the period preceding the senate's no-confidence vote, however, Professor Boyle, in his capacity as the linguistics representative to his college's Academic Affairs Committee, had represented the complaints of the linguistics faculty to the CAAC about a lack of shared governance in curricular actions taken by Professor Berlin and Provost Frank, and those concerns became part of the bill of particulars that served as the basis for the votes of no confidence. Following the senate vote, Professor Kaplan-Weinger, in her capacity as chair of the faculty senate, organized and led open meetings with campus faculty for discussion of the bill of particulars. She stated that President Hahs and Provost Frank attended the meetings and spoke to the faculty present.

President Hahs, addressing the issues of no confidence at a senate meeting on November 9, 2010, and again in a letter to the university community on December 2, expressed her commitment to shared governance and denied accusations of retaliatory actions against faculty members who had criticized the administration's policies or actions. Despite her assurances, in February 2011 the NEIU faculty at large held another vote in which approximately two-thirds of those who cast ballots voted no confidence in President Hahs and Provost Frank. The NEIU board of trustees, meeting that month, did not take public action in response to the no-confidence vote. With regard to collective bargaining negotiations then in process, however, the board stated publicly that it "continue[d] to support the President's vision and her ability to lead the University." A month later, President Hahs and the chair of the faculty senate jointly approached the national AAUP for assistance in obtaining a consultant to evaluate the state of shared governance on the campus. The Association's staff recommended and NEIU engaged Professor Kenneth Anderson (University of Illinois at Urbana-Champaign), a longtime active AAUP member. After two days of interviewing NEIU faculty members and administrators, Professor Anderson submitted a detailed report in May 2011. His report noted long-standing patterns of compromised shared governance, emphasized the AAUP's view of the primary role of faculty in matters of curriculum and faculty status, and offered a number of suggestions to enhance shared governance at NEIU. In the investigating committee's interview with President Hahs, she indicated that while not endorsing the Anderson report

in its entirety, she had undertaken initiatives to address his concerns.

Members of the linguistics faculty claimed that their role in the 2010–11 no-confidence votes resulted in the administration's retaliating against them by denying them grants, awards, and internal advancements and, finally, by rejecting tenure for Professor Boyle.

IV. The Tenure Candidacy of Professor Boyle

Under NEIU procedures, the initial major evaluation for tenure occurs before the fifth probationary academic year, 2011–12 in Professor Boyle's case. Notifying him in May 2010 of his reappointment for 2010–11, President Hahs stated that his 2009–10 performance review "raised some concern" regarding his research activity and suggested that he develop his research projects into scholarly publications. The investigating committee must assume that he adequately addressed her stated concern, because she did not raise it again in her evaluation of his 2011–12 performance or in her final evaluation of him for tenure in 2012.

In her June 2011 letter of reappointment to Professor Boyle for his final probationary year, however, President Hahs raised a new concern about his "performance in the area of teaching/performance of primary duties," particularly in relation to his "assignment as the undergraduate advisor for the Linguistics program." She drew attention to his program's stated criteria for a satisfactory or highly effective evaluation in the area of teaching/performance of primary duties, "which include, in part, mastery of content as reflected in peer and student evaluations; demonstrated dedication, academic integrity, [and] professionalism; and cooperation with colleagues and students." In setting her expectation for improvement in this area of evaluation, she focused exclusively on the criterion of his "cooperation with colleagues and students." To address her concern, she made the following request: "Consult with your acting chair and dean to develop an approved plan to improve how you cooperate with colleagues and students. This plan should detail the steps you will be taking during the 2011-2012 academic year to improve your performance. A copy of this plan should be filed with the Office of Academic Affairs by September 15, 2011."

According to documents provided to the investigating committee, the president's new concern, one that she would cite again in her June 2012 letter to Professor Boyle notifying him of her decision to deny

him tenure, grew out of a set of e-mail exchanges between Professor Boyle in his capacity as undergraduate linguistics adviser and his counterpart in the College of Education. In those exchanges, the education adviser sought clarification about Professor Boyle's advocacy of the linguistics minor and about course requirements for state ESL endorsement. In response, Professor Boyle provided a detailed explanation, which was subsequently verified as correct and sent at the direction of the tenured linguistics faculty. What appears to have been at issue in the exchange and the source of the president's concern about his "cooperation with colleagues" was Professor Boyle's attributing confusion about the programs, in part, to the absence of appropriate shared governance in the approval of courses for the TESL minor. Although the e-mail correspondence was dated December 2010, Professor Boyle was directed to submit that correspondence to Provost Frank in May 2011, one month before the president's June 2011 evaluation. Professor Boyle was informed, without explanation at the time, that these e-mail messages would be included in his performance portfolio.

In July, following the president's directive in her June 2011 letter of reappointment, Professor Boyle formulated a plan to improve his advising in a meeting with Dr. Wamucii Njogu, dean of arts and sciences; Dr. Rutschman, acting linguistics chair and associate dean; and Professor Hallett, coordinator of the linguistics program. The agreed-upon plan called for Professor Boyle to complete additional training in the Banner and Advisor Trac programs. Professor Boyle reported that those involved in formulating the plan reassured him that it would be a sufficient response to President Hahs's directive and needed no further approval.

In order to meet the president's September 15 deadline for filing the plan, Professor Boyle mailed the required notice, which was dated and cosigned by Professor Hallett, on August 22. Official notice of Professor Boyle's completion of the approved plan was reported by the Banner specialist on October 25, 2011, and by the Advisor Trac specialist on November 7.

On October 26, the linguistics department's Personnel Committee, citing what it characterized as an exemplary record, rated Professor Boyle's "teaching/performance of primary duties" as "superior," rated his "research/creative activity" and "service" each as "significant," and unanimously recommended him for promotion to associate professor with tenure. The applicable NEIU standards for tenure call for a successful candidate to receive a rating of "superior"

in "teaching/performance of primary duties" and ratings of "significant" in the other two areas of evaluation.

Two days later, on October 28, Professor Boyle received notice from Dr. Victoria Roman-Lagunas, the associate provost, of a meeting to be held on October 31 with Provost Frank, Dean Njogu, and her. The purpose, she wrote, was "to have a conversation with you and to hear what you have to say about some possible issues that have come to our attention." She noted that the meeting was not one of "sanction/pre-sanction" but informed him of his right to request representation from UPI officials.

At the October 31 meeting, Professor Boyle was presented with copies of two e-mail messages to be placed in his personnel file that made serious allegations about his conduct as an undergraduate adviser. In an October 20 e-mail message to the provost, dean, and associate dean, Professor Berlin accused Professor Boyle of inappropriately advising students in his classes to change their minors from TESL to linguistics, thereby significantly reducing the number of TESL minors. In an October 24 message to the dean, with copies to the president, the provost, and others, TESL professor William Stone reported a number of student complaints about Professor Boyle's having provided students with inaccurate information and accused him of "unethical" and "underhanded" behavior in advising students to change their minors from TESL to linguistics. The Stone message indicated that he was writing also for TESL professors Teddy Bofman, Jeanine Ntahirigeza, and Marit Vamarasi.

Professor Boyle denied all charges of inappropriate advising. Furthermore, in a November 30 response to be placed in his personnel file, he offered statistical evidence from the Office of Institutional Research to challenge Professor Berlin's claim about a decrease in the number of TESL minors, and he provided materials to refute Professor Stone's accusation that he had given students inaccurate information. On December 8, Professor Boyle submitted a more detailed defense against the accusations made in the Berlin and Stone e-mail messages in a petition to Allen Shub, the university's contract administrator, to remove these messages from his personnel file. Responding on January 3, 2012, Dr. Shub agreed to redact the statistic claimed by Professor Berlin regarding the number of TESL minors, but he denied Professor Boyle's request to remove the message from the file. Dr. Shub's response did not mention Professor Stone's e-mail message.

In addition to being presented for the first time with the accusatory e-mail messages in the October 31 meeting with academic administrators, Professor Boyle learned that the Office of Academic Affairs had not received his August 22 letter detailing the plan to improve his advising skills. Realizing his error in having sent the letter to the Office of Academic Advising, Boyle promptly submitted a copy of the cosigned letter of August 22, together with an explanation, on November 1, the very next day.

On November 21, 2011, Dr. Rutschman, in his capacity as acting department chair, concurred in the department's evaluation of Professor Boyle's teaching/performance of primary duties as "superior" and his research/creative activity and service both as "significant." He recommended Professor Boyle for promotion and tenure. In his evaluation of teaching/performance of primary duties, Dr. Rutschman noted that Professor Boyle had completed the plan requested by the president to improve his advising skills.

On January 10, 2012, Dr. Njugo, the arts and sciences dean, likewise rated Professor Boyle's teaching/performance of primary duties as "superior" and his research/creative activity and service each as "significant." The dean described Professor Boyle as a dedicated instructor whose teaching evaluations, which included the criterion of "fair and respectful to all students," were 10 percent higher than the standard required for a "superior" rating. In her otherwise positive evaluation, the dean stated two concerns regarding Professor Boyle's performance. Her first concern centered on Professor Boyle's error in sending a copy of his required improvement plan to the wrong administrative office, an error that resulted in his not having met the president's September 15 deadline. The dean's second concern was the TESL faculty's allegations that Professor Boyle had misadvised students. The allegations were important, the dean contended, because they spoke to the tenure criterion of "professionalism and cooperation with colleagues." She concluded her evaluation by noting that "[a]lthough there is no corroborating evidence from students who were directly impacted by Dr. Boyle's alleged actions, these types of allegations were raised in President Hahs's fifth-year retention letter. My concerns notwithstanding, I find that on balance, Dr. Boyle meets the superior criterion in teaching required for tenure and promotion."

On February 20, the University Personnel Committee (UPC), an eight-member committee elected by the faculty, submitted its evaluation of Professor

Boyle to Dr. Roman-Lagunas, who had become acting provost after Provost Frank's retirement. In its recommendation, the committee unanimously assigned Professor Boyle a rating of "superior" in teaching/performance of primary duties and, also unanimously, assigned him ratings of "significant" in research/creative activity and service. In addition to praising Professor Boyle's classroom teaching, the UPC cited his exemplary record of engaging students in research and his "high level of commitment to the academic progress and welfare of students." The committee noted that Professor Boyle had fulfilled the action plan required by the president and that "the charges of alleged misadvising remain unsubstantiated." UPC members interviewed by the Association's investigating committee reported that the tally of positive and negative votes for recommending a candidate for tenure was not ordinarily included in the committee's recommendation. In the case of Professor Boyle's evaluation, however, the committee elected to record that the positive recommendation for tenure was *unanimous*. According to one UPC member, the committee perceived that a positive evaluation for tenure by the president might be "an uphill battle" and that her decision would likely be based on "something beyond" the criteria set by the linguistics program's Department Application of Criteria.

On February 17—three days before the UPC's recommendation reached the acting provost—Dr. Shub, the contract administrator, notified Professor Boyle that a student complaint had been placed in his personnel file. On February 21, Professor Boyle received a copy of the complaint, dated February 9 and received by TESL professor Vamarasi, the student's clinical placement supervisor. In the complaint, filed some four months after the alleged incident, the student contended that Professor Boyle had recommended that she change her minor from TESL to linguistics. She reported that after doing so, she was told (presumably by someone associated with the TESL program) that she would be required to take three additional linguistics courses to fulfill the minor but only one to fulfill the TESL minor. The student wrote that she then "grew nervous and anxious," that she changed her minor back to TESL, and that the incident had made her feel "unhappy" and "deceived." She concluded her complaint by saying that she felt "on track once again."

Professor Boyle responded to the student complaint on March 9. He denied that he had told the student to change from a TESL to a linguistics minor, stated that

the information the student had received elsewhere about a linguistics minor requiring more courses was incorrect, and reported that the student was present in his class when Professors Mahootian and Kaplan-Weinger explained the requirements for a linguistics minor. Professor Boyle also expressed concern that the complaint did not follow the posted NEIU procedure governing student complaints. Had the procedures been followed, the student would have met with the dean, the assistant dean, or the coordinator to review the matter, and an assigned staff member would have investigated the nature of the complaint and contacted all necessary parties.

In early April, Professor Boyle learned from UPI grievance officer Cynthia Moran that President Hahs intended to deny him tenure, based on his failure to meet her September 15, 2011, deadline for filing a plan to improve his advising and on his having insufficiently addressed her concern regarding his ability to “cooperate with colleagues and students.” Professor Moran further informed him that the administration was prepared to defer his tenure consideration for one year if he agreed to terms specified in an “Agreement to Delay Tenure Application.” Should Professor Boyle be denied tenure in the following academic year, provisions in the agreement required him to waive all rights to grievance procedures or legal action and to acknowledge that his services at NEIU would then terminate. Professor Boyle found the terms of the agreement unacceptable, and after learning that the president had denied his requests for revision of the objectionable provisions, he declined to accept the administration’s offer to defer his tenure decision.

Whether or not the UPI supported his decision is a matter of disagreement. In a June 10, 2012, statement opposing a claim filed by Professor Boyle with the Illinois Education Labor Relations Board (IELRB)—to be discussed in this report’s next section—the NEIU administration contended that “[t]he Union has no concerns about the proposed Agreement and is comfortable with Dr. Boyle signing it.” In his January 2013 report on the case, the IELRB executive director stated that “[t]he Union was amenable to the Hahs plan, but Boyle proved somewhat resistant, refusing to accept the terms of the agreement.” A July 4, 2012, e-mail message to Professor Boyle from Professor Moran, however, directly contradicted those statements. Professor Moran wrote, “The UPI did not and could not recommend you accept the settlement the administration offered as written.”

At its meeting on June 14, 2012, the NEIU board of trustees discussed the Boyle tenure candidacy in executive session and then, by a seven-to-one vote, acted publicly to uphold President Hahs’s decision to deny him tenure. Following the vote, a number of colleagues and students addressed the board in support of Professor Boyle, to no avail.

V. Union Grievance and Filings with the Illinois Education Labor Relations Board

Professor Boyle learned on December 3, 2011, that the e-mail messages from TESL professors Berlin and Stone would remain in his personnel file. He then officially petitioned for removal of the damaging material, citing the provision in the UPI collective bargaining agreement with NEIU that “[i]f the Employee is able to show to the satisfaction of the University Contract Administrator that the materials are false or unsubstantiated, then those materials, including any recent evaluations, will be removed from the Employee’s personnel file.” Union officers participated in discussions with contract administrator Shub and Associate Provost Roman-Lagunas, but they could not reach an agreement on removing the messages. On January 30, 2012, Professor Boyle submitted the initial paperwork for a union grievance, calling for the removal of the two e-mails containing “demonstrably false or unverifiable material” from his personnel file.

During March and April, negotiations continued between Dr. Shub and union officers concerning Professor Boyle’s personnel file, which by that time included the student complaint. As part of the union’s investigation of that complaint, Professor Moran, the grievance officer, interviewed TESL professor Vamarasi by telephone on March 8 and TESL professor Stone in person on March 11. (According to Professor Boyle, the administration did not allow the student to be questioned, and Professor Berlin did not respond to Professor Moran’s request for an interview.) In the March 8 interview, Professor Vamarasi, who had provided the complaint form to the student, acknowledged that she had known the student in question for about a year. University enrollment records provided to the investigating committee confirm that the student was enrolled in Professor Vamarasi’s clinical placement course at the time the complaint was filed. When asked in the interview “if the student had given any reason why she had come forward at that time or if she had been prompted by anyone,” Professor Vamarasi indicated that she “had given all of the relevant information regarding the

origin of the complaint” and did not want to discuss “how it arose or the exact content of what she and [the student] talked about during any of their meetings,” but she emphasized that she would “consider it reprehensible” in a faculty member to suggest that “students needed to switch programs of study.”

Professor Vamarasi reported that she had met the requirement on the complaint form that the matter be “referred to dean and chair” not by telling the student to speak with the dean and chair but instead by sending both of them copies of the student’s complaint. According to Professor Boyle, neither he nor the linguistics coordinator was provided with an opportunity to discuss the concerns with the student, nor was either of them provided a copy of the complaint at the time it was filed.

Professor Moran’s notes of her March 11 interview with Professor Stone reveal that Dr. Shub had approached Professor Stone on February 3 to inquire whether “there was any substantiation of the (then undocumented) student complaint.” Professor Stone confirmed that, after his conversation with Dr. Shub, he spoke to Professor Vamarasi and believed that “she may have contacted [the student] regarding the matter.” He reported to Professor Moran that the student had not wanted to file the complaint while she was enrolled in Professor Boyle’s class but that he did not recall whether the student had intended to file a complaint after the term ended. Professor Stone further reported that he had not seen the student’s complaint as an isolated one and that he had written his October e-mail about Professor Boyle because he wanted “to put an end to the undermining of the TESL program” and thought faculty “should not mess with students.” As noted earlier in this report, the student’s decision to change the minor back from linguistics to TESL was apparently based on her distress at having received conflicting information about requirements of the two minors. Professor Stone confirmed in the interview that he did not refer the student back to Professor Boyle for clarification of the linguistics requirements.

The grievance was heard on June 19, the week following President Hahs’s denial of tenure to Professor Boyle. The grievance panel, consisting of two members chosen by the union and two members chosen by the administration, was charged with making a recommendation to President Hahs, and the president would then have one month to respond to that recommendation.

Among the issues raised at the hearing, according to Professor Boyle’s transcript of the proceedings, were

the incorrect and unsubstantiated nature of the Stone and Berlin accusations, the irregular process by which the student complaint was received and processed, and Dr. Shub’s decision to retain the materials in Professor Boyle’s file. When Professor Moran asked Dr. Shub why he was not convinced that the e-mail messages and the student complaint contained unverified information, the hearing transcript shows that he replied “I just wasn’t” and that the standard for determination required by the collective bargaining provision relied completely on his assessment. During the panel’s discussion of Professor Stone’s allegations of improper advising on Professor Boyle’s part, a panel member asked whether Professor Stone, acting as the TESL undergraduate adviser, might have misadvised students during the period of confusion over requirements of the minor programs. Dr. Roman-Lagunas, the acting provost, responded that while that was possible, “it was much more serious for a junior faculty member than for a senior tenured faculty member to misadvise a student.”

The grievance panel failed to come to a consensus, and panelists individually reported their recommendations. Because Professor Boyle had filed his grievance on January 30, before the administration had added the student complaint to his personnel file, not all of the recommendations specifically addressed removal of that complaint.

In supporting the removal of the Stone and Berlin e-mail messages from Professor Boyle’s file, one of the union appointees stated that there “are no data to support Dr. Berlin’s claims” and “[t]he Contract Administrator acknowledged that at the hearing.” The recommendation expressed concern that the student complaint was not handled according to established procedures and that it “was intentionally obtained to support the two e-mails so that the administration would have a defense against this grievance.” In the final paragraph of the recommendation, the panel member stated, “It was clear to me during the hearing that the administration is intent on building a case against Dr. Boyle.” The second union appointee likewise recommended that the Berlin and Stone e-mail messages be removed from the file, but, without explanation, recommended that the student complaint be retained. The recommendation characterized Professor Berlin’s claims as unsubstantiated and the Stone e-mail message as a “placeholder document” filed until supporting evidence for it could be found.

Both administrative appointees supported Dr. Shub’s decision to retain the materials in Professor

Boyle's file. One of the administrative appointees based the recommendation to retain the e-mail messages solely on the contract administrator's authority to do so. Other than observing that the grievance was "set in the context of conflictual departmental politics" that often involve "messy charges and countercharges," the recommendation offered no independent judgment about the accuracy of the materials in question. The second administrative appointee suggested that additional information might be redacted from the Berlin e-mail message and stated that the student complaint substantiated the Stone e-mail message. The recommendation closed by stating as follows: "Dr. Shub acted within the contractual rights of his job as Contract Administrator to make a determination about the documents that are kept in the personnel file. Therefore, I do not find that the University Contract Administrator violated the Collective Bargaining Agreement." According to faculty members interviewed by the investigating committee, the administrative appointee offering this opinion, Dr. Elliott Lessen, was to become acting university contract administrator two weeks following Professor Boyle's hearing.

Responding after the UPI contract deadline for her decision, President Hahs asserted that there were no violations of the collective bargaining agreement and that the remedies sought by Professor Boyle "are not under consideration." While conceding that the contract administrator was unable to verify the quantitative information in Professor Berlin's e-mail message, the president asserted, "That does not, however, mitigate the tenor of behavior of the Grievant as indicated in either e-mail."

In February 2012, soon after the union grievance process was under way, Professor Boyle submitted a complaint of unfair labor practice to the Illinois Education Labor Relations Board; the four linguistics faculty members filed a similar joint claim. Both claims charged the NEIU administration with retaliating against the linguistics faculty for their role in the no-confidence votes against President Hahs and Provost Frank. Professor Boyle amplified his individual charges in an affidavit filed on February 23, and the four linguistics professors amplified their joint charges in an affidavit filed on April 4. In both claims, the professors contended that their actions in challenging the administration's violations of shared governance policies and their participation in the votes of no confidence constituted "protected concerted activity." On June 10, the NEIU administration filed its response, denying the

professors' claims and contending that their participation in the no-confidence votes was not protected activity. The administration further contended that Professor Boyle failed to establish a prima facie case by not showing a causal relationship between his alleged protected concerted activity and the challenged actions.

In his July 5 response, Professor Boyle contended that, as the untenured member of the linguistics faculty, he was uniquely exposed to retaliation by the administration. He further asserted that the materials that provided the basis for President Hahs's denial of tenure contained factually incorrect and unsubstantiated accusations that should have been removed from his personnel file. In their July 12 response, the linguistics professors reasserted their claims that they had engaged in protected concerted activity for which the NEIU administration had retaliated against them. The NEIU administration's reply of August 3 denied the claims and sought dismissal of the charges.

On January 29, 2013, IELRB executive director Victor E. Blackwell issued his "Recommended Decision and Order" dismissing Professor Boyle's charge on the grounds that it "fail[ed] to raise an issue of law or fact sufficient to warrant a hearing." On February 18, Professor Boyle exercised his right to file exceptions to the recommended decision, and Professor Boyle's attorney filed a brief in support of those exceptions. On April 25, 2013, the IELRB notified Professor Boyle that it was sustaining its executive director's decision.

VI. Involvement of the Association

As noted earlier in this report, President Hahs and faculty leaders invited an Association leader in Illinois, Professor Kenneth Anderson, to review and offer recommendations about the state of shared governance on the campus. He submitted his report to President Hahs and faculty leaders in May 2011.

The first formal AAUP response to the denial of tenure to Professor Boyle was a July 13, 2012, letter to President Hahs from Professor Peter N. Kirstein, chair of the Illinois Committee A on Academic Freedom and Tenure and vice president of the Illinois AAUP conference. In his letter, Professor Kirstein detailed concerns about incidents and inaccuracies that appeared to have played a role in the president's decision and may have resulted in a violation of Professor Boyle's academic freedom. The president's reply, coming on July 19, stated that while much of Professor Kirstein's information was accurate, "significant information" was "missing." Professor Kirstein was also among those

who appeared before the NEIU board of trustees on February 21, 2013, to advocate again for reversal of President Hahs's decision to deny tenure to Professor Boyle, which Professor Kirstein characterized as "arbitrary and at odds with broadly recognized AAUP standards."

The national AAUP staff initially wrote to President Hahs on February 26, 2013, expressing the Association's interest in Professor Boyle's case and requesting the missing information to which she had referred in her reply to Professor Kirstein. President Hahs's reply, dated March 13, enclosed a copy of the IELRB executive director's January 29 recommended decision for dismissal of Professor Boyle's claim of unfair labor practice. The staff responded on March 4, noting that the AAUP's concerns did not focus on whether a charge of unfair labor practice was valid and again requesting the information regarding her decision to deny tenure.

Having received no response from the president, the staff wrote again on March 22. Noting that Professor Boyle was the only candidate of sixteen to have been denied tenure that year and observing that there was "nothing remotely compelling in the record that would explain [her] rejection of the entire series of highly positive recommendations," the staff suggested to the president several alternatives for resolving the matter.

With no response from President Hahs to that letter or to a reminder sent to her on April 22, the Association's acting general secretary authorized a formal investigation on April 26. President Hahs was so notified by letter of May 2. Crossing this notification was an April 30 Hahs response to the staff's March 22 and April 22 letters, stating that the concerns raised in them "are not new and warrant no substantive response beyond what NEIU has already provided."

A May 13 letter notified the president of the names of the investigating committee members and the dates of the committee's site visit. Writing again on June 10, the staff expressed regret at not hearing from her with regard to a meeting with the committee. President Hahs notified the staff by letter of June 17 that she would meet with the investigating committee, and on August 9 she submitted the names of five administrators who would also attend the meeting.

The investigating committee conducted its interviews with NEIU faculty members and administrators on August 12 and 13. Joining President Hahs in meeting with the committee were Provost Richard Helldobler; Dr. Roman-Lagunas, now vice provost;

Dr. Rutschman, associate dean of arts and sciences; Dr. Lessen, the UPI contract officer; and Melissa Reardon Henry, general counsel. Dr. Njogu, the dean of arts and sciences, was out of the country at the time of the site visit. Among the faculty members meeting with the committee were members of the linguistics program, members of the University Personnel Committee, officers of the local AAUP chapter, and other interested faculty. Faculty members in the TESL program declined to meet with the committee, as did NEIU's UPI officers, who stated that they were instead directed to refer all questions to statewide UPI president Sullivan.

VII. Issues of Concern

The investigating committee identified the following issues of primary interest.

A. President Hahs's Stated Reasons

In support of her decision to reject Professor Boyle's tenure candidacy, the president cited only two reasons: (1) Professor Boyle's failure to file a plan to improve his advising by her September 15, 2011, deadline and (2) his failure to improve to her satisfaction his "cooperation with colleagues and students."

Were the consequences of President Hahs's decision not so dire for Professor Boyle, the investigating committee might be inclined to dismiss out of hand her citing a missed deadline as a basis for denying him tenure. As the record shows, Professor Boyle followed the president's directive to formulate a plan in consultation with the dean and chair; submitted the plan, cosigned by the linguistics coordinator and dated August 22, three weeks before the deadline; and successfully completed the requirements of the plan by early November. He inadvertently erred by routing a copy of his plan to the academic advising office rather than to the academic affairs office, an error he corrected on November 1. In her letter of denial, the president chose to cite October 31 as the date by which Professor Boyle had not yet filed the plan.

President Hahs apparently based her judgment that Professor Boyle was insufficiently cooperative with colleagues and students on several e-mail messages and a single student complaint. The use of collegiality as a criterion for denying tenure is, in itself, troubling. In its 1999 statement *On Collegiality as a Criterion for Faculty Evaluation*, the Association recommends against adding a separate category of collegiality to the traditional categories of teaching, scholarship, and service in evaluations of faculty performance: "Certainly,

an absence of collegiality ought never, by itself, to constitute a basis for . . . denial of tenure.” Moreover, the investigating committee can find no evidence to support the president’s assertion that Professor Boyle was uncooperative in the performance of his duties. Professor Boyle’s e-mail messages in the exchange with an adviser in the College of Education in December 2010, which became President Hahs’s basis for citing a lack of cooperation in her letter of reappointment for 2011–12 and which she invoked as a basis for denying tenure in 2012, are, by any objective standard, informative and cordial. The complaints by Professors Berlin and Stone, faculty members embroiled in a turf war with linguistics faculty over competing minors, contain information that is either unsubstantiated or refuted by data from NEIU’s Office of Institutional Research. In the matter of the sole student complaint, the investigating committee is troubled both by its timing and by the circumstances of its filing. Although the alleged misadvising by Professor Boyle occurred in the fall term of 2011, the student did not file her complaint until some four months later, the administration handled the matter outside of the university’s ordinary process, and the student apparently wrote the complaint at the suggestion of a TESL faculty member, just as Professor Boyle’s tenure application was reaching the president’s level of review. In student evaluations of Professor Boyle’s course in which the student filing the complaint was enrolled, 100 percent of the students evaluated him as excellent in the category of “fair and respectful treatment of all students.”

In only the most perfunctory way do President Hahs’s stated reasons for denial of tenure meet Association guidelines for providing a candidate with reasons for nonreappointment as set forth in the *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* and in Regulation 2 of the *Recommended Institutional Regulations on Academic Freedom and Tenure*. Professor Boyle corrected the missed deadline at least seven months before the president evaluated him, and her judgment of Professor Boyle’s “lack of cooperation with colleagues and students” is neither specific nor substantiated. Every level of review of Professor Boyle’s tenure application—that of his linguistics colleagues, his chair, his dean, and the faculty’s University Personnel Committee—uniformly found him well qualified for the award of tenure. Not only did the president reverse the positive recommendations at all levels of review, but in her evaluation of Professor Boyle’s teaching/performance of primary duties, she

also stated, without elaboration, that she found him only minimally qualified for a rating two levels below that accorded him by every other reviewing body. When measured against the Association’s standard in its *Statement on Government of Colleges and Universities* that an administrative reversal of faculty judgment on faculty status should occur only “in rare instances and for compelling reasons which should be stated in detail,” the president’s justification for denying Professor Boyle tenure was glaringly insufficient.

B. President Hahs’s Unstated Reasons

In her July 2012 response to Professor Kirstein, the Illinois Committee A chair, President Hahs stated that there was “significant information” missing in Professor Kirstein’s discussion of concerns regarding her decision to deny tenure to Professor Boyle. Since the president had not responded to the AAUP national staff’s request for the “missing” information, the investigating committee asked her directly what that information might be. Her first response was that there was no unrevealed additional information. Later in the meeting, however, she suggested that there was additional information but that she was not inclined to provide it. She stated that she was comfortable with her decision and that she did not intend to discuss it further. According to the member of the University Personnel Committee who had examined Professor Boyle’s personnel file during the tenure process, the file contained no additional documents or materials upon which the president might have based her decision.

That serious disagreements had arisen between the linguistics and TESL faculties regarding curriculum and shared governance matters is abundantly clear. What is not convincingly documented by any materials made available to the investigating committee, however, is that Professor Boyle’s advocacy for his program’s minor was inappropriate, that the information he provided to students about the minor programs was inaccurate, or that his manner in carrying out his duties as undergraduate adviser was disrespectful.

C. President Hahs’s Motive

The disturbing absence of any reasonable justification for the president’s denial of tenure to Professor Boyle, the only one of the sixteen candidates she evaluated in 2012 whom she denied tenure, calls into question for the investigating committee the president’s motive for her decision. NEIU faculty interviewed by the committee saw Professor Boyle, the only untenured member of the linguistics faculty, as a convenient target for

retaliation by the president for the linguistics faculty's active opposition to the administration. There is no indication that he played a significant or public role in supporting the votes of no confidence in President Hahs and Provost Frank. By all accounts, however, his tenured linguistics colleagues did play a major role. Importantly, the linguistics faculty's assertions that shared governance policies had been violated in curricular matters served as the impetus for the faculty senate's survey regarding shared governance and academic freedom; and, under the faculty senate leadership of linguistics professor Kaplan-Weinger, that survey would lead to the votes of no confidence by both the senate and the NEIU faculty as a whole.

D. Academic Freedom

The investigating committee finds, on the basis of the information made available to it, that President Hahs's stated reasons lack credibility as grounds for denying tenure to Professor Boyle. What stands un rebutted is the opinion, broadly held by NEIU faculty members, that the president denied tenure to Professor Boyle in retaliation for the linguistics professors' expressed opposition to the administration and for their central role in the votes of no confidence in her and her provost.

The Association's guiding principles of academic freedom are widely accepted as protecting a faculty member's participation in challenges to administrative policies and actions. In the absence of a rebuttal to the allegations of retaliation against the untenured Professor Boyle for the actions of his tenured colleagues, the investigating committee finds that the president's decision to deny him tenure was in violation of principles of academic freedom. The votes of no confidence by the NEIU faculty, the extent to which the tenured linguistics professors may also have suffered retaliation, and the expressed concerns of other faculty members interviewed by the investigating committee suggest to the committee an unfavorable climate for academic freedom at NEIU.

VIII. Conclusions

1. The Northeastern Illinois University administration, in denying tenure to Assistant Professor John P. Boyle, violated principles of academic freedom as enunciated in the joint 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative Association documents.
2. The administration, in failing to state credible reasons for denying tenure, did not afford

academic due process to Professor Boyle, acting in disregard of the Association's *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments* and in blatant disregard of the requirement in the *Statement on Government of Colleges and Universities* that the reasons for rejecting an affirmative faculty recommendation be "compelling" and "stated in detail."

3. The administration, by questioning Professor Boyle's collegiality in denying him tenure, disregarded the admonitions in the statement *On Collegiality as a Criterion for Faculty Evaluation*.² ■

2. Melissa Reardon Henry, NEIU's general counsel, responded in behalf of the administration to Committee A's invitation for corrections and comments on a prepublication draft of this report. The response addressed alleged inaccuracies and misinterpretations of particular points in the text, calling these a selection out of a large multitude, and the particular comments she provided have been taken into account in preparing the final document. The response also provided general objections to the report, and samples of these objections are quoted in the paragraphs that follow. Finally, the chair of Committee A offers a few comments on the disparity between these objections and the report's findings and conclusions.

The investigating committee, the NEIU administration's response states,

proved all too ready to interpret the University's commitment to preserving the confidentiality of its personnel decisions as an admission of retaliatory or bad motives on the part of the University President or even the Board of Trustees. The University takes the strongest possible exception to the committee's highly personalized, misguided attacks against University President Sharon Hahs. The fact the President and senior administration declined to discuss specific personnel actions during the AAUP committee's visit was misconstrued and then condemned by the committee as evidence of retaliatory motive on the part of the President and Board. This accusation is wholly unwarranted; the AAUP is not a part of the University's governance structure and the University's unwillingness to reveal confidential details of a personnel matter to an AAUP committee is not tantamount to admitting misconduct. This aspect of the committee's approach, perhaps more than any other, undermines the legitimacy and validity of the draft report.

Moreover, with respect to issues of shared governance and the decision to deny tenure to Professor Boyle, the administration's response states as follows:

The Draft Report challenges President Hahs's recommendation against tenure in the particular case under consideration and the Board's acceptance of that recommendation, opining that this was inappropriate because all prior levels of review recommended the granting of tenure. But, as established in the collective bargaining agreement, the tenure-review process created with Northeastern

faculty authorization provides that decision-making responsibility for tenure decisions rests with the President and the Board. This is entirely consistent with AAUP's *Statement on Government of Colleges and Universities* that implicitly contemplates that, even if prior levels of review favor awarding tenure, tenure may still be denied by "the governing board and president." Thus, contrary to the premise advanced in the Draft Report, there is nothing inherently impermissible about the Board's and President's having rendered a decision contrary to recommendations made during prior stages of the process. It is also significant that Northeastern's process also calls for more than simple "yes/no" recommendations from each layer of review; on the contrary, each step in the process yields a written discussion of the factors weighing in favor and against a recommendation. Thus, even when a committee, chair, or dean recommends in favor of granting tenure, the written evaluation conveying an opinion may include observations or expressions of concern that run contrary to the final recommendation.

Northeastern followed this jointly-crafted shared governance process in the case under consideration in which tenure was denied. The detailed reasons for a tenure decision involve confidential personnel information, which the University does not share outside of the tenure-review process, and related labor/management processes.

With respect to the "AAUP's retaliation theory" and academic freedom, the response is as follows:

The Draft Report concludes, based in part upon the University's refusal to invite AAUP into its governance system, that the decision to deny tenure in the present case must have constituted "retaliation" in violation of academic freedom principles. There is absolutely no support for this conclusion other than the AAUP's apparent assumption that any refusal to share confidential personnel information with an AAUP committee must necessarily reflect bad motives.

And finally,

AAUP may disagree with the result that [NEIU's] shared governance system yields in a particular case, but this does not mean that the process or the result was flawed. AAUP does not perform a governance function at Northeastern. In the matter at issue, multiple levels of process and review were utilized appropriately and consistently with AAUP's published principles. As such, the University disagrees with the Draft Report and requests that the Association decline to endorse or adopt it.

* * *

Committee A chair Henry Reichman has provided the following comments on the foregoing objections:

The objections emphasize NEIU's commitment to major AAUP policy documents and its resentment about being faulted for declining to provide "confidential personnel information" to an external professional organization standing outside the NEIU governance system. The basic problem for Committee A, however, is not NEIU's refusal to provide the information to AAUP. The AAUP investigating committee's concern is instead that Professor Boyle was not afforded credible reasons, stated in detail, for the decision to deny him tenure and, as called for in the AAUP's procedural standards, opportunity



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University of Central Arkansas, *chair*

BETTY A. DEBERG (Philosophy and World Religions)
University of Northern Iowa

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University of Illinois at Chicago

Investigating Committee

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors*.

Chair: **HENRY REICHMAN** (History), California State University, East Bay

Members: **MICHAEL BÉRUBÉ** (English), Pennsylvania State University; **DON M. ERON** (Writing and Rhetoric), University of Colorado; **MARJORIE HEINS** (Communications), New York University; **RISA L. LIEBERWITZ** (Law), Cornell University; **WALTER BENN MICHAELS** (English), University of Illinois at Chicago; **DEBRA NAILS** (Philosophy), Michigan State University; **CARY R. NELSON** (English), University of Illinois at Urbana-Champaign; **JOAN WALLACH SCOTT** (History), Institute for Advanced Study; **HANS-JOERG TIEDE** (Computer Science), Illinois Wesleyan University; **THERESA CHMARA** (Law), Arlington, VA, *ex officio*; **RUDY H. FICHTENBAUM** (Economics), Wright State University, *ex officio*; **JOAN E. BERTIN** (Public Health), Columbia University, *consultant*; **BARBARA M. JONES**, (Legal History), American Library Association, *consultant*; **IRENE T. MULVEY** (Mathematics), Fairfield University, *liaison from the Assembly of State Conferences*.

for him and his supporters to contest what they alleged to be an unstated reason that violated principles of academic freedom. Professor Boyle was not alone in failing to receive credible reasons for being denied tenure. His candidacy had commanded support from his department's colleagues and its chair, from the dean of his college, and, unanimously, from the faculty's elected University Personnel Committee without sufficient information to explain, to the investigating Committee's knowledge, why their recommendations had been rejected. The AAUP report found that the administration's not having stated credible reasons for acting against this stream of favorable recommendations was "in blatant disregard" of the requirement in the *Statement on Government*—to which the administration's response claimed full NEIU compliance—that its rejection of a positive faculty recommendation be only for "compelling" reasons that are "stated in detail."