Academic Freedom and Tenure: University of Northern Iowa[1]

(DECEMBER 2012)

This report concerns actions taken in February and March 2012 by the administration of the University of Northern Iowa, with the approval of the Iowa Board of Regents but without consultation with the faculty, to discontinue nearly one-fifth of the university's academic programs and close the university's laboratory school. These actions threatened the termination through layoff of more than fifty faculty appointments. Although no layoffs ultimately occurred, numerous tenured professors were constructively dismissed. After assigning certain faculty members to eliminated "program areas," the administration offered some of them separation plans that would provide a year of severance salary plus benefits—having led these selected professors to believe that refusal to accept the separation offers would likely result in their being laid off at the end of the academic year with no severance salary and no further benefit payments.

I. Background

In 1876, the Iowa legislature established the Iowa State Normal School in Cedar Falls to provide "special instruction and training for teachers of the common schools of the state." After its name was changed to the Iowa State Teachers College in 1909 and to the State College of Iowa in 1961, the institution acquired its current name in 1967. Accredited since 1918 by what is now the Higher Learning Commission of the North Central Association of Colleges and Schools, UNI is one of three public four-year institutions in Iowa (the others are Iowa State University and the University of Iowa), all of which are governed by the Iowa Board of Regents. During the 2011–12 academic year, some six hundred full-time and two hundred part-time faculty members served the approximately thirteen thousand undergraduate and graduate students enrolled in UNI's five undergraduate colleges and in its graduate college, which offers programs of study leading to a variety of master's degrees and to doctoral degrees in education and in industrial technology. Since 1991, all of UNI's varsity sports have participated in Division I of the National Collegiate Athletic Association.

Dr. Benjamin Allen became UNI's ninth president in 2006, after having served as vice president for academic affairs and provost at Iowa State University. His advanced degrees in economics are from the University of Illinois at Urbana-Champaign. Dr. Gloria J. Gibson was appointed executive vice president and provost in 2009 after having served as dean of the College of Humanities and Social Sciences at Arkansas State University. She earned her PhD in folklore with a concentration in ethnomusicology at Indiana University. An administrative officer who was viewed as having played a critical role in the events of concern was Ms. Virginia Arthur, the associate provost for faculty affairs. Associate Provost Arthur, who holds a bachelor's degree in economics and business administration from Syracuse University and a law degree from American University, came to UNI in 2008 from the College of Saint Benedict and Saint John's University in Minnesota, where she had been a professor of management. In May 2012, Ms. Arthur was named provost and vice president for academic affairs at Metropolitan State University in Saint

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 the University of Northern Iowa, to the officers of the AAUP chapter and 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.

Paul, Minnesota. In August 2012, President Allen announced that he would retire by July 1, 2013.

The primary agency for faculty participation in institutional governance at the University of Northern Iowa is the faculty senate, which consists of nineteen elected representatives from the undergraduate colleges and from the library. The senate meets twice a month during the academic year. The faculty as a whole also elects annually a chair who presides over meetings of the faculty, held at least once a year, and, according to the faculty constitution, acts "as spokesperson for the established policies and positions of the faculty."

For the purposes of collective bargaining, faculty members at UNI are represented by the United Faculty (UF), an AAUP chapter with some two hundred members and the only faculty union at an Iowa four-year institution.

II. Events of Concern

According to President Allen's response to a prepublication draft of this report, the review of academic programs at the University of Northern Iowa began in August 2008, when the interim provost, Dr. James F. Lubker, announced an intensive review of existing programs within the academic year to follow. The stated goal was the elimination of as much as 20 percent of course offerings that no longer served the university's mission or met student demands. A team of ten faculty members designed the assessment process, President Allen reported, after which a mixed group of faculty and administrators evaluated the programs and placed each in one of four categories: growth and investments, reorganization/consolidation/reduction, maintenance, and phase out. The group's report, submitted in April 2009, led after consultation with deans and department heads to the discontinuance of a total of forty-five majors, minors, certificates, and emphases.

Three years later, with a major budget shortfall for 2012 in prospect, the UNI administration notified United Faculty officers of the need under the collective bargaining agreement to meet and discuss the definition of "program area" as the first step in effecting potential layoffs resulting from anticipated program changes. Five meetings occurred between January 25 and March 6, with no agreement on a definition reached. The board of regents and the administration determined that lack of progress at the final meeting left discussion at an impasse, and the UF was so notified.

On March 8, 2012, President Allen announced in a letter to the university community that he would be recommending to the Iowa Board of Regents approval of "a series of changes that include closure and restructuring of academic programs with low graduation rates." Among the programs slated for closure were undergraduate majors in French, geography, geology, German, and Russian and master's degree programs in criminology, French, German, and sociology. The criterion used to determine which programs to eliminate was the number of students graduating from them over the most recent five-year period: according to the administration, the programs selected for closure had graduated, on average, fewer than two students a year. At its March 21 meeting, the board of regents voted unanimously to approve the administration's final recommendation to close twenty-two undergraduate majors, twenty undergraduate minors, and sixteen graduate degree programs; to suspend admissions to seven undergraduate and graduate programs; and to restructure another thirteen, thus affecting a total of seventy-eight programs.

In his March 8 letter, the president stated that the closures were necessary in order to "reallocate resources to high-demand and potential-growth programs," address "current budget requirements," and "meet . . . student demand." In a February 23 public statement, the administration noted that the university's state funding had been reduced seven times since 2000 and was currently below 1996–97 levels, that it had begun the 2012 fiscal year with a $5 million budget shortfall, and that it would begin the 2013 fiscal year with $4.1 million in obligations resulting from "negotiated salary and benefits increases." A "Request to Terminate/Suspend Programs at the University of Northern Iowa" presented at the March 21 board of regents meeting informed the board that the cuts were "required to allow the university to address its budget challenges (both immediate and long-term) and to focus resources on strategic and high-demand programs. There are immediate budget concerns for the next fiscal year as well as more long-term challenges and opportunities. In the near term, there is an existing budget shortfall of almost $1 million and known cost increases of more than $4 million for the next fiscal year."

In its coverage of the meeting, the *Cedar Rapids Gazette* reported that, while Provost Gibson could not give board members an exact estimate of the cost savings to be achieved by the cuts, she did convey the hope that the amount would contribute toward

reducing an anticipated $800,000 budget deficit in the 2012–13 academic year.

Preceding the program discontinuances was the board's controversial decision, on February 27, to accept the administration's recommendation to close the university's Malcolm Price Laboratory School, effective June 30, and lay off its faculty members, who held university appointments. The next day, the teacher-education faculty, by a vote of sixteen to one, adopted a resolution expressing no confidence in President Allen, Provost Gibson, and the Iowa Board of Regents for closing the school "without any consultation with faculty in affected programs and faculty knowledgeable about the interrelationships of academic programs [and] with evident disregard for the values of shared governance." In a March 5 "open letter" to the UNI community, President Allen offered the following explanation for the decision to close the lab school: "[N]ot only is the operation of a laboratory school financially unsustainable, but also it is questionable whether the model is the best way to prepare our future teachers."

As with the decision to shutter the laboratory school, faculty members complained that the administration did not involve them in the decision-making process that led to the program closures elsewhere in the university. In a March 6 e-mail message to UF members, chapter president M. Catherine DeSoto noted that union leaders first learned around January 13 that program cuts were being considered when the board of regents requested a meeting with the chapter leadership pursuant to article 5 ("Staff Reduction") of the *Master Agreement between the Board of Regents, State of Iowa, and the UNI-United Faculty* (hereafter Master Agreement). Article 5 requires the board to attempt to reach agreement with the union regarding the definition of "program area" before initiating layoffs. In the same message, Professor DeSoto noted that on January 25 President Allen had sent a letter to all faculty members informing them for the first time that planned program cuts would result in layoffs of tenured professors—without, however, revealing which programs were to be eliminated. On February 27, the provost first shared with the UF and the faculty senate a "preliminary and confidential" list of the programs that the president would be proposing for elimination. After those lists were leaked to the faculty and to the press, the general faculty met on March 2 to vote no confidence in the president and the provost, and the faculty senate met on March 6 to approve a resolution decrying the administration's failure to "consult in a timely fashion" with the faculty about the closures. The administration, the resolution stated, did not consult the senate until "roughly two weeks before a planned public announcement, despite the fact that the administration [had] known for the entire academic year that such cuts would be proposed." The resolution also "condemn[ed] the process used to arrive at these recommendations as contrary to accepted practices for an institution of higher learning." Following subsequent discussions between the administration and the two faculty groups, the administration removed several programs from the preliminary list of majors and minors recommended for closure before issuing its final version on March 8. In the meantime, as already noted, the board of regents on March 7 had declared an "impasse" in reaching an agreement with the UF on the definition of program area.

The administration did not dispute the lack of faculty involvement. On March 2, on the eve of the faculty vote of no confidence, the *Gazette* cited a university spokesperson as stating that the administration had kept the list secret to avoid needlessly alarming those students and faculty members whose programs might finally be saved. As to faculty objections to the closures, he added, "It's only human nature to want to preserve the status quo, but it's not good leadership or business practice."

According to administration and faculty sources, immediately prior to the March 8 announcement the administration invited twenty-three tenured faculty members whose programs were to be closed to "mandatory meetings" at which the administration offered them early-separation agreements. Approved by the board of regents on March 5, the Early Separation Incentive Program (ESIP) offered faculty members meeting the eligibility requirement—holding a "tenured appointment as of March 2012 in a program area finally identified for closure and/or restructuring by the University"—payment of accrued sick leave up to $2,000, salary for one additional year, and "cash payment equal to the value of eighteen (18) months of COBRA premium for health and dental insurance." In exchange, faculty members had to agree to "fully resign or retire no later than June 29, 2012," and "to waive any claim arising under the Age Discrimination in Employment Act of 1967 and the Older Worker Benefit Act." Accepting the ESIP also "terminate[d] any previous agreement, contract, or understanding concerning the prior employment relationship including but not limited to rights arising under tenure, a collective bargaining agreement, or university policy."

The administration offered eligible faculty members phased-retirement agreements as an alternative to the ESIP. In either case, faculty members were given until April 30 to sign. The administration told the local press that it hoped the early-separation offers would preclude the need for layoffs.

A March 29 article in the *Waterloo–Cedar Falls Courier* reported that the administration had also offered the ESIP agreements to twenty-one tenured faculty members in the laboratory school. Internal university documents obtained by the newspaper through Freedom of Information Act requests indicate that twenty-two laboratory school faculty members held tenured appointments, nine held appointments probationary for tenure, and seventeen held full-time non-tenure-track appointments. In a March 26 memorandum, Associate Provost Arthur notified laboratory school "faculty employees" of the opportunity to apply for "existing open positions" or new positions yet to be created within the Department of Teaching.

According to information available to the undersigned investigating committee, nontenured UNI faculty members with appointments in programs selected for closure were not offered ESIP agreements or anything comparable. Nor were they informed of their assignment to a program area, much less offered the opportunity to appeal that assignment.

An article in the fall 2012 issue of *Union Line*, the UF newsletter, reported the administration's having informed the union in March "that upwards of fifty faculty members could be facing layoffs." An examination of the documents upon which the board of regents based its March 21 decision would seem to confirm this estimate. Four attachments to the above mentioned "Request to Terminate/Suspend Programs at the University of Northern Iowa" contain descriptions of all the affected programs, with each description including among its six categories "anticipated cost savings" and "resources to be reduced." Under bachelor of science in applied physics, for example, the anticipated cost savings is "one tenured faculty," and the resources to be reduced are the same. For the bachelor of arts in German, the anticipated cost savings are "four faculty (two tenured, one term, one tenure-track)" and "four graduate assistants." The resources to be reduced are likewise identical. But other entries are much less specific. The anticipated cost savings of eliminating the master of science with an emphasis in environmental health, for instance, is a "reduction in adjunct or term faculty." Under resources to be reduced is the following notation: "Permanent faculty workload will be shifted to other programs; reduced need for adjunct or term faculty." The most common entry is "may lead to reduction in adjunct or term faculty." Based on these documents a reasonable inference is that at least twenty-five tenured appointments and an indeterminate but potentially much larger number of full-time nontenured appointments were subject to potential release.

III. The Collective Bargaining Agreement

The relevant provisions of the collective bargaining agreement are set forth in article 5 ("Staff Reduction") of the Master Agreement. Section 5.1 ("Notice") provides that, "[p]rior to informing any Faculty Member of layoff, the Board shall notify the United Faculty of possible layoff(s) and shall give the United Faculty reasonable time to consult with the Board." Section 5.2 ("Definition"), as noted above, requires agreement between the board and the UF on the definition of "program area" and, if such agreement is not reached, permits the board to provide its own "reasonable definition." Section 5.3 ("Order of Reduction") specifies the order of layoff: first to be laid off are part-time, temporary, and term faculty, followed by probationary faculty members and then tenured faculty members, with preference given to seniority within these classifications. Relocation rights are addressed under section 5.35, which stipulates that tenured faculty members who are laid off "shall be eligible to transfer to any vacant position in the bargaining unit for which the Faculty Member possesses the necessary educational preparation, professional qualifications, and the appropriate terminal degree under current standards." Section 5.4 ("Recall") provides that laid-off probationary faculty members "be placed on a recall list for three (3) years" for any position that might open for which they possess "the necessary educational preparation and professional qualification." Tenured faculty members who have been laid off remain on the list indefinitely, but must also possess the necessary qualifications. Beyond what is contained in 5.1, article 5 is silent about notice or severance salary and about any grievance or appeal rights.

At first glance, articles 10 ("Grievance Procedure") and 11 ("Appeal of Denial of Tenure, Failure to Promote, Nonrenewal of Probationary Appointments, Termination of Term Appointments before the End of Appointment, and Recommendation to Terminate a Tenured Faculty Member") do not appear to contain provisions that would afford a faculty member the right to contest a layoff decision. Article 10 explicitly

excludes termination of appointments from its scope, and article 11, while affording access to nonbinding arbitration for the actions listed in its title, says nothing about layoffs. Indeed, President Allen, in his March 20 letter to the AAUP's staff, asserted that no tenured faculty members were to be "terminated" at UNI. "Rather," he wrote, "the applicable contract provision is a layoff provision." By implying that the administration did not consider article 11 to be applicable, he apparently took the position that "layoff" was not "termination," perhaps on grounds that the collective bargaining agreement sets no terminal time for a laid-off faculty member's eligibility for recall.

President Allen has also asserted that article 10, with its reference to UNI's governing policies, does not represent a complete incorporation of the policies but rather incorporates only those policies that are applicable to the action in question (see note 3). The investigating committee, however, reads article 10 (section 10.01) as affording a faculty member the right to file a grievance (which could involve binding arbitration) regarding any provisions of the Master Agreement other than those in article 11. If it can be argued that layoffs are often tantamount to termination of appointment, as it surely can, then article 11 does seem to provide for nonbinding arbitration of layoffs of faculty members holding term appointments (when the layoffs occur prior to the expiration of the term appointments) and for final and binding arbitration of layoffs of faculty members holding tenured appointments. Moreover, layoffs are covered by article 5 and thus fall under the binding arbitration provision of article 10 as "layoffs," regardless of whether they are in fact dismissals. In an arbitration, the issue whether the program reductions were "reasonable" and consistent with the university's curricular review procedures, incorporated by reference in the Master Agreement, would be subject to the arbitrator's determination.

IV. The Association's Involvement

United Faculty leaders first sought the assistance of the national AAUP in late February 2012 following the closure of the Malcolm Price Laboratory School and indications that the administration intended to impose massive program cuts and possible faculty layoffs. On March 2, the AAUP's staff conveyed its concerns to President Allen regarding the decision to close the laboratory school and his announced intention to recommend the elimination of numerous academic programs and the termination of faculty appointments without any evident meaningful consultation with the faculty "in contravention of normative standards of academic governance." The staff's letter quoted relevant passages from a June 6, 2011, statement by investigating committee chair Michael Bérubé, in his capacity as chair of Committee A's subcommittee on program closures, regarding program cuts and terminations in the University of Louisiana (UL) System. The letter noted that the Association had just completed an academic freedom and tenure investigation of those actions at two UL System campuses, was about to publish the investigating committee's report, and would be considering imposition of formal censure at its 2012 annual meeting. It urged the president to refrain from taking further steps without consulting with the faculty.

On March 16, having received no response from President Allen and having learned that his final recommendation to eliminate nearly sixty academic programs had been forwarded to the Iowa Board of Regents, the staff wrote again, this time to inform him that, under AAUP-recommended procedural standards, "faculty members whose appointments are being terminated are entitled to an on-the-record adjudicative hearing before a body of elected peers" and that in such a hearing the administration must "demonstrate that the stated grounds for the action are bona fide and that every effort is being made to relocate displaced faculty members in suitable positions elsewhere within the institution." Noting that UNI's policies were "silent on these matters," the letter stated that "affected faculty members presumably are not being afforded the academic due process to which they are entitled under Association-supported standards." As a result, the letter continued, the Association's general secretary had authorized this investigation. After outlining the investigative process and the steps leading to the eventual publication of the investigating committee's report, the letter concluded by assuring the president that the Association remained receptive, in this as in all cases, to a resolution that would preclude the need for proceeding with the investigation.

President Allen responded by letter of March 20. He began by expressing his hope that he and the provost would be able to work with the AAUP's staff to effect a resolution of the Association's concerns. He then outlined the financial difficulties that the university faced as a result of "an unprecedented reduction of state funding in just over three years" of $23.6 million (24 percent); an excessive dependence on in-state tuition revenue; and increasing expenses,

including $4.04 million in "salary-dependent benefit costs in Fiscal Year 2013." These financial constraints, the president wrote, "placed UNI in the very difficult position of having to determine how to meet its costs and fulfill its educational mission with significantly fewer resources."

After noting that he and his administrative colleagues took "very seriously" the "principles of academic freedom and shared governance," President Allen stated that his administration was also required to "fulfill its contractual obligations to the faculty as reflected in the Master Agreement," the relevant provisions of which he went on to outline. "Unlike at Louisiana," he wrote, "no tenured faculty members are being terminated at UNI. Rather, the applicable contract provision is a layoff provision." He added that, under the collective bargaining agreement, "tenured faculty members have other protections," such as eligibility for transfer to another open position and indefinite recall rights.

He characterized the offer of early-separation agreements to tenured faculty as an instance of the administration's "going beyond what was strictly required" by the Master Agreement. With respect to "due-process rights," President Allen referred to the opportunity afforded tenured faculty members to "verify or challenge" their assignment to a discontinued program. With respect to shared governance, he referred to his administration's consultation with the faculty union and the faculty senate. These meetings were "[c]onsistent with the provisions of the Master Agreement," were "substantive and valuable," and "clearly . . . had a meaningful effect on the final recommendations." In the same vein, he alluded to the review of the curriculum by an "ad hoc faculty committee" that took place three years earlier and that formed the basis of a subsequent consultation with the faculty senate.

After acknowledging that "the faculty and their governance bodies are upset with the decision-making process," the president expressed his intention to cooperate with the senate in creating curricular review procedures that would "incorporate even more significant and earlier faculty involvement" and to meet more frequently with the faculty senate to consult and answer questions.

In closing, he reiterated his administration's intention to follow the provisions of the collective bargaining agreement; the university's commitment "to principles of academic freedom and shared governance," which, he averred, were "honored" in "the process leading up to these closure decisions"; and his hope that, after the AAUP's staff had reviewed his response, "further investigation would be deemed unnecessary."

Replying by letter of March 22, the AAUP's staff welcomed President Allen's detailed response, noting that it would "serve as a useful basis" for the investigating committee's work. The letter went on to list the members of the investigating committee and to give the dates of the committee's planned visit to UNI. It ended by inviting his cooperation.

The undersigned committee conducted its site investigation May 8–9, 2012. It interviewed several dozen faculty members, including faculty senate and UF leaders, and spent ninety minutes with President Allen, Provost Gibson, Associate Provost Arthur, and Mr. Robert Donley, executive director of the Iowa Board of Regents. The Allen administration extended full cooperation to the investigating committee.

V. Developments Following the Committee's Visit

On June 13, President Allen wrote the investigating committee to update its members on "the effect of the program closures" and on his "administration's ongoing efforts to repair and enhance shared governance at UNI." He stated that the administration and the United Faculty had agreed on severance packages for a small group of laboratory school faculty who lacked degree qualifications to serve elsewhere in the university and that the administration had offered appointments elsewhere in the university to thirty-three others, of which twenty-six had been accepted. According to a table enclosed with the letter, of twenty-nine faculty members outside of the Malcolm Price Laboratory School whose appointments were to be terminated, thirteen had accepted either the ESIP or a two-year phased-retirement agreement, making layoffs apparently unnecessary. "You will note," he wrote, "that no faculty members, whether tenured, probationary, or on term appointments, are expected to be laid off."

The president stated that he and the provost understood "the need for rebuilding relationships with [the] faculty in order to strengthen shared governance at UNI" and that they had taken several concrete steps to strengthen faculty participation in governance, among them the establishment of regular meetings with the faculty senate and UF leaders. Topics discussed included a "transparent and inclusive" budget process, improvements to the faculty misconduct policy, and,

with the UF, the provisions on program definition in article 5 of the Master Agreement.

In a June 30 letter addressed to "United Faculty Colleagues," current UF chapter president Daniel Power wrote that "the most significant development" following the investigating committee's visit appeared to be "no layoffs at UNI this year under Article V of the Master Agreement," an outcome that he characterized as "a major victory for United Faculty." "In the spring," he wrote, "we faced the prospect of dozens of faculty layoffs. Through a series of program cut reversals, transfers, early separations, and a severance settlement, it appears that layoffs will be avoided." He identified the severance settlement as the UF's negotiation of severance packages for teachers in the laboratory school who lacked the degree credentials to transfer to other positions in the university. His letter went on to discuss issues that remained, including a June 21 Iowa Public Employment Relations Board ruling that the ESIP agreements were "a mandatory topic of bargaining" and thus could "not be created unilaterally by the [UNI] administration."

While President Power's letter to UF members recognized positive developments, the investigating committee also received a report of continuing concerns from a UF officer whose own program was slated for restructuring—Professor Betty DeBerg, vice president of the UF and chair of its grievance committee.

Writing in early July, Professor DeBerg began by recounting that the UNI administration, by fiat, closed or initiated restructuring of seventy-five "program areas," with faculty members assigned to only sixteen of them and, in early March, with tenured professors in eight of the sixteen invited to avoid potential layoff by retiring through the ESIP plan or its two-year alternative. She wrote that these professors, twenty-three in number, were "the tenured faculty we talk of as being 'targeted' and threatened with layoff so that they would give up tenure and leave the university." The twenty-three included everyone assigned to French, geology, German, leadership studies, philosophy, religion, and Russian, plus one from the nine tenured professors in physics. Ten of them accepted the ESIP or the two-year retirement option. The ESIP was also given to three tenured professors not assigned to a program area who asked for it, but it was denied to at least one other such professor who wanted it.

Professor DeBerg went on to comment on President Allen's June 13 letter to the investigating committee. She asserted that "it does nothing to address the way in which a handful of tenured faculty were targeted and coerced, under threat of layoff, into giving up their tenure. Nor does it address the arbitrary and unfair way in which staff reductions have been accomplished." She further asserted that President Allen wrote falsely about achieving "closure to the employment issues for all faculty" while three UF grievances involving these issues were still in process and while the administration's appeal of the Public Employment Relations Board's finding the ESIP program illegal still awaited a ruling.

As to the president's claim that his administration had taken steps to improve shared governance, Professor DeBerg wrote that she attended all the senate meetings; that at the meeting following the faculty's no-confidence vote, the president and the provost said little they had not said before; and that at a ninety-minute summer senate meeting, with the budget on the agenda, the provost provided insufficient data.

Professor DeBerg concluded her letter by identifying "issues on which, recently, the university senate has spoken clearly and almost unanimously and has been ignored by the administration." She referred to senate opposition to the extent of the president's use of general education money for intercollegiate athletics, to its opposition to remodeling a building for use by the wrestling team when it could have been remodeled for academic purposes, and to its opposition to significant changes by the administration in a revised academic grievance policy that the senate had approved. "These three issues," according to Professor DeBerg, "might have been a good place for President Allen to actually start listening to the faculty and taking its careful recommendations seriously."

A UF chapter newsletter issued in early August confirmed that, "thanks to the efforts of so many," no layoffs had occurred, despite the administration's March warning that more than fifty faculty members would be laid off pursuant to article 5.

VI. Issues of Concern

Summarized here are what appear to the investigating committee to be the central issues.

A. The Basis for the Decision to Terminate Appointments

The AAUP has long recognized only three legitimate bases for terminating tenured appointments or term appointments prior to their expiration: (a) for adequate cause; (b) as a result of a bona fide financial exigency, under Regulation 4c of its *Recommended*

Institutional Regulations on Academic Freedom and Tenure; or (c) as a consequence of a bona fide program discontinuance not mandated by financial exigency and based essentially on educational considerations, under Regulation 4d of the *Recommended Institutional Regulations*. In its public statements, the UNI administration routinely characterized its prospective termination of faculty appointments (under article 5 of the Master Agreement) simply as "staff reduction" and justified it on financial grounds by alluding to the need to "reallocate resources to high-demand and potential-growth programs" in order to address "current budget requirements."

During the investigating committee's long interview with them, President Allen and his administrative colleagues were offered the opportunity to defend the curricular changes on educational grounds, a basis that would have called for procedures in accordance with Regulation 4d, but they were firm in their response that the rationale for the closures was strictly a matter of budget shortfalls.[2] However, faculty members reported to the investigating committee that Provost Gibson had told them that the closures would have occurred regardless of the financial condition of the university, and indeed the administration did not change course when the state legislature increased funding to UNI by 8.5 percent. The investigating committee thus finds no legitimate basis, financial or otherwise, for the administration's actions to terminate faculty appointments.

B. Participation of the Faculty in Decisions to Terminate Programs

Under Regulation 4c ("Financial Exigency") of the *Recommended Institutional Regulations*, the faculty is to participate in the fundamental decision that programs must be closed and in subsequent decisions about which programs to close and which appointments to terminate. Under AAUP-supported standards of academic governance, as set forth in the *Statement on Government of Colleges and Universities*, the faculty has "primary responsibility" for academic programs, and all significant long-range plans that have ramifications for the academic program should be the result of "joint effort" of the administration, governing board, and faculty.

The UNI administration's decisions regarding the elimination of seventy-eight academic programs were marked by procedural irregularities and violations of widely accepted standards of academic governance. The program closures entirely bypassed the university's curricular policies and thus the collective bargaining agreement that incorporates these policies by reference; they also violated the policy manual of the Iowa Board of Regents. The faculty played no meaningful role in the decision to close programs. Because the program closures were so sweeping, they had curricular implications for the academic mission of the institution. Yet the faculty did not have the opportunity to exercise primary responsibility for these curricular decisions as called for under the *Statement on Government* and the university's own *Policies and Procedures Manual*.

Section 2.04 of the university's manual contains the following provision:

> The decision-making power resides at various levels in those bodies responsible for the determination of policy and the allocation of resources. Usually, proposed curricular changes are initiated by the departments, but they may at times be initiated by the colleges or by the general faculty. Normally, the process of effecting curricular change moves from the level of the department to the college, to the university as a whole, and finally to the Iowa Board of Regents. New programs and new courses must have the approval of the appropriate bodies of both the university and the Board of Regents. Other curricular changes, including modification of established programs and new courses designed for established programs, must have the approval of the appropriate bodies within the university.

The policy establishes departmental, college, and university committees and charges them to play specific roles in all curricular matters. The administration's decisions to close programs were made entirely outside of this established curricular-review process. When asked why these curricular changes did not go through the standing curricular process, the administration responded that the financial shortfall the university faced presented an urgent need to respond with a celerity that the normal process did not permit.

The policy manual of the Iowa Board of Regents contains policies regarding the approval of program changes in section 6.06, which states that "[r]equests

2. The administration never provided substantiation for its claim that the Malcolm Price Laboratory School was financially unsustainable and never explained the basis for its skepticism about the laboratory-school model for teacher training.

to limit, suspend, substantially reduce admission [to], or terminate a program shall be submitted to the Board Office with justification for such a request before any action is implemented at the institution" and refers to "Form F."

Form F requests information about programs to be terminated, including five-year trends in applications and enrollments and the anticipated impact on other programs. Not only did the administration fail to provide this information to the board; it is clear to the investigating committee that the administration also did not consider this information in its decisions. No one in the administration even seems to have recognized that the closures had curricular implications, as is evident from the fact that the administration apparently thought a bachelor of arts in teaching program in physics could be sustained without a bachelor of arts program in physics. The two programs overlap significantly in required courses, which, according to a faculty member from the physics department, achieve adequate enrollments only because students from both degree programs enroll in them. More generally, the administration seems not to have realized that eliminating physics and foreign languages would affect students in other majors who needed basic courses in those subjects to complete their degrees.

A number of programs were slated for "restructuring" rather than closure, implying some significant curricular changes. However, several faculty members who met with the investigating committee indicated that they had not been told what exactly "restructuring" meant or what was expected of faculty members assigned to programs that were to be restructured.

The *Statement on Government* speaks of the primary responsibility that the faculty has "for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process," and it provides that in these areas "the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances and for reasons communicated to the faculty." Similarly, as noted above, section 2.04 of the *Policies and Procedures Manual* asserts that "the faculty has primary responsibility for the curriculum." The administration claimed that faculty involvement regarding program closures occurred at two points: the establishment of a program-review committee during the 2008–09 academic year and the presentation of the list of affected programs to the university senate. Regarding the first, many faculty members interviewed indicated that the program-review process undertaken in 2008–09 bore no relation to the criteria for program closures in 2012. Regarding the second, while the administration took into account responses from senators after presenting to the senate the list of programs to be closed, that process can, by all accounts, best be described as haphazard: senators from affected programs were able to provide additional information about their programs on the spot, while programs that happened not to be represented on the senate were not so lucky. There is no indication of meaningful faculty involvement in these curricular decisions. During their interview with the investigating committee, administrators seemed sincerely to believe that they had consulted from the outset, and the provost offered as evidence her having repeatedly warned the faculty that cuts would be forthcoming. The committee finds this degree of communication about matters that should be the primary responsibility of the faculty to have been grossly inadequate.

In sum, the investigating committee finds that the UNI administration, in reaching its decisions affecting seventy-eight programs, failed to follow the university's curricular policies, the policies of the Iowa Board of Regents, and widely accepted standards of shared governance as set forth in the Association's Regulations 4c and 4d and the *Statement on Government*.

C. Identification of Programs for Termination

A troubling aspect of the administration's decisions is the definition of programs and the assignment of faculty members to these programs. Once the negotiations between the governing board and the United Faculty over the definition (negotiations that were required by article 5 of the collective bargaining agreement) were declared by the board to be at an impasse, the board provided its own definition of "program area," which was then implemented by the administration. The investigating committee sees the definition and its implementation as problematic. Faculty members were assigned to one program area only, even if their teaching assignments had been across multiple departments or programs. Program assignments were sometimes at the level of a minor and usually below the level of departments. The newly identified "program areas" sometimes consisted of a single faculty member. More broadly, this aspect of the assignment process led several faculty members to remark that

they no longer felt comfortable contributing their service to interdisciplinary programs, since they might be assigned to that program (as opposed to their home department) when that program was targeted for elimination. Indeed, the administration assigned faculty members to program areas without following any criteria, even by admission of the administration itself: a tenured faculty member shared with the investigative committee an e-mail message from Dean Philip Mauceri of the College of Social and Behavioral Sciences in response to her request to be told to which program she had been assigned. The dean declined to provide the information, stating that "assignments to 'program areas' have only been shared with those faculty who are assigned to a 'program area' finally announced for closure and/or restructuring, since assignment to a program area is applicable only for purposes of determining eligibility for the Early Separation Incentive Program (ESIP) and, if it becomes necessary, for the application of Article Five of the Master Agreement on staff reductions." Another tenured faculty member, appealing assignment to a vulnerable program area, reports having asked the administration, without getting a response, whether there was any purpose for the new program areas other than preparing the scene for layoffs of preselected, targeted faculty members.

The investigating committee finds that the so-called academic program areas employed by the UNI administration were utterly devoid of constructive academic purpose and were created solely as a device for laying off members of the faculty whom the administration no longer wished to retain.

D. Constructive Discharge

Selected tenured faculty members were offered the opportunity of resigning and receiving one year's salary and eighteen months of health-insurance coverage if they released the university from claims, an offer the administration characterized as going beyond what was stipulated in the collective bargaining agreement regarding layoffs. Potential recipients of the offer were told that if they did not agree to the ESIP or the two-year phased-retirement alternative by April 30, their appointments were in danger of being terminated effective June 29 with no additional severance payment. Yet, under the 1940 *Statement of Principles on Academic Freedom and Tenure*, when tenured appointments are terminated for reasons other than moral turpitude, the affected faculty members should receive at least one year of notice or severance salary. Accepting these agreements with their condition regarding release of claims would have provided little more than the minimum notice or severance salary to which these faculty members would have otherwise been *unconditionally* entitled under AAUP-supported standards.

Since not accepting the ESIP or the phased-retirement offer, under the collective bargaining agreement, could result in termination effective June 29 with no payment of salary and no extension of benefits, there is the issue whether the faculty members who accepted the offer did so under coercion and were therefore subjected to constructive discharge.

Although it turned out that no tenured faculty member was subjected to the layoff provision, several tenured professors accepted ESIP offers under what the investigating committee sees as unambiguous conditions of duress. Faculty members who had been assigned to a program area to be eliminated described being called to a meeting at which they were given two handouts: a description of the ESIP offers and article 5 of the Master Agreement, which sets forth the layoff policy. According to these professors, the clear implication was that if they did not choose to accept the ESIP, they could well have been subjected to layoff. In addition, professors in some departments were told of the number of positions that needed to be shed—four, in the case of the Department of Philosophy and World Religions—implying that rejection of the ESIP by senior faculty members would require that junior faculty members be laid off instead. To make matters worse, the administration later made it clear that it considered the number of positions it expected to cut in the department a moving target: thus, after two faculty members in the philosophy and world religions department had accepted separation plans, the administration declared its target met. One faculty member described the strategy of the administration as keeping the faculty in "deliberate uncertainty." The investigating committee learned of one faculty member's having crossed out the word "voluntarily" and written "I'm forced to take the buyout *under duress*" in the ESIP agreement she signed and of two faculty members who confirmed that they felt coerced into signing ESIP agreements.

Successive reports of investigating committees, published with Committee A's approval, have found that coerced retirements (or resignations) amount to constructive discharge, even when the departing individuals have been required to sign statements that they are leaving voluntarily. The following are three

recent examples involving institutions currently on the AAUP's list of censured administrations:

- A 2005 report on a case at the University of the Cumberlands deals with a professor expecting to be fired by an angry president who summoned him to his office. The president pressed him to resign, effective immediately, and the professor orally expressed assent. Once out of the president's office he had misgivings, and the next morning he asked the president if he could withdraw his assent. The president, however, held him to it. The AAUP report concluded that requiring the professor to choose between resignation and immediate discharge was effectively a dismissal that, since cause for the action had not been demonstrated, was in violation of the 1940 *Statement*.
- A 2010 report on the University of Texas Medical Branch at Galveston addresses the termination of tenured faculty appointments after the devastation from Hurricane Ike led to a declaration of financial exigency. Censure was imposed with issues of redress for thirty-two tenured faculty members unresolved. An officer in the University of Texas administration questioned the number, stating that twenty-five of the thirty-two had retired, leaving only seven still requiring resolution. The AAUP staff responded by questioning how many of the twenty-five retirements could truly be considered voluntary, noting that two of the retired faculty members had joined nonretired laid off UTMB professors in group litigation against the terminations.
- An investigating committee's 2012 report on Southeastern Louisiana University has as its focus the termination of the appointments of the institution's three tenured French professors. One of them had been awarded a state-funded sabbatical for the following year and was told that now it would not be honored and that she could remain on the faculty, without tenure, only at the reduced rank of instructor and at a sharply reduced salary. Appalled at being treated in this manner, she chose immediate retirement. The investigating committee was not distracted by this coerced retirement from treating her case, like those of her two colleagues, as a termination of appointment without demonstration of grounds for the action, and Committee A in recommending censure likewise did not differentiate her case from the other two.

The investigating committee finds that the retirements at UNI under the ESIP and its alternative, in many if not most instances, were cases of constructive discharge in which the administration terminated tenured appointments without having demonstrated its grounds for doing so.

E. General Conditions for Academic Freedom and Governance

During its visit to the University of Northern Iowa, the investigating committee heard repeatedly from faculty members about a lack of trust in the Allen administration that antedated the events of 2012. Several faculty comments were about administration actions seen as autocratic and erosive of faculty morale. A faculty member was said to have been summarily released, with an arbitrator subsequently finding in his favor, and another faculty member was reportedly accused of improper conduct with students and placed on leave without a hearing, thus being denied due process under AAUP-recommended procedures for imposing a severe sanction. Faculty members reported no opportunity for faculty involvement in a decision to increase teaching loads for "unproductive" faculty members, with the announcement of the decision early the previous summer coming as a complete surprise. Faculty members also noted that UNI's Academic Affairs Council, which determined the criteria for "active scholar," had no faculty members on it. Nonresponsiveness was characterized as part of a general pattern, seen more recently in the administration's failure to respond to the faculty senate's February 2012 vote of no confidence.

In sum, the investigating committee left UNI with the distinct impression of insecure conditions for academic freedom and shared governance.

VII. Conclusions

1. No legitimate basis, financial or otherwise, existed for the University of Northern Iowa administration's actions to terminate faculty appointments in contravention of the 1940 *Statement of Principles on Academic Freedom and Tenure* and Regulations 4c and 4d of the Association's derivative *Recommended Institutional Regulations on Academic Freedom and Tenure*.
2. The UNI administration, in reaching its decisions affecting seventy-eight programs, failed to follow the university's curricular policies, the policies of the Iowa Board of Regents, and widely accepted standards of shared governance as set forth in the Association's Regulations 4c and 4d and in

the *Statement on Government of Colleges and Universities*.

3. The so-called academic program areas devised by the UNI administration without faculty consultation reflected no constructive academic purpose and were created solely as a device for laying off members of the faculty whom the administration no longer wished to retain.
4. The retirements at UNI under the Early Separation Incentive Program and its alternative phased-retirement plan, in many if not most instances, were cases of constructive discharge in which the administration terminated tenured appointments without having demonstrated its grounds for doing so. In so acting, the UNI administration violated basic standards of academic freedom, tenure, and due process enunciated in the 1940 *Statement* and derivative Association documents.[3] ■

3. In his prepublication comments on this report and its conclusions, President Allen reiterated and amplified points made in his March 20, 2012, response to the Association's concerns.

He denied that his administration acted in violation of academic freedom and tenure, alleging that only layoffs, not terminations of tenure, were to occur, despite the fact that a layoff lacking a terminal date is in essence a termination. He referred to the AAUP's Regulations 4c and 4d on terminating faculty appointments as recommendations to institutions that UNI's administration and its AAUP chapter had agreed not to adopt in their entirety.

With respect to shared governance and faculty consultation, he asserted that the investigating committee is mistaken "in assuming that the CBA [collective bargaining agreement] incorporates by reference section 2.04 of the University's *Policies and Procedures Manual*." In his words,

> The CBA does not explicitly incorporate the cited sections of the *Policies and Procedures Manual*, nor does it make reference to them in the context of program restructuring or Article 5. Appendix F to the CBA simply provides that individual faculty appointments are governed by applicable sections of the *Policies and Procedures Manual* as well as the collective bargaining agreement. This provision is scrupulously observed by the University, but does not represent a complete incorporation of the *Policies and Procedures Manual* into the CBA.

Regarding the CBA, faculty consultation, and the AAUP's *Recommended Institutional Regulations*, he wrote as follows:

> The committee's suggestion that UNI violated Board of Regents policies or general AAUP recommendations is also unpersuasive. In dealing with a very difficult financial emergency, the University acted in strict compliance with the terms of the CBA negotiated by an AAUP-affiliated union, United Faculty. This agreement provides extensive protections for faculty, such as certain faculty consultation requirements identified in Article 5; these reflect some, but not all, of the principles set forth in the relevant AAUP recommended institutional regulations. . . . The AAUP's recommended institutional regulations specifically note that they are intended to be modified for individual institutions, and the AAUP-affiliated union involved in negotiating this particular CBA was well within its discretion in deciding to implement the AAUP recommendations in this manner.

President Allen acknowledged lapses in governance that he said were being remedied, while faulting a draft report that "trivializes" the genuine consultation that did occur as "haphazard." Noting that the consultation was with elected faculty committees and bodies, he stated that "there is nothing 'haphazard' or inadequate in honoring the faculty's own decisions regarding its leadership."

On the matter of "academic program areas," the president did not address the report's finding that the determinations, crucial for the faculty, were made by the administration without faculty consultation. Nor did he adequately address the conclusion that the designated program areas served solely as a device for laying off faculty members whose retention was no longer desired. He objected to the investigating committee's concurrence in the United Faculty's continuing assertions that the administration fashioned program areas as a device for "laying off targeted members of the faculty." "The critical weakness in this argument," he stated, "is that no faculty members were actually laid off."

President Allen concluded his response to the draft report by declaring that the administration took "strong exception to the accusation that it 'coerced' faculty members by offering a generous severance opportunity" that was not available under the collective bargaining agreement. This "opportunity" was in the terms of the Early Separation Incentive Program—the tenured faculty member will "voluntarily resign and receive monetary compensation" consisting of one year of salary, up to $2,000 in accrued sick leave, and eighteen months of health and dental COBRA premiums—an offer that the investigating committee, in his words,

> condemns as a coercive form of "constructive discharge." The committee explains that relevant AAUP recommendations require that a faculty member receive one year's notice or severance salary in the event a faculty appointment is terminated. According to the committee, because affected faculty were notified that staff reductions under Article 5 of the collective bargaining agreement were a possibility, any acceptance of the ESIP was done under duress. The committee cites as evidence of "duress" a meeting at which faculty members were provided information on the ESIP and relevant portions of the CBA.
>
> This argument is greatly in error. While the AAUP certainly advocated that faculty members be afforded at least one year's salary, even in circumstances of exigency, the simple fact remains that AAUP recommendations are not binding unless they are explicitly incorporated into a contract. Here, they were not. It is undisputed that affected UNI faculty members were not operating under a contract that afforded them any severance, much less one year's salary plus certain benefits. Moreover, the CBA was negotiated by an AAUP-

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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: **ERNST BENJAMIN** (Political Science), Silver Spring, MD*; **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; **DEBRA NAILS** (Philosophy), Michigan State University; **CARY R. NELSON** (English), University of Illinois at Urbana-Champaign; **HANS-JOERG TIEDE** (Computer Science), Illinois Wesleyan University*; **THERESA CHMARA** (Law), Arlington, VA, *ex officio*; **RUDY FICHTENBAUM** (Economics), Wright State University, *ex officio*; **JOAN E. BERTIN** (Public Health), Columbia University, *consultant*; **ROBERT A. GORMAN** (Law), University of Pennsylvania, *consultant*.

*Did not participate in the vote.

affiliated union, which secured transfer and certain other rights but did not provide for severance in any amount. The committee's position is an inappropriate end-run around a negotiated contract.

There is no factual support for the suggestion that the ESIP was offered or administered in a manner that "coerced" faculty members into accepting it. . . . The cash benefits offered by the university far exceeded the threshold of one year's salary recommended by AAUP. A faculty member's decision to accept these benefits was completely voluntary and rescindable. . . . This was not a situation in which employees elected to participate in the ESIP without an understanding of the implications. As the committee itself emphasized, the university provided comprehensive information to affected faculty before the faculty members were offered an opportunity to participate in ESIP. Faculty members were urged, in writing, to seek legal and financial counsel prior to making any decision. Faculty members were free to reject ESIP benefits and seek placement within the institution with the assistance of the employee transition team, and a number of affected employees did so. This was a generous offer, not coercion.