The "You're Fired" Era: Academic Freedom, Student Complaints, and Faculty Discipline

By Kristine Anderson Dougherty, Gary Rhoades, and Mark F. Smith

Kristine Anderson Dougherty, former chief negotiator for the United Faculty of Florida, conducts searches and language summary in NEA's Higher Education Contract Analysis System (HECAS) for this chapter each year. After receiving her Ph.D. in sociology from the University of North Carolina, Chapel Hill, she taught at Florida Atlantic University. Dougherty is currently a research manager in Florida.

Gary Rhoades heads the Department of Educational Policy Studies and Practice at the University of Arizona, where he is also is professor and director of the Center for the Study of Higher Education. His research focuses on the restructuring of academic labor and institutions. Rhoades is the author of Managed Professionals: Unionized Faculty and Restructuring Academic Labor *(State University of New York Press, 1998) and co-author (with Sheila Slaughter) of* Academic Capitalism and the New Economy: Markets, State, and Higher Education *(Johns Hopkins University Press, 2004).*

Mark F. Smith is a senior policy analyst-higher education for the National Education Association. He advocates the policy goals of the association and its affiliates on behalf of college and university faculty and staff. Smith previously served as an NEA organizational specialist in higher education. He holds a B.A. in history and political science from the University of Wisconsin, and an M.A. in government from Johns Hopkins University. Prior to joining NEA, he served as director of government relations at the American Association of University Professors. He is a member of the American Historical Association and the American Political Science Association.

Each academic generation faces challenges to the free pursuit of scholarship, instruction, and service, and to the free discussion of institutional policy and practice. Each generation also faces obstacles to incorporating previously excluded and underserved populations. Our generation must heighten our defense of free speech and academic freedom while shielding students, faculty, and staff from discrimination, harassment, and hate.

Criticism of faculty exercise of free speech, though always present, intensified during the recent anti-establishment, anti-university presidential campaign. Members of "othered" categories became targets of discrimination, victims of the darkest sides of American life. Hostility

to "political correctness" and racist, misogynist, homophobic, anti-Semitic, and xenophobic rhetoric now seriously threaten the well being of members of the groups.

Faced with these challenges, faculty members must guard themselves from politically motivated discipline and dismissal, and from discrimination based on race, sex, sexual orientation, and religion. Non-tenure track faculty members, now the vast majority of our colleagues, are at greater risk. Their contingent, at-will employment status accords them few due process protections. We can expect even greater challenges to employees' job security with a president famous for saying, "You're fired," and with legislatures having Republican majorities in 30 states.

This chapter discusses NEA's work on behalf of academic freedom, student complaints, and faculty discipline, including dismissals. We then offer language contained in NEA's database of collective bargaining agreements that is intended to safeguard free speech and to protect targets of discrimination.

NEA: PROTECTING FACULTY AND LEARNERS

NEA's policies are reviewed annually at its Representative Assembly. The resolution on "Evaluation and Promotion in Higher Education" asserts that, "its higher education members must be allowed to determine through the collective bargaining process the methods by which they are evaluated and promoted." A resolution on "Continuing Employment and Fair Dismissal Practices" states, "that security of position must be provided for all education employees through appropriate employment policies, including fair dismissal procedures." It also calls for "procedural and substantive due process."[1]

NEA's resolution on "Faculty-Staff Governance in Higher Education" states "that faculty and staff in higher education should participate in the governance of their educational institutions." In addition:

> Higher education faculty should have primary responsibility for determining curricula, methods of instruction, and subject matter; establishing requirements for earning degrees and certificates; reviewing institutional budgets; and making recommendations on financial issues that impact academic programs.
>
> Where appropriate, faculty and staff should participate in the selection and evaluation process and determine the status of colleagues and administrators, especially appointments, reappointments, and tenure.
>
> The Association also believes it is the primary responsibility of faculty and staff, where appropriate, to establish procedures relative to promotions, sabbaticals, and research support.

The resolution on "Academic and Professional Freedom," adopted in 2002 and amended in 2009, states:

> The National Education Association believes that academic freedom is essential to the teaching profession. Academic freedom includes the rights of teachers and learners to explore and discuss divergent points of view. Controversial issues should be a part of the instructional program when, in the judgment of the professional staff, the issues are appropriate to the curriculum and to the maturity level of the student. A teacher shall not be fired, transferred, reassigned, removed from his or her position, or disciplined for refusing to suppress the free expression rights of students.

In addition to its own resolution, NEA endorses the 1940 "Statement of Principles on Academic Freedom and Tenure," issued by the American Association of University Professors (AAUP).[2] Central to that document is the proposition that:

> Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends on the free search for truth and its free exposition.
>
> Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher and of the student in freedom in learning.

"Freedom of the Teacher," adopted by NEA in 1928, tied the concept of academic freedom to the professional status of teaching:

> We believe there should be more genuine freedom for the teacher, freedom in mind and spirit to achieve and create and to take pride in the art of teaching, so that he may have the same satisfaction in achievement and recognition that the lawyer, the doctor, and the engineer have in the practice of their professions.

The Association subsequently based its defense of higher education on these policies. A decade ago, NEA members defended academic freedom by resisting efforts to enact the so-called *Academic Bill of Rights*. In the most serious assault, a Pennsylvania legislative special committee held hearings on the proposed legislation. National, state, and local NEA leaders testified against the bill, and prevented any statutory enactment.[3]

NEA also pays increased attention to the dangers to academic freedom posed by the widespread use of part-time and non-tenured faculty. These employment practices "threaten(s) the job security vital to academic and intellectual freedom."[4]

"Academic and intellectual freedom in institutions of higher education," state NEA leaders and staff, "are best protected and promoted by tenure, academic due process, and faculty self-governance." Academic freedom is essential to secure favorable working conditions for college and university faculty and staff. It is also indispensable for maintaining the quality of the education and the learning conditions of students. "Academic freedom," writes law professor Robert Post, "is conceived of as the price the public must pay in return for the social good of advancing knowledge."[5]

CONTRACT PROVISIONS

NEA's Higher Education Contract Analysis System (HECAS), is a valuable resource for bargaining research and preparation for negotiations. HECAS includes hundreds of agreements bargained by locals of the three major academic unions, NEA, AAUP, and the American Federation of Teachers. The database includes the most current available contract for a bargaining unit, and an archive of past contracts. Staff at NEA's affiliated units in higher education may access this resource. Leaders or staff with logins can upload new or replacement contracts for their units, or for other units on their campuses. Searchers can filter the contracts by unit characteristics, and by keywords or phrases.

After examining academic freedom language contracts in HECAS, we discuss language related to student, community, or anonymous complaints. We focus on units at four- and two-year institutions that include non-tenure track faculty or that cover only part-time faculty.

ACADEMIC FREEDOM IN THE CONTRACTS

Some contracts may include a distinct article containing a statement of academic freedom principles. Others contain a clause discussing its use as a rationale for grieving a personnel decision.

General Articles

Academic freedom contract language commonly employs a version of the classic American

AAUP definition. The contract for Wenatchee Valley College, Washington, states: "The District subscribes to the academic freedom portion of the 1940 'Statement on Academic Freedom and Tenure' issued by the American Association of University Professors."

Most articles refer to freedom in the classroom and in research. The adjunct contract at the University of New Hampshire includes strong language:

> It is the policy of the College to maintain and encourage full freedom, within the law, of inquiry, teaching, research and publication. The College cannot fulfill its purpose of transmitting, evaluating and extending knowledge if it requires conformity with any orthodoxy of content and/or method.

The language is limited to teaching and research: "The College is obligated to protect and defend faculty members from pressure and harassment connected with their academic and scholarly work."

Fuller descriptions, conforming to the AAUP definition, include the rights of faculty members to speak freely as citizens. The Wenatchee Valley College contract refers to research, teaching, *and* extramural faculty speech in their role as citizens. It also incorporates the AAUP's religious exception: "Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment."

Many clauses note responsibilities for faculty exercising that speech. The Union County College, New Jersey, contract indicates:

> A faculty member is a citizen, a member of the learned profession, and a member of an educational community. When s/he speaks or writes as a citizen, s/he should be free from institutional censorship or discipline, but his or her special position in the community imposes special obligations. As a man or woman of learning and as an educator, s/he should remember that the public may judge his or her profession and his or her institution by his or her utterances. Hence s/he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that s/he is not a College spokesperson.

Many contracts, including the adjunct only unit of the University of Vermont, contain such special obligations language.

The Roosevelt University, Illinois, contract for adjuncts provides for members' academic freedom outside the classroom "free from institutional censorship or discipline," without any special obligations or restrictions. The contract for Chabot Las Positas Community College District, California, states, "When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college or university."[6] They have obligations "as members of their community," such as "to promote conditions of free inquiry," but the contract places no special obligations or restrictions on that speech.

Most contracts omit the many challenges involving speech about institutional policy and practice—an important fourth dimension of academic freedom. The contract for Delaware State University specifies that, "Unit members shall have the right to speak freely and dissent on matters of educational philosophy, institutional policies, or the administration and the operation of the University." The contract for Cincinnati State Technical and Community College states, "As a member of their institution, bargaining unit members seek above all to be effective teachers and scholars. Although they observe the stated regulations of the institution, provided those do not contravene academic freedom, they maintain their right to criticize and seek revision." Many contracts contain the same phrasing, including the contract for the Chabot Las Positas Community College District.

The contract for the Sonoma County Junior College District offers stronger language than the typical reference to the "stated regulations" of the institution:

> Policy and Procedures: Faculty members will observe the stated policies and procedures of the District, provided those policies and procedures do not contravene academic freedom; however, they maintain their right to express differences of opinion and seek revision."

As part of "instructional freedoms," the contract specifies the right of faculty members to, "Express differences of opinion with and among students, faculty, staff, and administration on academic matters."

Such language is critical at a time managers increasingly assert the rights to sanction faculty for speaking out against institutional practices. An AAUP policy report called for a similar clause in contracts and faculty handbooks after the Supreme Court decision in *Garcetti v. Ceballos* (2006). That decision held that public employees have no First Amendment protection for statements they make in the course of their professional duties. This holding may apply to some cases in academe.[7] For example, the University of California Board of Regents included as part of academic freedom, "freedom to address any matter of institutional policy or action when acting as a member of the faculty whether or not as a member of an agency of institutional governance."

Personnel Decisions

Though far less common than in general academic freedom articles, a few clauses addressing personnel decisions include relevant language.

The Connecticut State University contract states, "Discipline shall not be used to restrain members in the exercise of academic freedom or other rights of American citizens." A stronger provision in the University of New Hampshire contract for tenure track colleagues accords faculty members the right to grieve a personnel decision.

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

This clause refers to the non-reappointment of probationary tenure track faculty. But the UNH adjunct faculty contract has strong academic freedom language in a general article.[8] It also has exceptional language regarding non-reappointment: "A decision not to reappoint an adjunct faculty member shall have a rational basis in fact and shall not contravene Articles 4 (Academic Freedom), Article 5 (Fair Practices), and Article 11 (Evaluation)." Unfortunately, non-renewal is not grievable.

By contrast, the contract for part-time faculty at the Vermont State Colleges allows faculty to grieve non-renewal decisions:

> A faculty member may receive a notice of non-reappointment from the College indicating he or she will no longer be considered for future assignments. A faculty member who receives such notice may file a grievance claiming that such action has violated the Anti-Discrimination Article or Academic Freedom Article.

The Central Michigan University contract affords laid-off bargaining unit members the right to grieve based on an alleged violation of academic freedom:

> A grievance and appeal mechanism exists in this Agreement to ensure bargaining unit members a system of due process. The grounds for a grievance under this Article are allegations that a violation of procedural regulation has occurred, or that errors of fact, prejudice, arbitrary and capricious actions, or considerations violative of academic freedom occurred which may have significantly contributed to the decision.

Having the ability to grieve is important, but so is the level and process for grievance. The process called for judging alleged violations of the academic freedom article in the Cabrillo Community College District contract starts with an Academic Freedom Review Committee. But the president and governing board are the ultimate arbiters—an obviously problematic arrangement. By contrast, the Connecticut State University contract assigns the final decision to an Academic Freedom Committee, which may call upon an external expert on academic freedom for advice. The contract for the University of Cincinnati permits grievance of a non-renewal based on alleged violations of academic freedom to go to binding arbitration.

Most contracts addressing student complaints provide for academic freedom. The contract for C.S. Mott Community College states, "The student complaint procedure will not negate or supersede Article V.E. (Academic Freedom-Grade Change provision)."

"The free discussion of ideas, no matter how unpopular the ideas are or how uncomfortable individuals may be made by the ideas, is essential to achieve the purposes of postsecondary education," notes the section on discrimination and harassment complaints in the Mt. Hood Community College contract. "Discomfort, no matter how real or intense, within the content of academic discourse, should not be the basis of a charge of discrimination."

Treasure Valley Community College prohibits the filing of complaints "that may infringe upon the member's academic freedom as expressed in Article 15 of this Agreement unless such acts can be shown to be egregiously arbitrary or capricious."

STUDENT, COMMUNITY, OR ANONYMOUS COMPLAINTS

There are potential conflicts between the exercise of academic and other rights. Some contracts offer general language when addressing a potential conflict. Collective bargaining agreements have long protected faculty and staff from discrimination and harassment, and have supported affirmative action in employment. Some contracts have included specific language concerning student discrimination and harassment complaints. The Shoreline Community College, Washington, contract indicates, "Nor shall academic freedom be exercised in any manner which would interfere with the due process rights of academic employees delineated in this Agreement or any other employee or student of the College." Similar provisions usually allude to state and federal law, and protected classes under those laws.

What do contracts say about student, community, or anonymous complaints about faculty speech and conduct that are not clear violations of federal and state discrimination laws? These complaints may be rooted in dissatisfaction with teaching styles, content that students see as threatening, or accusations of bias. Further challenges will emerge, given the upsurge of hate speech and crimes in the recent presidential campaign, and the presence of right-wing groups searching for evidence of "liberal" bias among faculty members.

Bias response teams, developed on some campuses, receive complaints from faculty, staff, students, parents, and even campus visitors. Though only recently developed, at least one campus has disbanded its bias response team, based on concerns about academic freedom and free speech.[9] But other teams still exist. Anyone can use the policy on bias and hate-related incidents at Bellevue College in Washington to report "an incident that may be a hate crime or incident of bias that would have a serious impact on groups or individuals because of their race, color, religion, ethnic or national origin, gender expression, sex, age, disability, or sexual orientation." Sanctions can include termination of employment if the college pursues disciplinary action. The college relies on anonymity when possible to maintain student comfort and to avoid retaliation.

The Bellevue faculty contract fails to mention this policy. In fact, no contract in the HECAS

database mentions bias or hate crime incident teams. This is not necessarily a limitation. Response teams deal with many instances of bias—from slurs to violent crimes, from sexual harassment to rape, and from students to faculty to visiting sports teams. Incorporating these processes in all-encompassing contract language is challenging. Unions might better focus on strengthening existing contract provisions dealing with student complaints; personnel files; evaluation, promotion, and tenure criteria; academic freedom, and discipline. Joint labor/management task forces could explore remedies for the range of bias incidents that might elicit strong responses.

Agreements that do address student complaint procedures usually refer to state statutes, education codes, or university procedures. For example, the contract for West Hills Community College District, California, notes, "Student grievances and complaints shall be handled in accordance with applicable board policies and administrative procedures." This provision requires use of a structured procedure. The agreement adds:

> The outcome of any investigation into any student grievance or complaint will not be considered during an evaluation pursuant to Article 4 of this Agreement or for disciplinary purposes, or be placed in the personnel file unless and until the District follows the procedures set forth in the Education Code.

Where the contract incorporates the complaint procedure, methods of supporting faculty rights and academic freedom include: requiring attempts at informal resolution before a formal complaint involves a faculty member; limiting the formal process to cases where there is just cause, including actual harm to the student; using a committee having faculty membership selected by the union or faculty senate; permitting a union representative to offer support and advice to the faculty member during meetings; according the faculty member due process; supporting academic freedom, and providing for grievances.

Most contracts referring to a student complaint process encourage informal discussion with the faculty member. The Saginaw Valley State University, Michigan, contract states:

> All student complaints regarding academic or procedural issues related to a specific course must first be presented to the faculty member involved. If the discussion fails to resolve the complaint, before any administrative personnel become involved, the faculty member must receive a written complaint from the student. Failure by administrative personnel to follow the Student Grievance Procedure is grievable.

Some contracts delineate the complaints that are subject to a formal process, and the complaints belonging in a different process, such as illegal discrimination or sexual harassment. The contract for Treasure Valley Community College, Oregon, states:

> Only students have standing to file complaints against faculty members. A student who has suffered harm as a result of an arbitrary or capricious act, grade, omission, incident or other alleged violation shall be deemed to have standing. The student must show that the alleged act by the faculty was a result of capriciousness or arbitrariness on the part of the faculty member.

The Montana University System (MUS) contract defines "complaint" as "only a claim or allegation by a student who is a real party in interest against any members of the bargaining unit." The complaint must satisfy specific criteria, including the failure of the faculty member "to carry out academic responsibilities…whereby the specific actions of a faculty member had a material adverse effect on the academic performance or academic record of a student."

When a student invokes a formal process, most contracts do not provide for a strictly administrative review. Instead, they call for fairly selected faculty representatives on a committee that examines evidence offered by the student and faculty member. The MUS contract provides for two committees to adjudicate undergraduate and graduate student complaints. The provost or a representative chairs the committee as a non-voting member. The chair of the faculty senate appoints four bargaining unit members, and the student association leadership selects three students for each committee.

The contract for Charles S. Mott Community College calls for a panel to hear formal complaints. The panel includes two faculty members appointed by the union and two students appointed by the student association. A committee at Rogue Community College, Oregon, hears complaints about teaching materials. The union designates "members competent in the field of study to which the teaching material belongs."

Unions may also support accused faculty involvement by participation in meetings or hearings. The St. John's University contract states, "The faculty member will be advised that he/she may have a union representative accompany the faculty member to the interview…. The union representative may advise and consult with the faculty member, but may not answer questions on behalf of the faculty member."

Attention to standards of due process helps to negotiate a response to student complaints. This attention starts by limiting anonymous complaints because of the difficulties faculty members face in framing a response. Some contracts allow student names to remain confidential for a specified period or during the early stages of the process. The Massachusetts State College faculty contract includes strong language:

> The administration of each College shall not take adverse action against any unit member on the basis of anonymous complaints, including complaints where the complaining individual does not want his or her identify disclosed, whether such complaints are made orally or in writing, unless the unit member agrees to the action; no record of any action so taken shall be placed in the unit member's personnel file or used in connection with the making of any decision under…the parties' collective bargaining agreement.

The Yakima Valley Community College, Washington, contract states, "No disciplinary action shall result from a complaint unless the complaint has been reduced to writing, dated, and signed by the complainant and presented to the affected employee by the supervising administrator prior to any such disciplinary action." The contract includes a distinct process for handling Title IX complaints.

Contracts can specify time limits for filing and processing complaints, a standardized format for the complaint, and written notification to the faculty member of a filing. They can also note the right of the faculty member to union or legal assistance, and to present witnesses and evidence in defense. Contracts can delineate a process with steps that attempts to find a resolution or appeal the decision at each step. Many contracts allow the administration to make an ultimate decision; others provide for involvement of a mediator or a committee.

The Treasure Valley Community College agreement, for example, outlines an informal complaint procedure. The process begins with a meeting between the student and faculty member, followed by a meeting that includes the department chair, and another involving the college dean. The student can then file a formal complaint by submitting a signed written statement that includes a statement of facts and the resolution sought. The student has the burden of proof during a multi-step procedure that includes a committee hearing. Clear rules exist at each stage.

Contracts should note that the student complaint process does not negate rights existing

under other sections of the contract. Nor does the process negate the right of the faculty member to file grievances alleging violations of the defined complaint process, and violations of rights under other articles of contracts, including evaluation, discipline, and the personnel file. Some contracts separate decisions on student complaints from the discipline or evaluation process. The Treasure Valley Community College agreement focuses on attempts to resolve the complaint. The article ends, "No decision regarding a faculty member arising from the complaint process or procedures shall be disciplinary in application, nature, or intent." Some contracts provide less comprehensive statements. The contract for the College of DuPage, Illinois, notes, "Student complaints which may have been validated by this process and have become part of the personnel file maintained in the Human Resources Office cannot be appealed in any other method, except in a hearing of the Board requested by a Faculty Member as part of a discharge or unpaid suspension action."

FACULTY DISCIPLINE AND DISMISSALS

The defense of academic freedom is enhanced by strong protections for faculty against discipline and dismissals. These protections include due process attached to tenure, multi-year contracts, and assured continued employment for long-term contingent faculty. Most contracts contain "just cause" clauses, and arbitrators may use that standard even if not explicitly established.[10]

Most contracts call for written notification of charges, the ability to have union or legal representation, clear timelines (often short), mediation or a peer committee review, presentation of documents and witnesses by both sides, and grievability through arbitration of dismissal decisions.

Here, we examine dismissal and discipline provisions for tenured faculty and for colleagues on multi-year appointments. When can an individual be immediately suspended? What is the burden of proof in proceedings? Does dismissal occur only after a process of progressive discipline? What are the criteria for considering dismissal?

Immediate Suspension

Most contracts provide for immediate suspension, usually with pay, under certain circumstances. If the University of Connecticut "judges that the grounds for dismissal or discipline require the immediate suspension of the staff member, the suspension shall be with pay until the hearings…have taken place." The president of University of Cincinnati may suspend a faculty member whose presence "presents a threat to the health or safety of the faculty member or anyone in the university community, or represents a threat of substantial disruption or substantial interference with the normal and lawful activities of the University community."

The stronger language of the Temple University contract requires the accused to have "been charged with violent criminal activity, fraud or theft from the university, or been arrested for a major felony, or poses an imminent risk of harm to the safety of the faculty members or others, or disruption of university programs and/or operations." The provost may suspend the faculty member with or without pay.

Burden of Proof

The few contracts that address the burden of proof place the responsibility on the institution. Defining the required standard of evidence helps committees balance the seriousness of the charge against the importance of academic freedom. The University of Connecticut contract calls for a preponderance of the evidence. The University of Cincinnati contract identifies a higher standard, "In all grievances involving a Proposal of Discipline, the burden of proof rests with the Administration." The contract adds, "The burden of proof that adequate cause exists rests with the University and will be satisfied only by clear and convincing evidence in the record considered as a whole."

Progressive Discipline

Most agreements provide for a progressive discipline system. But providing exceptions sets the stage for dismissal for a single complaint or incident. The institution has discretion if the sort of incident subject to exception is poorly defined. Eastern Washington University limits the progressive discipline requirement:

> The University shall apply where appropriate the principles of progressive discipline which include, but are not limited to, the following steps: verbal warning, written warning, suspension without pay and, finally, discharge. The University will not be required to apply progressive discipline where the nature of the offense calls for immediate discharge or imposing discipline without progression.

The contract leaves the "nature of the offense" undefined.

The contract for the non-tenure track unit at the University of Southern Illinois Carbondale, states: "The Board agrees to follow the principle of progressive discipline, with the understanding, however, that the gravity or seriousness of given conduct may justify immediate dismissal without any prior progressive discipline." The contract for Saginaw Valley State University defines extreme cases requiring no prior warnings as "serious intentional wrongdoing, such as a theft of significant property, or a significant physical assault on another member of the community." The contract thus offers a greater level of specificity, but it still leaves the term "significant" undefined and in the discretion of management.

Criteria for Dismissal

Many contracts specify criteria for dismissal. For example, the University of Connecticut contact identifies five criteria:

> 1. Neglect of assigned responsibilities; 2. Insubordination or noncompliance with the University of Connecticut Laws and By-Laws, (Revised June 20, 2006 [April 25, 2012]), noncompliance with the Code of Ethics for Public Officials (Chapter 10 of the Connecticut Statutes), or with University, State, or Federal Regulations governing research or NCAA rules and regulations; 3. The use of fraud, collusion, concealment, or misrepresentation of a fact material to obtaining employment with the University and/or obtaining tenure, promotion, salary increase, or other benefit; 4. Sexual harassment, serious misconduct, or other conduct which impairs the rights of students or other staff members employees; 5. Repeated, documented failure to meet generally accepted satisfactory standards of job performance based on written evaluations conducted in accordance with Article 13.4 above.

"Insubordination," the second criterion, challenges academic freedom.[11] This criterion contradicts the AAUP's statements on academic freedom, though the University of Connecticut chapter is an AAUP affiliate.

The Temple University contract defines "just cause" as "dereliction of duties, professional or academic dishonesty or continued patterns of misconduct in cases of dismissal." Termination, states the contract, shall be for "factors of failure to maintain competence as a teacher and scholar or of repeated failure to comply with job requirements." A provision in the Saginaw Valley State University contract states that dismissal shall be for just cause based on "repeated failure to comply with job requirements."

The contract for Skagit Valley College, Washington, specifies eight conditions that constitute "sufficient cause" for dismissal of tenured, probationary, or "temporary" faculty. As at the University of Connecticut, "insubordination" leaves the door open for management to dismiss faculty arbitrarily when they feel challenged. The Central Oregon Community College contract provides extensive language for tenured faculty, and for probationary and adjunct faculty.

Faculty members "shall be dismissed only for cause," but shall have "no right of appeal beyond the College Concerns Procedure."

Can "just cause" include behavior outside the scope of employment? A provision in the University of North Florida contract reads, "Just cause shall be defined as: incompetence or misconduct.… A faculty member's activities which fall outside the scope of employment shall constitute misconduct only if such activities adversely affect the legitimate interests of the University or Board." The phrase, "the legitimate interests of the university," accords management full discretion to determine those interests.

The contract for Wenatchee Valley College, a community college in Washington that includes full and part-time faculty in the bargaining unit, contains strong language on many aspects of the dismissal process. The "sufficient cause" clause indicates that, "The burden of proof that cause for discipline exists rests with the District." The clause requires that complaints or charges against a faculty member must be written and signed. It provides bargaining unit members "right to representation" in any meetings or conferences related to or surrounding discipline.

Contracts for part-time faculty are far less likely to have protective language for dismissal and discipline. Some adjunct faculty contracts, including the contracts for the Black Hawk College Community College District; Parkland College, and Sauk Valley Community College, all in Illinois, refer to dismissal as a management right. The limited timeframe of employment contracts may explain the lack of protection. The same language appears in the contracts of adjunct only units in four-year universities, including George Washington, Georgetown, and Tufts—units affiliated with the Service Employees International Union.

CONCLUSION

We must guard against losing the gains made in protecting academic freedom *and* in enhancing the diversity of the academy. How do we achieve these goals in negotiating contract language in the face of complaints by students and other parties?

Many contracts include academic freedom articles that protect faculty rights in teaching, research, and extra-mural speech as citizens. But too few contracts address the right of faculty members to speak about institutional concerns without fear of retaliation. Even fewer contracts cite academic freedom as grounds for filing a grievance in personnel decisions. We have suggested some examples of strong language that bargaining units can build on.

Protecting the academic freedom of faculty members through clear contract language becomes more important as "watchdog" groups complain about "liberal bias" and "biased" scientific research—climate change, for example. Unions must also address the upsurge in hate speech and crimes, and the strong backlash against "othered" groups. Contract language about discrimination and sexual harassment often invokes state and federal law. But internal mechanisms are mandatory, if governments refuse to enforce or even reverse existing statutes. Locals might negotiate for joint labor/management work groups, task forces, and/or committees to develop policies and language to ensure academic freedom *and* full inclusion.

Finally, unions must strengthen the contracts of part-time only bargaining units that define dismissal and discipline as management right. Contract provisions that focus on "just cause" ensure the right of accused faculty members to know the charges and to prevent personnel actions based on anonymous complaints. These contracts call for decision-making committees with faculty representation, place the burden of proof on management, and provide clear criteria for dismissal or discipline. The strongest provisions avoid exceptions to contract language, and exclude "deem clauses," leaving total discretion to management. Unions must remove the ability of management to say arbitrary, "You're fired."

NOTES

[1] National Education Association, 2016, is the source of all quotations in this section.

[2] NEA initially adopted the statement in 1950. It reaffirmed its endorsement in 1985 following the publication of AAUP's "Interpretive Comments" (1970).

[3] Aby, 2007.

[4] NEA, 2007. This research update includes a discussion of academic freedom and its ramifications.

[5] Post, 73.

[6] American Association of University Professors, 2009 [1966].

[7] O'Neil et al., 2009.

[8] See above, page 4.

[9] Knott, 2016.

[10] Saltzman, 2008 outlines the tests used by arbitrators for just cause, and the due process rights for public employees guaranteed by the U.S. Constitution.

[11] See above, page 2.

REFERENCES

Aby, S.A., ed. *The Academic Bill of Rights Debate: A Handbook*. Westport, Conn.: Praeger, 2007.

American Associaton of University Professors. S*tatement on Professional Ethics* (2009 [1966]). Available at: https://www.aaup.org/report/statement-professional-ethics.

Bellevue College. "Bias and Hate Related Procedures and Protocols," original date 5/18/2007, last revision effective 2/5/2015. Available at: http://www.bellevuecollege.edu/policies/id-1460.

Knott, K. "University of Northern Colorado will Disband Controversial Bias-response Team." *Chronicle of Higher Education* (September 9, 2016). Available at: http://www.chronicle.com/blogs/ticker/u-of-northern-colorado-will-disband-controversial-vias-response-team/114095.

National Education Association, "Academic Freedom and Higher Education Employees: NEA Principles, Policy, and Practice in Response to Recent Threats." *NEA Higher Education Research Center Update* 11 (4) (December, 2007). Available at: http://www.nea.org/assets/docs/HE/vol11no4.pdf.

_____. *2016–17 NEA Resolutions*. Washington, D.C.: National Education Association, 2016.

O'Neil, R.M., J.C. Areen, M.W. Finkin, L.G. Gerber, W.W. Van Alstyne, and C. Nelson. "Protecting an Independent Faculty Voice: Academic Freedom after *Garcetti v. Ceballos,*" *Academe* 95 (6) (2009), 67-88.

Post, R. "The Structure of Academic Freedom," in Beshara Doumani, ed., *Academic Freedom after September 11* (Brooklyn, N.Y.: Zone Books, 2006).

Saltzman, G.M. "Dismissals, Layoffs, and Tenure Denials in Colleges and Universities," *The NEA 2008 Almanac of Higher Education*. Washington, D.C.: National Education Association, 2008, 51-65.