AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

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VIA ELECTRONIC MAIL

AAUP Chapter
Wright State University
Dayton, Ohio 45435

Dear Wright State AAUP Chapter:

You have written to request the advice and assistance of the national American Association of University Professors concerning the retrenchment policy for faculty members that Wright State University's board of trustees adopted in 2025, especially regarding the consistency of those policies with AAUP-supported principles and procedural guidelines. We understand that this retrenchment policy was unilaterally adopted by the trustees, without meaningful participation of the faculty, after the Ohio Senate Bill 1 declared that retrenchment policies were no longer a permissible topic of higher education bargaining in the state of Ohio. We further understand that this policy will go into effect for the Wright State faculty once its current bargaining agreement is no longer in effect.

Below we provide a detailed account of how the trustees' retrenchment policy fails to live up to AAUP-recommended standards and the norms for institutions of higher education. The larger picture, however, is clear. The retrenchment policy the Board has adopted is devastating for academic freedom and tenure. It provides the administration with remarkably broad and unilateral authority to initiate retrenchment under nearly any circumstances it chooses, and grants it, in the person of the provost, the power to selectively terminate faculty appointments. The policy has the effect of reducing all faculty members at Wright State to at-will employees whose positions may be unilaterally and abruptly terminated by the administration within the space of a single semester, irrespective of tenure status. With this policy in place, tenure exists in name only at Wright State University. The consequences for faculty members, students, and the institution as a whole may be easily predicted. Essential academic programs that are "underperforming" or attract negative attention in the current fraught political climate are likely to be eviscerated or eliminated altogether. Long-serving full-time faculty members with tenure will likely have their appointments terminated, to be replaced by less-well-paid part-time faculty members. Those faculty members who remain will research, teach, and speak timidly rather than according to their expertise and best judgment, fearful that the administration's disfavor might lead to the summary termination of their careers and livelihoods.

The consequences for shared governance at Wright State are no less dire. The AAUP defends normative principles of academic governance, as set forth in the enclosed *Statement on Government of Colleges and Universities*, which our Association formulated in cooperation with the Association of Governing Boards of Universities and Colleges and the American Council on Education. The *Statement on Government* makes the case that effective institutions of higher education practice joint or shared governance, which in practical terms means (a) that no important institutional decision will be made without the participation of the governing board, the administration, and the faculty and (b) that each of these three institutional components will have decision-making authority regarding its areas of primary responsibility. The faculty has "primary responsibility," and thus decision-making authority, "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." Its authority over faculty status extends to "appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal." As shared governance is practiced at most reputable institutions of higher education, the administration and governing board accept faculty recommendations in these areas except, as the *Statement* notes, "on rare occasions and for compelling reasons stated in detail." However, the retrenchment policy grants the administration unilateral authority over many of these areas and takes them entirely out of the faculty's hands. Portions of the curriculum may be hollowed out or shuttered without any faculty input, and tenured faculty members may be fired without cause and without the involvement of their peers.

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What follows is an analysis of the Wright State University board's retrenchment policy and how it compares to the AAUP's standards. AAUP procedural guidelines on these matters, which are derived from the 1940 *Statement* and the *Statement on Government*, are presented in Regulation 4 of the enclosed *Recommended Institutional Regulations on Academic Freedom and Tenure*.

Triggering Conditions for Retrenchment

Under the WSU trustees' policy, the conditions that can trigger retrenchment are numerous and extremely broad. The administration may "retrench faculty for any lawful cause or reason," including "stagnation or decline" in enrollment in an academic unit; the "strategic" reduction, discontinuance, or reorganization of academic programs; "business necessity … requiring reallocation of university resources"; or changes in "institutional strategy." A final "management discretion" trigger permits retrenchment based on any "administrative decision to execute an operational change"—effectively giving the board and administration carte blanche to carry out layoffs at any time and for any reason of their choosing.

By contrast, under AAUP standards, there are only two legitimate grounds for terminating faculty appointments other than dismissal for cause: bona fide financial exigency or the discontinuance of an academic program for essentially educational reasons as determined primarily by the faculty. These two conditions and the recommended procedural guidelines for each are discussed in the *Recommended*

Institutional Regulations. Financial exigency and program discontinuance for educational reasons are discussed in Regulation 4c and 4d, respectively.

Regulation 4c defines financial exigency as "a severe fiscal crisis that fundamentally compromises the academic integrity of the institution as a whole and that cannot be alleviated by less drastic measures" than the termination of faculty appointments. The AAUP would not regard a financial crisis that falls short of this definition as a legitimate basis for retrenchments. Mere "fiscal pressures" or "business necessities" that "require reallocation of university resources" certainly would not qualify.

The standard for academic program discontinuance under Regulation 4d requires a "long-range judgment" on the part of the faculty "that the educational mission of the institution as a whole will be enhanced by the discontinuance of that program." "Institutional priorities" and "institutional strategy" are no substitute for that faculty determination. Bureaucratic restructuring of academic programs does not qualify as a program discontinuance if the degree is still offered. Yet all of these are permissible grounds for termination of faculty appointments under the trustees' policy.

It is also important to recognize the distinction between academic program *elimination* and program *reduction*. The latter of these is especially dangerous for academic freedom, because the selective termination of faculty appointments within a program allows for the targeted removal of faculty members or sub-disciplines that are disfavored by the administration, governing board, donors, or political actors. AAUP standards only permit reductions of that kind in conditions of bona fide financial exigency, where the university is facing a severe crisis and may have no other way to continue to offer essential academic programs without eliminating faculty positions. However, the board retrenchment policy allows for program reduction under any of the triggering conditions.

The Role of the Faculty

The history and adoption of the retrenchment policy are already disturbing from an AAUP-policy perspective. This extremely consequential regulation was developed and adopted by the board unilaterally, without the meaningful involvement of the faculty, contrary to the AAUP principles of shared governance discussed above.

The substance of the policy continues this pattern of rejecting fundamental norms of shared governance and deference to faculty expertise. Faculty retrenchment decisions will now rest exclusively with the board and administration, with the provost invested with unilateral power to "conduct, administer and complete the retrenchment process." The provost is authorized to decide unilaterally where cuts to the academic program will be made, and, in the case of a program reduction, to determine unilaterally which of its faculty experts are "best qualified to meet programmatic, curricular, and institutional needs" and will therefore be retained.

By contrast, the procedural standards of Regulation 4c require meaningful faculty participation in every phase of decision-making related to the declaration of financial exigency, the reduction or closing of programs, and the resulting terminations. Prior to a declaration of financial exigency, "an elected faculty governance body" or "a body designated by a collective bargaining agreement" will participate "in the decision that a condition of financial exigency exists or is imminent and that all feasible alternatives to termination of appointments have been pursued" (4c[1]).

After financial exigency has been declared, the faculty must play an even more expansive role as the decisions turn to cuts that will affect the institution's academic mission. To quote the AAUP's *On Institutional Problems Resulting from Financial Exigency* (enclosed), "There should be early, careful, and meaningful faculty involvement in decisions relating to the reduction of instructional and research programs . . . . The financial conditions that bear on such decisions should not be allowed to obscure the fact that instruction and research constitute the essential reasons for the existence of the university."

Prior to making any proposals on discontinuing programs for reasons of financial exigency, "the faculty or an appropriate faculty body will have the opportunity to render an assessment in writing of the institution's financial condition" (4c[2]) To ensure that the faculty has the information needed to make these decisions, the administration will provide access to critical financial data, including "five years of audited financial statements, current and following-year budgets, and detailed cash-flow estimates for future years" and "detailed program, department, and administrative-unit budgets" (4c[2]). Under Regulation 4c(1), the faculty as a whole, or an elected representative body thereof, will have primary responsibility for "determining where within the overall academic program termination of appointments may occur" and for "determining the criteria for identifying the individuals whose appointments are to be terminated." These provisions are in keeping with principles of shared governance articulated in the *Statement on Government*, which assign the faculty primary responsibility for decisions concerning educational policy, the curriculum, and faculty status.

Under these same principles, when financial exigency is not at issue, the authority for closing academic programs for educational reasons should rest primarily with the institution's faculty, and its judgments should normally be accepted by the administration and governing board. The (enclosed) 2013 statement *The Role of the Faculty in Conditions of Financial Exigency* makes the Association's position on this point clear: "We hold that program closure is very much a matter of educational policy and that the faculty should therefore be accorded an *initial and decisive* role in any deliberations over program closure and release of tenured faculty members" (emphasis in original).

Measures to Avert Retrenchment

Regulation 4c explicitly lists examples of the "less drastic means" that must be evaluated before financial exigency warrants the termination of faculty appointments. These include drawing on reserve or one-time funds as bridge money, reducing administrative budgets, adopting furloughs or pay cuts, offering voluntary early retirement packages, deferring nonessential capital expenditures, and cutting noneducational programs, "including expenses for administration."

The Wright State trustees' policy does not require that administrative or non-academic budgets be cut before retrenching faculty members, nor does it require proof to the faculty that all feasible financial alternatives have been exhausted. Indeed, because the triggering conditions are so permissive, retrenchment need not be necessary to avert a crisis or serve the academic mission of the institution at all: it may resort merely from a managerial decision "to execute an operational change."

Prioritization of Tenured Positions

As *The Role of the Faculty in Conditions of Financial Exigency* observes, "When programs are discontinued and faculty members face relocation or release, priority must be given to the tenured, or tenure itself will lose meaning."

For that reason, Regulation 4c(4) provides that, under a declaration of financial exigency, a tenured faculty appointment may not be terminated while retaining a faculty member on a nontenured appointment "except in extraordinary circumstances where a serious distortion in the academic program would otherwise result." Nor, under Regulation 4c(4), may new hires be made while tenured positions are being terminated, except under the same extraordinary circumstances.

The trustees' policy does not incorporate these tenure protections: in fact, its "No Displacement Clause" expressly forbids tenure or seniority from playing a role in retrenchment actions.[1] In real terms, this means that the entire faculty workforce at Wright State will serve on contingent appointments, subject to unilateral and summary termination by the administration on short notice. "Tenure" that does not protect against such administrative action is unworthy of the name.

Rights of Affected Individual Faculty Members

Hearing Rights

Under Regulations 4c(3) and 4d(4), affected faculty members will have the right to contest any termination or relocation in an on-the-record adjudicative hearing before an elected faculty hearing body. Issues that may be contested include the "institution's failure to satisfy any of the conditions" of the Regulation. The burden of proof will rest with the administration except when the faculty has offered its judgment that a program should be discontinued, which "will be considered presumptively valid."

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[1] There is one notable exception, which corresponds to a carve-out in SB1: faculty members who have between 30 and 35 years of service in the state retirement system will be exempt from retrenchment.

The trustees' policy, however, does not provide retrenched faculty members any form of redress or review, and we understand that at the moment it is unclear whether they would be entitled to use the grievance procedures in their collective bargaining agreement to contest the administration's retrenchment actions. This deprives faculty members of fundamental academic due-process rights and removes the last opportunity for correcting mis- or malfeasance in a unilateral administrative process that will end their careers.

Suitable Alternative Positions

Under Regulation 4c(5) and Regulation 4d(3), before terminating a faculty appointment because of program reduction or discontinuance, the administration "will make every effort to place the faculty member concerned in another suitable position" in the institution, retaining their faculty status and tenure. Except in cases of financial exigency, the institution will also provide "financial and other support" for "a reasonable period of training" if required for this reassignment. This standard helps to ensure that terminations are based on a bona fide financial exigency or educational reasons rather than on impermissible considerations. As *The Role of the Faculty* report notes, the suitable alternative position condition

> is crucial to determining whether a program is being discontinued for sound, legitimate educational reasons or whether it is being discontinued simply in order to shed its tenured faculty members: an institution that makes no substantial effort (or, as is often the case, no effort at all) to find "another suitable position" for faculty members affected by program closure is effectively using program closure as a convenient way to terminate tenured appointments.

The trustees' policy contains no such provision.

Notice and Severance

Under AAUP-recommended standards, tenured or long-serving faculty members whose appointments are terminated for reasons of financial exigency must be offered notice or severance of at least one year (Regulation 4c[6]). Faculty members whose appointments are terminated because of program discontinuance for educational reasons should receive "severance salary equitably adjusted to the faculty member's length of past and potential service." For faculty members with tenure, this adjusted total "may well exceed but not be less than" one year's salary (Regulation 4d[3]).

Under the board retrenchment policy, faculty appointments may be terminated as soon as the end of the semester in which the retrenchment process begins, and the notice period may not exceed twelve months. Beyond their notice, faculty members are ineligible "for other severance or separation-related compensation or benefits under other University policy."

Recall Rights

Regulation 4c(7) provides that a faculty member whose appointment is terminated because of financial exigency will be offered reinstatement if their position is reopened within the subsequent three years, affording them essential safeguards against ill-considered or targeted retrenchment action. The Wright State trustees' policy contains no such provision.

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I hope that this letter and its enclosures are useful to your chapter and to your campus colleagues, and that it has made clear why the national Association is deeply concerned about the new retrenchment policy. It is lamentable that SB 1 prevents higher education unions in Ohio from bargaining over retrenchment policies. However, it does not mandate that those policies contain the objectionable provisions discussed above, nor does it prohibit governing boards or administrations from working in concert with the faculty to develop retrenchment policies that do not include these provisions.

Please feel free to contact us with any further questions or concerns, and do not hesitate to contact us in the event that the retrenchment policy is used to terminate faculty appointments in a manner inconsistent with the AAUP policy standards set out in this letter and the enclosed policy documents.

Sincerely,

Mark Criley
Senior Program Officer
Department of Academic Freedom, Tenure, and Governance

Enclosures by email attachment

Cc: Professor Gretchen McNamara, President, Ohio AAUP Conference