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VIA ELECTRONIC MAIL

Dear President Mulvaney:

I am writing to you to request an investigation into the University of Akron's decision to cut nearly 100 full-time faculty without notice and without regard to tenure, rank, or seniority. The University claimed, and ultimately an arbitrator agreed, that the University's invocation of force majeure was justified by the COVID-19 pandemic, and that this allowed them to bypass the procedures and faculty protections in the [Collective Bargaining Agreement](#)'s retrenchment article (with the exception of recall rights and right of first refusal to teach part-time classes).

The University's Board of Trustees approved a [proposed contract](#) which included a "reduction in force" (RIF) list of 96 bargaining unit faculty (BUF) on July 15, 2020. 69, or 72% of the RIF faculty were tenured processors; these faculty were released without due process or sufficient regard for the impact on academic programs. The bargaining unit faculty voted down this proposed agreement on August 5 by 184-159. The Chapter's Executive Committee and Liaison Council believed that, if approved, the faulty process used to create the reduction in force list would have created a dangerous precedent for public university union contracts in Ohio and nationwide.

By way of background: in April of 2020, the UA Administration requested the Chapter meet with them to discuss their financial situation under COVID-19. The Administration insisted the Chapter's negotiating team sign an NDA to have access to certain financial information and to be able to see the latest enrollment numbers.

On May 6, 2020, the Administration proposed reorganizing UA, reducing the number of colleges from eleven to five. At the time, the UA administration and Board claimed it had to reorganize the entire university as a way to [reduce the budget](#), though no savings were estimated before the reorganization took place, nor were they explained after the fact. According to the AAUP's Statement on Governance, "The function of each component in budgetary matters should be understood by all." There remain many questions remaining about the reorganization and the university's finances, particularly the necessity of the cuts to the academic mission and the de facto elimination of programs.

The reorganization was not initiated by the faculty, nor was there meaningful faculty input. Although this reorganization plan was discussed with faculty in the university's Faculty Senate at a [special meeting](#), the senators were allowed only limited opportunity to provide feedback, no vote was taken, and decisions with important implications for academic programs took place without adequate consultation or advice from the faculty. Further, the Faculty Senate Executive Committee asked for information and clarification that would help inform the faculty and senators regarding the advisability of this massive reorganization ([posted here](#)), but the administration never answered the questions either in writing or at the senate meeting held to discuss reorganization. Among the unanswered questions were:

What does phase two of this reorganization look like? Does it include program elimination? We would like the proposal that is presented to faculty senate to include additional information about the implementation of restructuring in order to have meaningful discussion and informed input. For example, faculty are concerned about the implications of reorganization to the RTP process. How will this impact the RTP approval process at the department and college levels? We need to make sure that we don't disadvantage faculty who may be moved under a new department or a new college with different procedures and guidelines.

In late May, during negotiations with the Akron-AAUP, the university administration and Board [declared force majeure](#) and began to construct, at about the same time, a list of faculty to eliminate. While Akron-AAUP believed this clause only allowed the Administration to skip past the procedural stages of retrenchment—while still following

seniority in determining layoffs—the Administration’s interpretation was that *force majeure* meant there were now no rules for laying off faculty.

Provost Wiencek [tasked the deans to make cuts](#) that purported to put the faculty-student ratios in each college more in line with Delaware study data.

Problematically, UA based their analysis on numbers of BUF from prior to the retirement or separation of 49 BUF at the end of Spring 2020 and didn’t adjust their calculations after this was pointed out. The deans and department chairs were not given criteria to use to make cuts; they were merely instructed to meet the college budget cut goals that had been given to them by the Provost. In the end, some units were left with either few or [no full-time faculty](#) members, which constitutes de facto program closures, or at the very least, will result in dramatic program changes.

In the interests of shared sacrifice, the Chapter asked the University to make deeper cuts to non-essential auxiliaries such as [athletic spending](#), and the Administration refused. The Administration still has not provided evidence of administrative costs being reduced, despite a radical reorganization of the University that was supposed to improve efficiency and cut costs.

Eventually, the Administration shared the “[reduction in force](#)” (RIF) list with the Chapter’s negotiating team. In the end, 96 bargaining unit faculty were slated for layoff *without regard to tenure status or rank* — which are the two main factors determining layoff order under the current contract.

At no point during negotiations was the Chapter negotiating team given criteria for the layoffs; a [FAQ sheet](#) the negotiating team received simply stated, “College and department level supervisors, in consultation with University leadership, made position elimination decisions based on business and academic need.”

When the Chapter sought to verify UA’s financial picture through a third-party, the Administration refused to allow access to some of its financial information, including enrollment numbers.

On July 15, the [UA Board of Trustees](#) approved a last, best offer, which included the layoff of 178 employees—60 hourly staff, 21 non-faculty or administrative “contract professionals,” one law faculty member, and 96 of 518 Akron-AAUP BUF.

The BUF layoffs disregarded rank and tenure status, which would normally determine layoff order as outlined in the “retrenchment” article of the CBA. The layoffs included the elimination of the entire full-time faculty in some programs, including Dance, Theatre, Arts Administration, Public Administration and Urban Studies, General Technology, Organizational Supervision, and Developmental Programs. Other programs experienced a reduction in faculty such that the sustainability of those programs has been brought into question, e.g. Special Education and Child and Family Development. In doing so, the University has circumvented the normal shared governance processes used to make curricular decisions.

The Executive Committee of Akron-AAUP [unanimously recommended](#) a “no” vote on the last, best offer from the Administration. The reasons are numerous and obvious: no criteria or rationale for the decisions, inability to independently verify financial evidence, the de facto elimination and devastation of programs, elimination of seniority and tenure, and lack of shared sacrifice by parts of the university not central to its mission, such as athletics.

The Departmental Liaison Council (department level contacts, similar to stewards) [also voted not to recommend ratification](#). The liaisons noted that *force majeure* wasn’t applied evenly to others with the same contract language (such as athletics coaches); that the list had “a distressing number of international faculty, older faculty, women, and BIPOC (Black, indigenous, people of color); and finally that “academic freedom for both tenure and non-tenure line faculty nationwide and at the University of Akron are threatened if this unprecedented decision stands.”

As noted earlier, the membership of the Chapter voted to not ratify the proposed agreement on August 5 by 184-159.

The RIF list contained troubling patterns. The list included a number of faculty members known for being outspoken; many had filed grievances in the past, and the list appears

to be ageist, racist, xenophobic, misogynistic, ableist, and retaliatory. Because of these concerns, Akron-AAUP has [filed a class-action grievance](#) on behalf of RIF list faculty.

Akron-AAUP has also [filed two unfair labor practices](#) against the administration for sending false and misleading information to members and for trying to renege on bargained aspects of the voted-down agreement, such as the loss of tuition benefits for the RIF list faculty dependents who are attending the university.

The UA administration has moved forward with the layoffs, even though the contract was voted down. They have [rescinded the mid-term modification request](#) that we were previously negotiating under, yet continue to stress the need to invoke CBA's *force majeure* clause in the way they have chosen to interpret it. Akron-AAUP has [submitted a grievance](#) regarding the invocation of *force majeure* and the UA administration's interpretation of it. The situation was resolved in binding arbitration, with the arbitrator essentially determining that the COVID-19 pandemic justified the University's mass elimination of faculty positions. Opening [briefs](#) were filed on August 21, and the arbitrator delivered [his decision](#) on September 18.

The UA administration's decisions have violated AAUP principles related to shared governance. De facto program closures by purposefully eliminating all or the majority of faculty in academic programs have created a situation that violates the university's curriculum procedures, University Rules, and the basic tenets of shared governance.

Tenure and Due Process

As mentioned previously, faculty members on the Reduction in Force (RIF) list were not afforded due process nor timely rationales for their selection. The chapter filed a class action grievance on behalf of the RIF list faculty, which disproportionately comprised protected groups (e.g. older faculty, women, and people with disabilities). We also note that the RIF list appeared to disproportionately target faculty members who had filed grievances or brought issues to the Labor Management Committee. The vast majority (69, or 72%) of those on the RIF list were tenured faculty members.

Although the recent arbitration has supported the university's right to declare *force majeure* and to retrench faculty, this portion of the arbitrator's decision is important:

In regards to Section 8, this Arbitrator is not sure if these provisions were applied to BUF before they were released. Little information was given as to how exactly the retrenchment list was created other than that information was provided to department chairs, college deans, and administrative representatives.

This lack of information about important decisions that affect the academic mission and the lives and professional careers of full-time faculty seems a clear dereliction of the due process rights and shared governance obligations of the University Administration and the Board of Trustees.

Force Majeure

In the AAUP provides detailed procedural guidelines in Regulation 4c, "Financial Exigency," of AAUP's document titled *Recommended Institutional Regulations on Academic Freedom and Tenure*. The University violated several of those guidelines.

One guideline states that "an elected faculty governance body" 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..." In spite of Provost Wiencek's remark in the [May 7, 2020 Faculty Senate meeting](#) that "...big mistakes needed to be avoided, and the only way to avoid that will be with widespread participation," such widespread participation never occurred. Faculty governance bodies (i.e. Faculty Senate and Akron-AAUP) had no role in the determination of the need for financial exigency; the process of determining what faculty cuts, if any, were needed; or the process of developing criteria used to decide which faculty to cut. Arguments that Akron-AAUP made regarding alternative options, such as cuts to the academic subsidy from the general fund, were ignored.

Although both Akron-AAUP and Faculty Senate were assured that any program cuts would go through Faculty Senate, there was no discussion in Senate about cuts that amounted to de facto program elimination. In fact, after assuring the Akron-AAUP negotiating team that program cuts would be few and would be discussed and approved in Faculty Senate, Provost Wiencek made the preposterous statement that there simply is no process for eliminating programs at the University of Akron. This is patently untrue. The University's own rules describe the process of [changing or eliminating academic programs](#).

According to AAUP's guidelines in *Recommended Institutional Regulations on Academic Freedom and Tenure*, prior to the making of any proposals on discontinuing programs, "the faculty or an appropriate faculty body will have the opportunity to render an assessment in writing of the institution's financial condition," and those faculty members whose programs are being considered for discontinuance "will promptly be informed of this activity in writing and provided at least thirty days in which to respond to it." None of this occurred. Faculty were informed after July 15th that their positions would be eliminated, and their final date of employment would be August 21, 2020. They were given no rationales at that time except that they were told that their positions were being eliminated for financial reasons, not for cause. Since that time, the faculty members were provided with more specific rationales, but to date, they have not been provided with hearings or any opportunity to rebut those rationales.

With respect to the due-process protections available to affected faculty members, Regulation 4c(3) requires affordance of "an on-the-record adjudicative hearing" before an elected faculty body similar in basic respects to what the AAUP recommends for dismissal (Regulation 5 of the *Recommended Institutional Regulations*). In such a hearing, an affected faculty member may contest

- "the existence and extent of the condition of financial exigency," **with the burden of proof resting with the administration**, [our emphasis]

- “the validity of the educational judgments and the criteria for identification for termination,” with the important qualification that “the recommendations of a faculty body will be considered presumptively valid,” and
- “whether the criteria are being properly applied in the individual case.”

None of this occurred. Akron-AAUP had difficulty getting updated financial information from the University to verify its claims of financial exigency. What data we were provided was given after the July 15th meeting, and thus too late to make an argument to inform decision making regarding faculty elimination. Akron-AAUP is continuing to advocate for the faculty whose rights were clearly violated.

Our Chapter can only regard these actions as illegitimate and sharply at odds with widely accepted norms of academic governance, tenure, and academic freedom. The Akron-AAUP is hopeful that any findings resulting from an investigation will help our University’s Administration examine its past practices and strengthen the University as such a critical moment in its history.

Respectfully,

Pamela A. Schulze,

President, Akron-AAUP