

## Collective Bargaining, Shared Governance, and Academic Freedom: Creating Policies for Full-Time Non-Tenure-Track Faculty at the University of Delaware<sup>1</sup>

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### Abstract

Collective bargaining has combined with norms of academic freedom, shared governance, and administrative imperatives to provide favorable and secure conditions of employment for full-time, non-tenure-track faculty at the University of Delaware from the early 1990s to the present. This essay analyzes relations among union activists; full-time, non-tenure-track faculty; faculty senate leaders; and administrators in developing policies and procedures that define the working conditions of non-tenure-track faculty, and it describes key events that resulted in these policies. The interplay of union powers, academic freedom principles, professional norms in the faculty senate, and actions by administrators combined to establish policies that provide significant academic freedom protections and employment security for full-time, non-tenure track faculty members. The policies resulted from faculty members exercising academic freedom and contributed to the expansion of academic freedom, especially for full-time, non-tenure track faculty members.

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The rationale for tenure is the principle that academic freedom requires stable and continuous employment regulated by professional norms and shared governance. The relationship between tenure and academic freedom was first articulated in the 1915 *Declaration of Principles on Academic Freedom and Academic Tenure* by the AAUP and reenunciated in the 1940 *Statement of Principles on Academic Freedom and Tenure*, by the AAUP and the Association of American Colleges (Metzger 1955). Tenure was formulated as a necessary condition for the exercise of academic freedom in teaching, research and scholarship, and shared governance. It provides for faculty members' independent judgment and freedom of expression in their institutional and professional roles within a context of peer review and academic norms. Norms of academic freedom rooted in tenure, peer review, and due process were disseminated during higher education's expansion in the postwar years at both private and public institutions (Finkin and Post 2009).

Tenure began to erode with the 1970s fiscal crisis of the state and political challenges to faculty autonomy (Ginsberg 2011; Slaughter and Rhoades 2004). Claims about the high cost of higher education, an increasingly vocational approach to higher education, and growing corporate participation and involvement in higher education research and curricular matters have supported the weakening of tenure. Within higher education, greater managerial roles by administrators and administrative initiatives to give them more flexibility in deploying faculty positions based on student and employer demand have become dominant. As a result, tenured faculty positions have been increasingly replaced by an array of contingent appointments with weakened employment security, professional autonomy, and academic freedom (Turkel 2009).

Once the overwhelming percentage of faculty appointments, tenured positions are now a minority of such appointments. In 1975, 45 percent of faculty members were either full-time tenured or tenure-track, 10 percent were full-time nontenured, and 24 percent were part-time. By 2014, the percentage of full-time tenured and tenure-track declined to 29 percent, the percentage of full-time non-tenure-track increased to 16 percent, and the percentage of part-time increased to 40 percent (AAUP 2015). Moreover, these data do not capture the wide range of employment conditions that have emerged, including highly contingent teaching by the course without any institutional commitment to continuing employment, part-time employment with neither continuing employment nor benefits, continuing part-time employment with benefits, full-time temporary employment, full-time continuing employment without tenure, and the employment of professionals who perform faculty activities.

This fragmentation of employment conditions for faculty members has generated numerous possibilities for conflicting interests and claims to authority, not only among administrators but also among faculty members in different types of positions. These conflicting interests affect the character of collegiality, shared governance, and the exercise of academic freedom (Gerber 2014). In a host of academic settings, including

faculty senates, faculty unions, and in colleges and academic departments, there have been ongoing debates concerning which categories of faculty members should be able exercise academic freedom by participation in discussing and voting on curricular decisions, personnel matters, and broad governance policies.

The gulf between faculty with tenure as a condition of continuing employment and faculty in contingent positions undermines both formal and informal conditions for academic freedom. This divide requires that we study the big picture as well as specific contexts of faculty employment. While broad national trends demonstrate a clear decline in the tenured status of faculty, the actual employment conditions of faculty members varies widely based on geographical location, state laws regulating whether faculty members have rights to collective bargaining, specific definitions of bargaining units, the character of faculty senates or committees and eligibility of types of faculty who may participate in making academic decisions, and the goals and policy imperatives of administrators.

Generalizations about the realities of faculty conditions of employment and knowledge of the specific institutional contexts of action conditioned by local legal and professional norms through case studies are both needed for adequate knowledge of employment conditions and academic freedom. In particular, case studies provide the basis both for comparative studies to illuminate the role of factors that shape faculty employment conditions and for frameworks to improve employment conditions that support academic freedom.

This article analyzes the development of conditions of employment affecting non-tenure-track faculty at the University of Delaware from the 1990s to the present. After providing some background on the context that has shaped employment conditions of non-tenure-track faculty and their relations to tenure-track and tenured faculty at this Research I institution, the analysis focuses on how collective bargaining has combined academic freedom, norms of institutional governance, and administrative imperatives to better the employment conditions of full-time non-tenure-track faculty.

This article describes conditions for union activists, non-tenure-track faculty, faculty senate actors, and administrators in developing policies and procedures that define the working conditions of full-time non-tenure-track faculty. The essay analyzes key events, often emerging as conflicts among various actors, that resulted in these policies. It focuses on the interplay of codified academic freedom, union powers, actions based on academic and professional norms in the faculty senate, and actions by administrators that combined to establish policies extending significant protections, rights, and employment security to full-time non-tenure-track faculty members.

The policy for full-time non-tenure-track faculty resulted from the exercise of academic freedom, as provided in the university's faculty handbook (FH), and the enhancement of academic freedom through the

inclusion of an academic freedom provision in the 2008 collective bargaining agreement (CBA), as well as a campus culture that supported faculty involvement in curricular and policy decisions. This culture was fostered by a history of collective bargaining conducted by faculty leaders of the University of Delaware AAUP chapter (UD-AAUP) and administrators rather than by outside counsel, and a long-standing tradition of open discussion in both UD-AAUP forums and the university faculty senate. The policy enhanced academic freedom by providing stable conditions of employment for full-time non-tenure-track faculty and their greater recognition and participation in academic life.

### **Background on the University of Delaware**

Founded in 1743, the University of Delaware is classified as a Research I institution. The university is located in a college town of 35,000 people almost midway between New York City and Washington, DC, on the AMTRAK corridor. It has 21,856 full-time students, which includes 2,816 graduate students. There are 1,128 full-time faculty members at the university, 837 of whom are either tenured or tenure-track and 291 of whom are continuing full-time non-tenure-track. There are 39 part-time faculty members. In addition, while difficult to quantify, courses are taught by teaching assistants and instructors hired on supplemental contracts (University of Delaware 2015–16).

### **Governance Structure at the University of Delaware**

The university's shared governance structure includes academic norms articulated through a variety of policies and legally binding provisions developed through collective bargaining. The major academic governing bodies are the university faculty senate, the UD-AAUP (the sole collective bargaining agent for all full-time faculty members), and the Office of the Provost. The university faculty senate is unitary in its composition, with both twenty academic administrators and thirty senators, representing academic units from the university's seven colleges, having voting rights. The senate works primarily through committees in processing such matters as faculty complaints, promotion and tenure decisions, curriculum design and academic programs, disciplinary issues, and formulation of a host of policies that shape the life of the university. Senate committee reports and senate resolutions typically take the form of recommendations to the provost.

The CBA is a legally binding contract between the UD-AAUP and the university that covers “wages, benefits, and conditions of employment” (CBA, article II: 1). In 2008, an academic provision was added to the CBA that includes freedom to teach, engage in scholarly and creative activities, “address any matter of institutional policy or action,” and “address the larger community with regard to any social, political, economic or other interest” (CBA, article II: 1).

Relationships between the UD-AAUP and the senate, and the CBA and the FH, are often intertwined. Importantly, the CBA recognizes the authority of the FH regarding the policies that govern a variety of practices, including promotion and tenure, suspension, termination, sabbatical leave, and treatment for alcoholism (CBA, article XVII: 31). The FH includes a robust statement on academic freedom (FH, 4.2.1). In general, the UD-AAUP focuses on core conditions of employment, such as workload and salary and benefits. It also enforces procedures, such as promotion and tenure procedures, specified in the faculty handbook, that affect faculty conditions of employment through the grievance procedure in the CBA. In turn, the FH references the CBA with regard to such issues as faculty retirement. As a practical matter, the boundaries of the CBA and the FH are often subjects of discussion and negotiation among UD-AAUP leadership, senate leadership, and administrators. In an issue involving academic freedom, the UD-AAUP would focus on procedural elements and the senate would focus on substantive elements; however, the CBA stipulates that in any conflict between policies in the FH and the CBA, the CBA shall prevail.

### **The AAUP and Full-Time Non-Tenure-Track Faculty Members**

The bargaining unit represented by the UD-AAUP includes all full-time tenured, tenure-track, non-tenure-track faculty and temporary full-time faculty members who are not administrative officers (CBA, article 3.1: 2). Chairs and school directors are excluded from the bargaining unit as are visiting faculty members.

While many non-tenure-track faculty at other public institutions in the University of Delaware's region are either not represented by a union, such as at the University of Maryland, College Park, or form bargaining units separate from tenure-track faculty, such as at Rutgers University and Temple University, all full-time faculty at the University of Delaware are represented by one union, the UD-AAUP, in both collective bargaining and in grievance actions. Despite some internal strains created by this definition of the bargaining unit, it has bolstered the position of non-tenure-track faculty at the University of Delaware.

The UD-AAUP has bargained for the specific interests of non-tenure-track faculty and has used the grievance process to better their conditions of employment. At strategic moments, sometimes in agreement with the university faculty senate and administration and sometimes in opposition, the UD-AAUP has played a role in shaping conditions of employment for non-tenure-track faculty members that provide stable conditions, opportunities for professional growth and promotion in rank, and secure academic freedom in curricular matters, teaching, institutional decision making, and public speech. The fullest expression of these efforts was the "Continuing Non-tenure Track Faculty Policy" and its extension and strengthening in recent years.

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## Conditions Leading to the “Continuing Non-tenure Track Faculty Policy”<sup>2</sup>

During the 1990s, the number of undergraduate students enrolled at the University of Delaware increased dramatically. This growth was largely the result of out-of-state students applying to the university and being accepted. As the number of out-of-state students increased, they became a majority of the undergraduate population. Currently, approximately 63 percent of undergraduate students are out-of-state.

The growth in the number of undergraduates created significant strains on instruction, especially in terms of faculty members available to provide it. As a result, the administration augmented its instructional faculty, in part by hiring full-time temporary faculty to teach, especially introductory and lower division courses. By the mid-1990s, a large contingent of full-time faculty members were providing instruction on year-to-year contracts.

To some extent, the hiring of faculty on year-to-year contracts resulted from the reluctance of the university’s board of trustees to provide recurring funding for instruction. Although the student body was growing rapidly, board members were concerned that this growth was not permanent. Administrators thus hired faculty members on a year-to-year basis. In addition, the university continued to hire increasing numbers of professionals with teaching responsibilities who did not have faculty rank, and, with the growth of graduate programs, more teaching assistants were teaching courses. The UD-AAUP often expressed concerns about the effects of these policies on the academic freedom of contingent faculty, especially with regard to their teaching.

In addition to the growth of the student population and the year-to-year funding of faculty members to meet instructional needs, other forces encouraged the focus on a policy for full-time faculty members who were neither tenure-track nor tenured. At the same time the undergraduate population was growing, the administration was seeking to increase the research character of the university. Faculty members who had been long-time instructors without tenure and who did not have either terminal degrees or research agendas located in the College of Nursing, the College of Education, the Department of Languages and Literature, and the Department of Mathematical Sciences were particularly concerned about the heightened focus on research. In part to enhance its research profile, the university administration reorganized the colleges and sought to develop a more research-oriented faculty.

Another factor was an ongoing discussion between the university administration and the UD-AAUP regarding how to define faculty members. One approach was to define them largely by status, relying

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<sup>2</sup> As I will explain later, full-time non-tenure-track faculty were designated as “continuing non-tenure track faculty” in the original policy. Later this was changed to “continuing track faculty.” With the aim of consistency, this essay refers to continuing track (CT) faculty throughout.

primarily on the bylaws of the board of trustees. These bylaws stipulate that all full-time employees with academic rank constitute the faculty at the University of Delaware (“Bylaws of the Board of Trustees,” section 3.2.2). Another more inclusive approach, supported by the UD-AAUP and some key administrators, was to define faculty members by activities rather than status. Following this approach, research scientists and professional staff whose responsibilities were instructional, clinical, public service, and research were engaged in faculty work and should be considered faculty members. In particular, their activities needed the protection and support of academic freedom.

In addition, non-tenure-track faculty issues had and continue to have gender dimensions. Approximately 60 percent of non-tenure-track faculty members were women in the mid-1990s. At a time when gender issues, including the employment status of women, were major concerns on campus, the fact that women were overwhelmingly teaching large enrollment, lower division courses without opportunities for career advancement, professional development, and academic freedom was a key issue for both the UD-AAUP and the administration.

Finally, although many faculty members without the prospect of tenure were hired in the early to mid-1990s, a number of faculty members had been on year-to-year contracts for well over ten years. By state law and by national AAUP standards, these faculty members had to be defined as permanent. This lack of conformity with state law and AAUP standards was a serious concern for non-tenure-track faculty, the UD-AAUP leadership, and the university administration.

### **Establishing a Policy**

The employment conditions of full-time non-tenure-track faculty members emerged as a key issue during the 1996–97 academic year. Although it is difficult to determine what specifically triggered action at that time, a number of factors were involved. First, a new provost had been appointed. In conversations between the UD-AAUP leadership and the new administration, conditions of employment of non-tenure-track faculty were much discussed, including the facts that they were disproportionately women, that many would be negatively affected by upgrading the faculty’s research profile, and that the precariousness of one-year contracts undermined their academic freedom. In particular, these discussions clarified the conditions under which non-tenure-track faculty members were providing instruction.

Second and much related to employment status, the UD-AAUP increasingly focused on the employment conditions of women. In 1990, a woman served as the UD-AAUP’s chief negotiator in contract negotiations with the university. In these negotiations, considerable emphasis was placed on gender equity in terms of salary, working conditions, and freedom in instruction. In addition, the UD-AAUP proposed domestic

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partner benefits for same-sex couples in 1996. Despite support from the administration, the effort to gain such benefits failed at that time. It did, however, contribute to knowledge about and greater concerns for gender equity.

Third, several non-tenure-track faculty members became increasingly vocal about the lack of recognition for their scholarship, the instability of their employment, and the precariousness of their freedom to engage in academic decision-making. As non-tenure-track faculty raised these issues, UD-AAUP leaders focused more fully on gender and the inequitable treatment of non-tenure-track faculty members. These concerns were brought to broader public attention by the publication, initiated by UD-AAUP leaders, of a front-page article in the local newspaper, the *News Journal*, in April 1997.

Rooted in the exercise of academic freedom, these public representations bolstered several administrators who understood the problems posed by the lack of recurrent budgets for instructional needs and who recognized the inequities faced by non-tenure-track faculty members. As a result, an ad hoc committee was formed by the provost and the UD-AAUP to develop a policy for full-time non-tenure-track faculty members.

### The Initial Policy

By mutual agreement between the UD-AAUP Executive Council and the administration, the “Non-tenure Track Faculty Policy” was added to the FH in August 1996 (FH 4.1.6). Although the policy was developed between contract negotiations and could not readily be added to the CBA, incorporating it into the FH made it a permanent addition to the university’s academic policies. To make it clear that the non-tenure-track policy is fully enforceable contractually, article 3.3 was added to the CBA in 1999. It stated that the FH “shall contain a complete copy of the policy governing terms of employment for individuals holding primary appointments as full-time, continuing non-tenure track faculty.”

Continuing non-tenure-track faculty members are supported from recurrent funding, are subject to procedures governing new position approval, and are eligible for promotion in academic rank and for sabbaticals.

The policy provides for stable and continuous employment based on periodic reviews. Individuals in these positions have a six-year probationary period. They have three successive two-year appointments. Each of these appointments requires a contract renewal recommendation by the individual’s academic supervisor, typically a department chair, and approval by the appropriate dean. After three six-year appointments, continuing track (CT) faculty members are subject to a full peer review. On the basis of the peer review and a recommendation from the academic supervisor and approval by the provost, the individual is appointed to a

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three-year contract. In the second year of the three-year contract, the academic supervisor recommends whether the individual be given a four-year contract at the end of the term of the three-year contract. During the last year of the four-year contract, a second full peer review is conducted. Based on this peer review and a recommendation by the academic supervisor, the individual receives a five-year “rolling contract.” In each year of employment, the individual is subject to an annual review by her academic supervisor. As with tenure-track and tenured faculty members, CT faculty members on five-year rolling contracts are subject to peer reviews based on their academic rank.

CT faculty members are afforded full rights and protections under the CBA regarding merit pay increases and promotion in academic rank. Also, they are provided with promotional increments based on years of service: After six years, they receive the salary increment equal to promotion to associate professor as provided in the CBA. After thirteen years, they receive the salary increment equal to promotion to professor. Merit pay is determined by an annual evaluation conducted by their chair and is based on workload assignments and their unit’s policies, including workload, merit pay, and promotion and tenure. Promotion in rank follows from policies stated in the CBA and FH as specified in departmental policies.

Conditions for terminating CT faculty members are less stringent than for tenured faculty members but still provide significant protections. CT faculty members may be terminated for unsatisfactory performance. Termination based on unsatisfactory performance requires that the CT faculty member have an unsatisfactory annual evaluation followed by an unsatisfactory peer review. Should the peer review report unsatisfactory performance, the faculty member may be terminated after receiving one full year’s written notice of contract termination. The faculty member may appeal to the Faculty Senate Committee on Faculty Welfare and Privileges. While the CT policy allows for termination based on programmatic and/or budgetary reductions, article 14.4 of the CBA requires that the university “make every effort to place the faculty member concerned in another suitable position.” The university is required to provide training for such a change in position.

### **Adding Types of Non-Tenure-Track Faculty**

Subsequent to the adoption of the policy, discussions continued between the UD-AAUP and the administration regarding the scope of the policy. In particular, both UD- AAUP leadership and the provost were in fundamental agreement that faculty status should be based on the actual work that people do rather than on the formal distinctions of rank provided by the board of trustee bylaws. The UD-AAUP was especially concerned that all employees engaged in faculty work have academic freedom protections and that their instructional, research, and service activities be fully recognized. In keeping with this more inclusive

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approach, categories of non-tenure-track faculty appointments were established by the UD-AAUP and administration officials and were added to the FB in October 2001.

Four categories of non-tenure-track faculty were formulated. These categories were intended to enable individuals in professional positions who did faculty work to have faculty status and to exercise academic freedom. The four types included instructional, clinical, public service, and research non-tenure-track faculty.

- 1) Instructional faculty have responsibilities for scheduled University course instruction and related student advisement as well as for instructional support activities.
- 2) Clinical faculty have major responsibilities in clinical supervision and instruction (including, for example, clinical nursing supervision, student teaching, internships, field placements, and practicums) and/or professional practice supervision (including, for example, HRIM [human resources and information management] and business practices) with the balance of workload involving regularly scheduled instructional and advisement responsibilities as well as related professional and scholarly contributions.
- 3) Public service faculty have major responsibilities for college-based (or departmental/school-based) public service programs (including applied research, technical assistance, and community and professional development training and education) with ongoing responsibilities for regularly scheduled undergraduate and/or graduate instruction and advisement, and with the balance of workload involving clinical and professional practice supervision, and related professional and scholarly contributions.
- 4) Research faculty have major responsibilities for externally-funded and sponsored programs of research. Since the salary of research faculty derives largely or exclusively from grants and contracts, research responsibilities generally constitute all or most of the research faculty's workload. While research faculty do not have ongoing responsibilities for regularly scheduled undergraduate and graduate instruction and advisement, they may supervise undergraduate and graduate students who participate in their research programs. Occasionally, research faculty may participate in scheduled instruction, on a voluntary basis, so long as that participation is consistent with their research responsibilities. External funding to support the appointment of research faculty must be continuous during the term of an appointment contract. Because appointments are made to fulfill external grant and contract responsibilities, the renewal limit on temporary appointments does not apply; renewals may be approved that are congruent with the terms of external contracts (FH).

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## Implementing the Policy: Tensions between the CBA and Academic Norms

The purposes of the policy have been favorably received by faculty members, department chairs, and by the university faculty senate. The policy has stabilized and enhanced conditions of employment by providing reliable funding, by establishing a coherent framework for faculty status based on activities and performance, and by securing the fundamentals of academic freedom for a major segment of the faculty.

In the implementation of the policy, however, tensions between key provisions in the CBA and the academic norms and culture of particular academic departments were exposed. Initially, departments with either no CT faculty members, such as engineering and science departments, and departments where there were very few CT faculty members relative to tenure-track and tenured faculty, such as Sociology and Criminal Justice, the policy was barely noticed and had minor impact. In other departments with a relatively large proportion of CT faculty, the implementation of the policy varied considerably. In the English Department, for example, the policy was largely accepted and, indeed, supported up to and including the promotion of a CT faculty to the rank of professor. In other departments with large proportions of CT faculty members teaching lower division courses, such as Mathematical Sciences, Foreign Languages and Literature, and other units in which CT faculty were engaged in clinical activities, significant tensions have developed.

The two major issues have been the criteria for promotion of continuing non-tenure-track faculty (CNTT) faculty members and, most directly related to academic freedom, the role CNTT faculty members ought to play in the governance of their academic units. While there has been minimal dispute over basic rights of academic freedom in instruction and extracurricular speech, participation in curricular and personnel matters have been controversial. Both of these issues required interpretations of key provisions of the CBA by the UD-AAUP leadership and determination of how these interpretations aligned with academic values and standards in the FH.

Regarding promotion, article 11.4 of the CBA stipulates, “an individual’s workload shall be assigned with the expectation that the faculty member will have the opportunity to meet the criteria for promotion and satisfactory peer reviews.” This contractual provision has been at odds with article 4.4.2 of the FH, which states, for example, that for promotion to associate professor, “at a minimum, the individual should show excellent achievement in scholarship or teaching and high quality performance in all areas.” In discussions of these conflicting imperatives of the CBA and the FH, a minority of the UD-AAUP Executive Council and Steering Committee members argued that, since the University of Delaware is a Research 1 institution, FH requirements should prevail and that, in the best-case scenario, the workloads of CT faculty members should be adjusted to allow them to fulfill some standard of scholarship. This view was shared by a number of

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administrators, many faculty members in units with high proportions of CT faculty members, and some members of the university faculty senate.

In opposition to this view, the prevailing view held by the UD-AAUP and by CT faculty has been that performance in the assigned workload constitutes the basis for promotion. Moreover, since by law the CBA takes priority over the FH and departmental policies, there are valid grounds for CT (and indeed tenure-track and tenured) faculty to base their applications for promotion on their workload assignments. As a practical matter, in the few cases in which the UD-AAUP has supported faculty members' applications for promotion based on workload assignment, the AAUP view has prevailed and has been affirmed by the administration, albeit grudgingly at times.

The issue of the role of CT faculty in participating in the governance of their academic units has also been contentious, although not as pervasive throughout the university. In some units with high proportions of CT faculty members, tenure-track and tenured faculty have been concerned about CT faculty members who teach lower division courses and who do not have research responsibilities participating in the hiring of tenure-track and tenured faculty, participating in departmental promotion and tenure recommendations, and participating in curricular design and decision making, especially with regard to graduate programs and instruction. Some CT faculty members and their supporters have argued that CT faculty members should have the right to participate in all aspects of departmental decision-making since (1) these are basic to academic freedom, (2) CT faculty members are equal stakeholders in their academic units, and (3) whatever the distribution of their workloads, they contribute fully to the success of their units. Although UD-AAUP leaders have generally supported full participation of CT faculty in such governance functions based on academic freedom grounds, the dominant and prevailing view is that these issues should be determined at the departmental level. While the UD-AAUP leadership supports CNTT participation in decision making, the UD-AAUP also recognizes that determination of voting rights on sensitive personnel and graduate policies should be left to departments and be in accordance with FH requirements. To be sure, UD-AAUP leaders recognize that this "states' rights" approach leads to differential conditions of employment and exercise of academic freedom for faculty members depending on the bylaws of their academic units and exacerbates inequalities among faculty members. They have also recognized the contentious, albeit principled and practical, issues that requiring full participation and voting rights would raise among faculty members in a variety of academic units and in other forums, including the university faculty senate.

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## Enter the Senate: A Broadening of Conflict between the CBA and Academic Norms

With the exception of supporting voting rights for CT faculty members as members of the senate, the university faculty senate was largely uninvolved in the formation of the CT policy. The UD-AAUP, based on its concerns for academic freedom, its organizational resources, and its powers to represent CT faculty members in collective bargaining and through the grievance procedure, and the administration, aiming to secure instructional resources and provide career paths for faculty members with continuing appointments but no prospect of tenure, found common ground in developing the policy.

As mentioned above, the policy, while explicitly referenced in the CBA, was located in the FH, a key arena for policy making by the senate. As more CT faculty were hired and as contentious issues emerged in a variety of academic units, the senate became increasingly engaged with the role of CT faculty members in governance, curricular matters, and the promotion criteria that should be applied to them.

In 2012, the president of the university faculty senate and the interim provost sought to develop a number of proposals focusing on the employment conditions of CT faculty members, largely rooted in concerns that the number of CT faculty members was “diluting the quality” of the university, whose reputation would diminish as a result. Some even argued that it disadvantaged the University of Delaware in national rankings and in benchmarks for academic analytics. Based on these concerns, controversial proposals focusing on CT faculty member titles, criteria for promotion, and rights to serve on departmental promotion and tenure committees were crafted as resolutions that would come before the university faculty senate. If these resolutions were approved by the senate and then approved and adopted by the interim provost, they would be placed in the FH as university policy, with serious consequences for the academic freedom of CT faculty members.

In December 2012, the senate president announced that hearings would be held on revisions to the university’s promotion and tenure policy. While no specific revisions were proposed during the winter of the 2012–13 academic year, a great deal of concern was expressed informally by tenured and CT faculty members about possible changes in the working conditions of CT faculty members. Importantly, such concerns were discussed at UD-AAUP Executive Council and Steering Committee meetings as the UD-AAUP was preparing for contract negotiations with the university in spring 2013. The UD-AAUP leadership, and in particular the vice president of the chapter, who was a CT faculty member, sought out CT faculty members to form a CT Caucus in order to organize and to articulate the concerns of CT faculty members. By midwinter, the CT Caucus had formed, developed bylaws, and elected an executive committee. It held scheduled meetings and prepared for any forthcoming senate meetings and actions on CT policy. The caucus exercised

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academic freedom by speaking out on institutional and governance issues and CT faculty members' conditions of employment.

At a special meeting of the senate on April 29, 2013, four motions dealing with promotion and tenure policy were discussed. One focused on the academic freedom of CT faculty members. Resolution c, which was supported by the interim provost and the president of the university senate, proposed that the FH be amended so that "voting on department promotion and tenure committees shall be limited to those faculty who are at or above rank to the position for which the candidate is applying, and in decisions that involve the granting of tenure, limited to those faculty who hold tenure." In addition to Resolution c, there was informal discussion among senate leaders about requirements for promotion of CT faculty members, including whether scholarship should be required.

While these actions were under way in the senate, the UD-AAUP and the university were negotiating a new CBA to go into effect on July 1, 2013. Throughout April 2013 contract negotiations, the UD-AAUP bargaining team expressed its concerns that the senate and the interim provost would change conditions of employment for CT faculty members in ways that would limit the latter's academic freedom. With these concerns in mind, the UD-AAUP bargaining team, with authorization from the steering committee, proposed stronger language for article 3.3 of the CBA to go beyond the statement that the FH shall contain the CNTT policy. It required that any change in the CT policy approved by the provost also require UD-AAUP approval. The university agreed to this new article 3.3. It was ratified and included in the 2013–16 CBA.

At a May 6, 2013, meeting of the senate, Resolution c was on the agenda. Many members of the CT Caucus along with tenured faculty allies attended the meeting and engaged in discussion of Resolution c. Based largely on arguments against such a broad restriction of the academic freedom of CT faculty members, the resolution was soundly defeated by a vote of 33 opposed, 10 in favor, and 6 abstentions.

### **The Titling Conflict: The UD-AAUP and the Senate in Opposition to the Provost**

The UD-AAUP played an important role in supporting CT faculty by engaging in meetings with and adding to the organizational capacity of the CT Caucus, as well as by strengthening article 3.3 of the CBA so that any change made by the provost to CT faculty members' conditions of employment would require UD-AAUP approval.

During much of the fall semester of 2013, the CT policy was not a focal concern of either the UD-AAUP or the senate. Actions by the provost in April 2014 dramatically raised the question of CNTT faculty members' conditions of employment.

Arguing that the research profile of the university was diminished by a lack of differentiation between tenure-track and tenured faculty, on the one hand, and CT faculty, on the other, the provost sought to unilaterally impose tagged titles on all newly appointed CT faculty members. The provost sought to designate new CNTT faculty members as instructional, clinical, public service, or research. For example, a CNTT assistant professor assigned to instructional activities would have the title of instructional assistant professor.

In response to the provost's actions, a petition signed by seventeen university faculty senators led to a special senate meeting on May 28, 2014. The meeting's agenda consisted of two resolutions proposed by the CT Caucus. One requested that the provost rescind his imposition of tagged titles on newly appointed CT faculty members. The other called for the appointment of a commission to examine CT issues and resolutions from 2013 dealing with a range of promotion and tenure policies.

The UD-AAUP Steering Committee passed a resolution supporting the CT resolutions proposed in the senate. Following its resolution, the UD-AAUP claimed that the provost's actions were potentially grievable since they violated two provisions of the CBA. The UD-AAUP argued (1) that the provost had violated article 3.3 of the CBA because tagged titles were conditions of employment and because the new tagged titles were not approved by the UD-AAUP; and (2) that the provost had violated article 17.3. Article 17.3 specifies the procedures through which changes may be made to FH policies. According to 17.3, the senate must act and make recommendations to changes in FH policies. In imposing tagged titles, these procedures were violated.

After these senate and UD-AAUP actions, the provost and the dean of the College of Arts and Sciences constituted a CNTT Commission in June 2014. The commission was chaired by the dean of the College of Arts and Sciences and included a broad range of faculty members. Four of the ten commissioners were CT faculty members. Although the UD-AAUP did not have official representation on the commission, two of the commission members were members of the UD-AAUP Executive Council. As the commission went about its work, the UD-AAUP was kept informed about the direction of its report. The UD-AAUP Executive Council had one formal meeting with the members of the commission and received monthly reports from the two council members serving on the commission.

The UD-AAUP determined that it would not immediately file a grievance against the actions of the provost. This was based on the fact that tagged titling was not being imposed since, with the exception of eight CT hires made immediately after the provost's action, no new CT faculty members were hired. In addition, the UD-AAUP decided that it would delay any filing of a grievance pending the outcome of the CT Commission report. If the report and subsequent actions by the provost were in accord with articles 3.3 and 17.3 of the CBA, the UD-AAUP would not grieve the provost's past actions.

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The CT Commission issued its report on March 31, 2015. Among its major recommendations was a change in the classification of continuing non-tenure-track to continuing track (CT) in order to define this status in more positive terms. The commission recommended that newly appointed CT faculty members have service in their workload assignments and that those with professorial rank have scholarship included. The commission recommended that there be two modified titles at the professorial rank: clinical and practice. These would signify work in educating students in clinical settings, such as hospitals, or in industry, business, or public service. Classifications of faculty, moreover, “should be clearly denoted on faculty rosters presented on department/school/college websites and the central UD HR personnel directory.” Additional recommendations included title progression for CT faculty at the rank of instructor and that “promotion of CT faculty members be based on excellence in their predominant role in their workload.” Excellence in scholarship “should not be expected in order to be successfully promoted” if teaching and service constituted more of the CT faculty member’s workload.

The commission’s report was formulated as resolutions for the university faculty senate. These resolutions were sent to all members of the faculty on April 8, 2015. They were on the senate agenda for May 4, 2015. The chair of the commission presented them to the senate, which approved them with only two senators opposing.

Following the senate’s actions and the commitment of the provost to implement the recommendations, the UD-AAUP did not go forward with a grievance against the provost’s actions. The recommendations are currently being incorporated into the FH and academic unit policies.

## Conclusions

The general decline in conditions of employment, professional autonomy, and academic freedom of the professoriate since the 1970s has very specific manifestations, with a sizable increase in the proportion of full-time non-tenure-track faculty members. At the University of Delaware, more than one-fourth of full-time faculty members are in this category. Yet, due to its mix of union representation and sometimes conflicting but generally supportive initiatives by the university faculty senate and administrators, conditions of employment for these faculty members are quite favorable. The exercise of academic freedom, especially in institutional policy making regarding these faculty members, has been robust.

Several major factors have led to the development of policies providing employment security, career development, and enhanced academic freedom for full-time faculty non-tenure-track members. The same union, the UD-AAUP, represents all full-time faculty members, tenure-track and tenured faculty members, and continuing track. This has provided CT faculty members with contractual rights to academic freedom

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and the same enforcement provisions of the CBA as their tenure-track and tenured colleagues. Beyond these formal contractual provisions, the UD-AAUP has been an advocate for CT faculty members in relations with the administration and the university faculty senate.

With academic freedom established through the CBA and FH, CT faculty members organized a caucus and participated at critical junctures in senate debates affecting their conditions of employment. The strong support for the norms of shared governance in the senate and the senate's affirmations of its powers led to support for bettering CT conditions of employment. The administration has, at various times, been a strong advocate for CT faculty. When goals potentially inimical to CT faculty members' status have been pursued, administrators demonstrated a willingness to engage with the UD-AAUP and the senate in forging innovative compromises.

To be sure, tenure is a defining source of academic freedom, shared governance, and faculty autonomy. In addition to the UD-AAUP's powers of collective bargaining and grievance, norms of shared governance institutionalized in the university faculty senate, and an engaged administration, the high density of tenure at the University of Delaware is a strong factor in shaping the campus climate. As with all CBA and FH provisions, there must be constant vigilance and efforts to ensure that the provisions are being fairly enforced. This is all the more necessary because conditions that undermine the status of faculty and academic freedom have intensified in recent years.

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