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# College and University Governance: Union County College (New Jersey)<sup>1</sup>

(NOVEMBER 2015)

This report concerns actions taken by the administration and governing bodies of Union County College to eliminate virtually all structures for faculty participation in academic governance.

## **I. The Institution**

Union County College is a public, two-year college in Union County, New Jersey, with a main campus in Cranford and additional campuses in Elizabeth, Plainfield, and Scotch Plains. Founded in 1933, it is the oldest community college in New Jersey. It has been accredited since 1957 by the Commission on Higher Education of the Middle States Association of Colleges and Schools. From the mid-1930s until 1982, it operated as a private institution, but that year it again became public after merging with Union County Technical Institute. UCC today enrolls some 11,200 students, about 4,800 of them full-time, and its faculty numbers around 600, with 156 serving on full-time appointments. Its website states that the college offers associate degrees and certificates in seventy areas of study. The college is governed by a board of trustees and a board of governors, the latter a vestige of the period when the college was a private institu-

tion. These two boards typically convene together, and much business is conducted through joint committees, but the board of trustees, which is vested with ultimate authority, meets by itself to render final decisions. In July 2010 Dr. Margaret M. McMenamain was appointed president of UCC, after having served for the previous ten years as executive vice president of educational services at Brookdale Community College in Lincroft, New Jersey. President McMenamain has a bachelor's degree in physical therapy, a master's degree in human resources administration, and an EdD in educational leadership.

The college's chapter of the American Association of University Professors was founded in 1965 and has represented the faculty in collective bargaining since the mid-1970s. The first collective bargaining agreement (CBA) between the college and the chapter was signed in 1975, when the college was private and under the jurisdiction of the National Labor Relations Board. After the merger in 1982, the AAUP chapter won a competitive representation election, certified by the New Jersey Public Employment Relations Commission (PERC), as the exclusive bargaining representative of all full-time instructional and professional library staff. From 1975 onward, successive CBAs were signed in regular course until 2012, when the 2009 CBA was reaching its expiration date.

## **II. The Association's Involvement**

In fall 2014, the UCC AAUP chapter leadership sent the national AAUP staff a ten-page letter, dated October 30, along with numerous supporting materials. The letter detailed faculty complaints regarding actions taken by President McMenamain that the

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1. The text of this report was written in the first instance by the AAUP representative, Professor Robert A. Gorman. In accordance with Association practice, the text was edited by the AAUP's staff and, with the author's concurrence, submitted to the Committee on College and University Governance. With that committee's approval, the report was then sent, with an invitation for corrections and comments, to the college's president, the chairs of the college's two governing boards, and the faculty members who had met with Professor Gorman. This final report was prepared for publication after consideration of the responses received.

chapter characterized as an “attack on collegiality and shared governance” and asked the AAUP’s national office “to review the governance situation at Union County College.” The writers discussed three “areas of faculty concern”: (1) “the imposition of a new governance structure” that “violat[e]d the existing faculty bylaws”; (2) “the imposition of new procedures for reappointment, promotion, and post-tenure review”; and (3) “the planned elimination of the existing academic departments” along with their “elected department chairpersons” followed by “the imposition of a new division structure with management-appointed deans.” The letter closed with a plea for “outside help to work our way through the massive attack on all aspects of our governance structure,” claiming that “nothing less” was “at stake than whether collegiality and higher-education standards can survive at this community college.”

In its November 13 response, the AAUP staff, after citing key passages from the AAUP’s foundational *Statement on Government of Colleges and Universities*, noted that “[t]he ‘areas of faculty concern’” reported in the chapter’s letter “clearly involve significant departures from the principles and standards recommended in the *Statement on Government*” and advised the chapter on possible courses of faculty collective action to address the problems it had identified.

Hearing further from faculty members (as well as from AAUP organizing staff who had been on campus assisting the chapter) in spring 2015 that the situation had only worsened despite the faculty’s best efforts, staff in the Association’s Department of Academic Freedom, Tenure, and Governance recommended sending to the college an expert on AAUP policies, national and New Jersey labor law, and arbitration to talk to all interested parties, offer advice, mediate a solution if possible, and write a report for the AAUP that would be made available to the parties. The undersigned AAUP representative, after having agreed to serve in this capacity, first reviewed a voluminous collection of documents and then visited Cranford on June 4, meeting with about a dozen faculty members, including chapter officers and elected representatives on college governance bodies.

Subsequent to that visit, the AAUP staff invited President McMenamín to meet with the AAUP’s representative. In its June 26 letter, the staff informed her that UCC faculty members had sought the national AAUP’s advice “about matters relating to academic governance and academic freedom at the

college.” “We wish to proceed,” the staff continued, “by having an experienced consultant, versed in AAUP-supported principles and procedural standards, visit the college to discuss the situation with representatives of the administration, the governing boards, and the faculty before drafting a report of findings and recommendations which will be shared with all parties.” The letter listed the consultant’s qualifications as including having been president of the AAUP and of the Association of American Law Schools, chair of the AAUP’s Committee A on Academic Freedom and Tenure, coauthor of the leading labor law casebook, and an arbitrator of international repute. The staff proposed three dates for this national AAUP representative to meet with President McMenamín.

A response came July 2, not from the president, but from the college’s “labor counsel,” Mr. Matthew J. Giacobbe. “As you may be aware,” he wrote, “the issuance [*sic*] of College governance was recently ruled upon by the New Jersey Public Employment Relations Commission (‘PERC’) in a comprehensive decision. Accordingly, the College sees no need to meet with Professor Gorman and will be guided by PERC’s definitive ruling on this issue.” He closed by noting that the college and the AAUP chapter had just begun negotiations for a new collective bargaining agreement. And he stated the administration’s position that “the various issues that the AAUP wishes to address—so long as those issues do not impinge upon the College’s managerial prerogatives—are best left for the bargaining table.”

The administration having rejected the Association’s invitation, the AAUP staff wrote on July 14 to Mr. Victor M. Richel and Ms. Elizabeth Garcia, the chairs, respectively, of the college’s board of trustees and its board of governors, enclosing the letter it had sent to President McMenamín and the labor counsel’s response. The staff wrote, “On June 26 we sent the enclosed letter to President McMenamín inviting her to meet with Professor Robert A. Gorman to discuss, not the college’s collective bargaining agreement in any direct sense, but rather the broader issues of academic governance and academic freedom that have arisen. It was our hope that through Professor Gorman’s good offices a resolution of these issues might be accomplished.” The staff proposed a range of dates during which the investigator could meet with the board chairs.

Responding by letter of July 20, Mr. Giacobbe wrote, “As I previously advised you in a letter dated

July 2, 2015, I serve as Labor Counsel for Union County College ('College'). Thus, I was somewhat perplexed that you thought it appropriate to write directly to my clients—Board of Trustees Chair, Victor M. Richel, and Board of Governors Chair, Elizabeth Garcia—renewing your invitation.” He went on, “In my July 2, 2015 letter, I wrote to you on behalf of the entire College, not just the President. Thus, when you write that the President declined your invitation, you are mistaken. Rather, when I wrote to you, I declined your invitation on behalf of the College’s Board of Trustees, Board of Governors and Administration. I also informed you that the New Jersey Public Employment Relations Commission ('PERC') recently ruled on the College’s governance in a comprehensive and definitive ruling. The College, its Board of Trustees, Board of Governors and Administration will be guided by that decision.” He closed with the same sentence, quoted above, with which he had ended his previous letter.

On September 24, Association staff wrote to inform President McMenamin that the AAUP’s executive director, on the recommendation of the Association’s senior professional staff, had authorized the submission of this report to the Committee on College and University Governance.

### III. The Issues of Concern

Soon after assuming the UCC presidency, Dr. McMenamin made changes in the governance of the college that sharply diminished the role and influence of the faculty. At a June 28, 2012, bargaining session, the UCC administration, through its attorney, presented the AAUP chapter with a binder identifying over one hundred specific provisions of the current CBA that the administration claimed to be nonnegotiable—that is, no longer subjects for collective bargaining. Barely two weeks later (bridging the July 4 holiday weekend), the administration filed a scope of bargaining petition with PERC, effectively blocking an unfettered discussion of the disputed provisions. Across some two years, discussions between attorneys for the chapter and for the administration led to the consensual elimination from the contract of a significant number of “nonnegotiable” contract provisions, and the college filed an amended scope petition. Ultimately, dozens of provisions remained in dispute. Many of these related to the structure and governance of the college and to the faculty’s participation therein, involving practices that had, in most cases, been in effect for decades. (The 2014 decision by PERC resolving the scope of

bargaining was issued after the successor agreement had been ratified.)

The administration, in insisting that these provisions be removed from the agreement and in refusing even to discuss them, relied on a series of earlier decisions of the New Jersey Supreme Court and its appellate division and of the New Jersey PERC.<sup>2</sup> Those decisions draw the line between mandatory subjects of bargaining, about which both parties must bargain and may arbitrate, and nonmandatory subjects, about which neither party is obliged to bargain. In the analogous world of private-sector bargaining, the latter are known as “permissive” subjects, about which negotiating parties are allowed to bargain but are not obliged to do so. In public-sector bargaining in New Jersey, however, the law perversely goes further and actually *forbids* bargaining about nonmandatory subjects. (This posture differs not only from private-sector bargaining, but also from public-sector laws in most other states.) Examples of subjects over which bargaining is prohibited include, among others, the criteria for appointment, reappointment, and promotion of faculty; the procedure for appointing the college president; the curriculum and the method by which it is developed and approved; and the structure of academic departments. Nonetheless, a very large number of nonmandatory subjects are voluntarily incorporated in CBAs—or in other policy documents, faculty handbooks, and the like—by New Jersey higher education institutions and their unions, as had been the case for decades at UCC, until the advent of the McMenamin administration.

To provide the full picture, a critical UCC institution should be mentioned, the Faculty Executive Committee (FEC). Chosen by members of the faculty, the FEC, among other accomplishments, produced long-recognized faculty bylaws and a faculty handbook dealing with governance at UCC. These faculty bylaws, which have now been effectively nullified by the current administration, appear to have been endorsed previously by the board of trustees. The FEC had worked alongside and cooperatively with the AAUP chapter and had for many years been a body of

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2. See, for example, *Rutgers, the State Univ. v. Rutgers Council of AAUP Chapters*, 256 N.J. Super. 104 (1992), *aff'd mem.* 131 N.J. 118 (1993); *Local 195, IFPTE v. State of New Jersey*, 88 N.J. 393 (1982); *Ridgefield Park Educ. Ass'n v. Ridgefield Park Bd. of Educ.*, 78 N.J. 149 (1978); *Dunellen Bd. of Educ. v. Dunellen Educ. Ass'n*, 64 N.J. 17 (1973); *Burlington County College, N.J. PERC No. 2010-28*; *Essex County College*, 33 N.J. PERC 8 (2007).

faculty recognized by the UCC administration. As will be seen, the McMenemy administration announced earlier this year that it would no longer recognize or deal with the FEC.

As already noted, when bargaining was under way to fashion a successor CBA, the UCC administration precipitately petitioned PERC in 2012 for a determination of the scope of negotiations—that is, a determination of which provisions were outside the administration’s duty of mandatory bargaining. PERC officials examined the many provisions challenged by the administration and, not surprisingly in light of the very strict case law in New Jersey and some previous concessions by the chapter, found several of the most significant contract terms to be nonmandatory, as impinging too greatly on the “managerial prerogatives” of the UCC administration.<sup>3</sup> Collective bargaining for a 2015 CBA carries on currently in the shadow of this narrow-scope ruling by PERC. It has obviously been the purpose of the current administration to strip the CBA of all “nonmandatory” provisions and to make all of those issues subject to the unilateral determination of the administration. Although this purpose may not be unlawful under New Jersey state law, it runs afoul of AAUP-recommended principles and standards relating to the participation of the faculty in shaping the governance of the college.

In this action and others to be described later in this report, the UCC governing bodies and administration have rejected or otherwise disregarded these widely observed principles and standards, as set forth in the AAUP-adopted 1966 *Statement on Government of Colleges and Universities*, a joint formulation of the AAUP, the American Council on Education, and the Association of Governing Boards of Universities and Colleges. The *Statement on Government* calls for “adequate communication” and “joint planning and effort” by the governing board, administration, and faculty in carrying out the wide variety of interrelated complex tasks that colleges and universities must perform. Effective joint effort, according to the statement, minimally proceeds on two principles: “(1) important areas of action involve at one time or another the initiating capacity and decision-making participation of all the institutional components and (2) differences in

the weight of each voice, from one point to the next, should be determined by reference to the responsibility of each component for the particular matter at hand.” The areas in which the faculty exercises “primary responsibility” are “curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process.” “Faculty status” includes “appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal.” The faculty’s primary responsibility for these matters stems from “the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues.” While acknowledging the governing board’s final authority, the *Statement on Government* also asserts that when the faculty makes a recommendation in one of its areas of primary responsibility, “[t]he governing board and president should . . . concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.”

With respect to the appropriate relationship between collective bargaining and sound institutional governance standards, the AAUP’s derivative 1988 *Statement on Academic Government for Institutions Engaged in Collective Bargaining* specifies that “collective bargaining can strengthen shared governance by specifying and ensuring the faculty role in institutional decision making.” In order for collective bargaining to be effective in supporting shared governance, all bargaining parties “must be free to address matters of legitimate concern, and bargaining should provide an inclusive framework within which the parties will be encouraged to move toward resolution of their differences.” Accordingly, “the scope of bargaining should not be limited in ways that prevent mutual employment of the bargaining process for the clarification, improvement, and assurance of a sound structure of shared governance.” The statement closes by cautioning that “[w]hen legislatures, judicial authorities, boards, administrations, or faculty act on the mistaken assumption that collective bargaining is incompatible with collegial governance, they do a grave disservice to the very institutions they seek to serve.”

In the eyes of the UCC faculty and the AAUP chapter, the following administrative actions have been particularly objectionable. In light of the above-cited principles and standards, this report finds them reprehensible.

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3. Union County College v. Union County College Chap. of AAUP, N.J. PERC No. 2015-24 (2014).

### **A. The Abolition of Structures of Faculty Governance**

The McMenamin administration, with the apparent concurrence of the trustees and governors, ended, or severely restricted, the faculty's role in choosing its own representatives to committees; eliminated most faculty committees, including the key Faculty Executive Committee; and replaced departments headed by faculty-chosen chairs with new academic divisions headed by deans selected with little or no faculty involvement. This latter reorganization was announced by the administration in July 2014 and presented to the governing boards at a meeting in September 2014. These changes were not discussed with the general faculty before implementation. The faculty as a whole voted for a resolution opposing elimination of departments, and five of the eight academic departments passed opposition resolutions. Although the administration displaced the existing faculty bylaws and recognized a new "College Assembly" of faculty, staff, and students in place of the FEC, no vote on these changes was taken among the faculty. The search committees for new academic deans and assistant deans have included some faculty members, but they have been appointed by the administration and not by the FEC or the faculty as a whole.

### **B. The Abolition of the Faculty's Role in Determining Faculty Status**

Consistent with the AAUP-supported standards noted above, common practice in higher education, and historic practice at UCC, decisions relating to the reappointment, promotion, and tenure of full-time faculty members and the relevant criteria governing them are to be determined largely by the faculty, applying academic standards (rather than, for example, business priorities). Now, at Union County College these decisions and the relevant criteria governing them are to be determined, for all practical purposes, unilaterally by the administration. Although the Peer Evaluation Committee (PEC) for reappointment and promotion has been carried forward, its composition and selection criteria are now in the hands of the administration, elections for several faculty members have not been held in proper course, and pertinent policies in the new "Academic Affairs Handbook" have been imposed by the administration, as have new requirements regarding the content of personnel files. For the first time, all candidates for reappointment, promotion, and tenure—without any basis in the CBA—are to be interviewed by the president of

the college and her vice president for academic affairs. Early experience with this practice shows what some faculty members have legitimately characterized as inappropriate political questions being put to the faculty member under review, or inappropriate questions about their grading practices, followed by an unelaborated adverse personnel decision. There have also been attempts by the administration to add new candidates to the faculty search pool after the search has been officially closed. There have been several cases of faculty members who were, without meaningful reasons given, denied promotion or reappointment, despite the fact that they had been unanimously recommended for the promotion by their respective departments and the PEC. According to faculty members who met with this representative, this accretion of authority to the UCC administration on personnel matters has induced many faculty members to fear reprisals for any public criticisms or other adverse comments directed against the president, the vice president for academic affairs, or other administrative leaders.

### **C. The Administration's Foreclosure of Any Discussions of Academic Governance**

A third set of reprehensible decisions by the UCC administration derives from what has been summarized above: the usurpation of the participatory authority of the faculty (and particularly the campus AAUP chapter) on the dozens of matters that the administration deems to be nonmandatory under the collective bargaining decisions of the New Jersey courts and PERC. Rather than continue to allow past practices of faculty governance to remain in force, as seems to be the common practice in public and private New Jersey institutions of higher learning, the UCC administration in 2012 demonstrated its desire to peremptorily terminate such cooperative practices through its initiation of a scope proceeding before PERC and by consequentially limiting faculty participation to the narrowly confined zone of matters that deal squarely with "wages and working conditions" and that do not remotely touch upon educational policy. As with other administration actions, no advance notice or discussion of the scope petition was given by the administration to the campus AAUP chapter or to the faculty leadership.

It should be emphasized that although many of the matters about which the chapter has taken issue are indeed outside of the scope of mandatory bargaining, this simply means that the administration is not required to bargain with the chapter. There is no legal

bar to such steps as *giving notice* of changes sought by the administration, *explaining the reasons* behind those changes, and *listening* to the positions of the chapter (or, for that matter, of the faculty generally). Nor is there any bar against the parties' voluntarily agreeing to maintain meaningful governance practices. As inhospitable as the New Jersey courts and PERC have been to the expansion of the category of mandatory bargaining, they have allowed—indeed encouraged—such notification, advice, and discussion and made it clear that governance procedures are not precluded, even if they are nonnegotiable as a matter of state labor policy. This interaction may not be *required* by the law; but it is not in any way *forbidden*.<sup>4</sup>

#### D. Threats to Academic Freedom

A final set of administrative actions relating to governance also relate to the other core principle of the AAUP, academic freedom (see the AAUP's 1994 statement *On the Relationship of Faculty Governance to Academic Freedom*), a principle to which the AAUP expects all administrations and governing boards to subscribe. The dismissive treatment of the faculty by the administration has created, in the words of the president of the campus chapter of the AAUP, "a growing sense of fear, intimidation, and retaliation," a view shared by at least several other faculty colleagues. Faculty members who have publicly criticized certain of the administration's actions have been told by administration spokespersons that continuing to do so may result in adverse personnel actions.

Perhaps the most striking illustration centered upon the dissolution of the FEC, the elimination of the positions of FEC chair and vice chair, the cancellation of ongoing FEC elections, and the unilateral

substitution of new regulations for the future governance of the college. A faculty member who was the chair of the FEC spoke out against those changes at a joint meeting of the board of governors and the board of trustees in March 2015, conveying positions taken by the FEC, which had recently passed a resolution repudiating these changes.

The resolution, which was read into the record at the meeting, states that "[o]n February 25, the faculty was informed that their annual election process was to be discontinued and a new process imposed by the administration would take its place. We were given no notice of this prior to February 24 and had therefore begun our own annual election process. . . . The new election process eliminates the leadership of the faculty . . . from the governance of the College. The administration has eliminated the role of the chair and vice chair of the faculty, the Faculty Executive Committee and all the[ir] responsibilities and activities." It closes by notifying the boards that "the faculty leadership" does "not recognize the new governance model" and does not "agree to participate in the new election process, which undermines our own and has led to a great deal of confusion due to the manner of its imposition" and that the faculty would go ahead with its elections, as "required by Article XX" of the collective bargaining agreement.

The FEC chair was immediately instructed by the administration, which viewed her behavior as insubordination, to recant her criticisms, which she in fact expressly did rather than face threatened charges of "gross insubordination." The administration subsequently also demanded, in an April 8 letter from Mr. Giacobbe, that she and the FEC "immediately pass another resolution rescinding this [earlier] resolution in its entirety and specifically recognize that Union County College possesses a managerial prerogative to implement its governance structure." The same letter required the professor "on behalf of the Faculty Executive Committee," to "read this new resolution into the record" of the next joint meeting of the two boards. This directive—for an FEC recanting accompanied by a faculty member's public repudiation of her genuinely felt and reasonable statements on college governance—was clearly in violation of the professor's academic freedom and certainly placed her in fear of retaliation in the event she refused to speak the words dictated by the administration. Another illustration of the administration's untenable incursion upon academic freedom was the exploration by the president and vice president for academic affairs—exercising

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4. See, for example, *Dunellen Bd. of Educ. v. Dunellen Educ. Ass'n*, 64 N.J. 17 (1973) (the School Board "would have been well advised to have voluntarily discussed it in timely fashion with the representatives of the teachers"); *Local 195, IFPTE v. State of New Jersey*, 88 N.J. 393 (1982) (public employer "should" discuss matters that are not for mandatory bargaining); *Rutgers, the State University v. Rutgers Council of AAUP Chapters*, 256 N.J. Super. 104 (1992), *aff'd mem.*, 131 N.J. 118 (1993) (a CBA provision that the Rutgers administration would "meet and discuss" governance provisions would be valid). See also *Rutgers, the State University*, 2 N.J. PERC 13 (1976) (whether to negotiate the composition of a university body to assist the governing board in making promotion decisions "is completely up to management. If it chooses to share this function . . . with an equal number of AAUP or faculty members, it may do so. However, it is not required to negotiate regarding such matters").

final interviewing authority without any basis in the long-standing provisions of the CBA—of the national-political views of a candidate for promotion, ultimately denying him a promotion in the face of an impressive record of publication.

The faculty members with whom the AAUP's representative spoke all noted the growing sense of fear and intimidation on the part of those who would publicly disagree with the governance and academic changes made by the administration of President McMenamin. The above actions taken by the McMenamin administration constituted more than an incursion upon faculty participation in shaping policy at Union County College. They constituted a most serious incursion upon the faculty's academic freedom.

#### **IV. Conclusion: The Administration's Demeaning Treatment of the Faculty**

For several decades, the college faculty selected a Faculty Executive Committee to explore matters of academic policy with the administration, appoint members to faculty committees, and carry out other governance functions. The FEC had developed faculty bylaws and a faculty handbook that included matters of college governance; for many years, these documents were recognized and implemented with the consent of the administration. In a striking repudiation of this respectful relationship with the faculty, the UCC administration under President McMenamin declared that it would no longer recognize or do business with the FEC or its committees. Perhaps the most startlingly disdainful treatment of the faculty was the denial by a college administrator, near the end of the 2014–15 academic year, of a room on campus in which the FEC wished to hold its final meeting, including the discussion of its own dissolution. In a peremptory letter to the leaders of the FEC dated June 10, 2015 (three weeks before the end of FEC terms of office), the administration representative—almost certainly with the knowledge of the president or the vice president for academic affairs—wrote, “As for the FEC, let's stop imagining that June 30 is a termination date for the FEC. The FEC became defunct with the introduction of the college's new Governance system in May. As the person who oversees room reservations, I will never authorize the use of any college room or facility for a committee that no longer has legitimate standing at Union County College.” (Quite apart from being a collegial affront, this unilateral and premature dissolution of the faculty's representative executive committee

by a functionary of the administration shows utter contempt for the authority of the faculty.)

Finally, the administration has sought to impose, as a replacement for the FEC, a new “College Assembly” of faculty, staff, and students—without any advance discussion with any of these constituencies—and operational rules for this body have apparently been set exclusively by the administration. At a recent all-campus meeting for faculty and others, a mere ten minutes were set aside for “discussion” of recent changes in organization and governance.<sup>5</sup> ■

**ROBERT A. GORMAN** (Law)

University of Pennsylvania, *AAUP representative*

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5. Having received a copy of the draft text of this report with an invitation for comment and corrections, the administration of Union County College responded through its “labor counsel” by letter of October 15. The letter is copied here in full:

I have been provided a copy of the September 29, 2015 draft prepared by Professor Robert A. Gorman concerning “College and University Governance: Union County College (New Jersey)”. Please be advised that Union County College (“College”), its Board of Trustees, its Board of Governors and its Administration decline to participate in Professor Gorman's “report” on governance. It is apparent that Professor Gorman dismisses the import of the New Jersey Public Employment Relations Commission's (“PERC”) myriad rulings concerning managerial prerogatives. In fact, Professor Gorman writes:

in Public-Sector bargaining in New Jersey, however, the law *perverse* goes further and actually forbids bargaining about non-mandatory subjects (this posture differs not only from private-sector bargaining, but also from public-sector laws in most States in the U.S.) Examples of subjects of which bargaining is prohibited includes, among other things, the criteria for appointment, reappointment and promotion of faculty; the procedure for appointing the College president; the curriculum and the method by which it is developed and approved; and the structure of academic departments.

(Emphasis added). Professor Gorman also writes:

Collective bargaining for a 2015 CBA carries on currently in the shadow of this narrow-scope ruling by PERC. It has obviously been the purpose of the current administration, going forward, to strip the CBA of all “non-mandatory” provisions and make all of those issues subject to the unilateral determination of the administration. Although this purpose may not be unlawful under New Jersey state law, it runs afoul of AAUP-recommended principles and standards relating to the participation of the faculty in shaping the governance of the college.

It is troubling that Professor Gorman characterizes binding legal precedent as “perverse”. It is also apparent that Professor Gorman



The Committee on College and University Governance has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors*.

Chair: **MICHAEL DECESARE** (Sociology), Merrimack College

Members: **CHARLES A. BAKER** (French and Film), College of the Holy Cross; **LINDA L. CARROLL** (Italian), Tulane University; **GEORGE M. COHEN** (Law), University of Virginia; **RUBEN GARCIA** (Law), University of Nevada, Las Vegas; **MICHAEL HARKINS** (History), Harper College; **JEANNETTE KINDRED** (Communications), Eastern Michigan University; **DUANE STORTI** (Mechanical Engineering), University of Washington; **RUDY H. FICHTENBAUM** (Economics), Wright State University, *ex officio*; **KATHERINE MORRISON** (Community Health and Wellness), Curry College, *liaison from the AAUP Collective Bargaining Congress*; **BRIAN TURNER** (Political Science), Randolph-Macon College, *liaison from the Assembly of State Conferences*

wishes to ignore PERC’s comprehensive ruling in *Union County College and Union County College Chapter of the American Association of University Professors*, P.E.R.C. No 2015-24 (2014); a binding ruling that the AAUP chose not to appeal. In fact, prior to PERC’s ruling, the AAUP acknowledged and voluntarily agreed to remove many provisions of the parties’ collective negotiations agreement, conceding that those provisions unlawfully infringed on the College’s managerial prerogatives. Thus, the AAUP was fully cognizant of what constitutes managerial prerogatives at the bargaining table and in the proceedings before PERC, but now apparently desires to ignore that reality.

Contrary to Professor Gorman’s various assertions, the College does engage the faculty in governance issues and will continue to do so in full conformance with binding New Jersey legal precedent; not the “AAUP-recommended principles and standards relating to the participation of the faculty in shaping the governance of the college.”

A week later the AAUP staff received the following unsolicited e-mail update from the UCC AAUP chapter president:

The new College Assembly has now had two meetings. At the first meeting, in May, when I asked for a quorum call, the President of the College told me that the Assembly does not operate according to Roberts Rules of Order. At the second meeting, held this September, I again asked if there was a quorum. It did not appear as though the person presiding knew how to respond, but at some point the Vice President of Finance, who was in the audience, stated that the Assembly would not take any votes, perhaps to indicate that the issue of whether there was a quorum was irrelevant. Just what this Assembly is has not been clarified.

Since the College Assembly was first created, the position of the head of the Governance Leadership Council (GLC), who also presides over the Assembly, has changed. She was director of Financial Aid when first appointed to this position. She has since been appointed to one of the new Division deanships. So she is now an administrator, not simply a member of the staff. Nonetheless, she continues to preside over these Assembly meetings. This is another significant change over what was once presented as a supposedly more inclusive governance structure. The new Division meetings (which take the place of the prior departmental meetings) also take no votes on matters presented. There is an Elections Committee working on procedures for this year’s elections, and there are still various committees with elected members. But whether only faculty can vote for faculty member representatives on committees has not been clarified. Who can nominate is also unclear.

Management does not like it when I express my view that shared governance has been eliminated. They are sensitive on that issue.