

Report

Academic Freedom and Tenure

University of Bridgeport¹

This report concerns the action taken by the administration of the University of Bridgeport to terminate the appointments of Professors John R. Braun and Richard H. Ehmer, on thirty days' notice, at the close of the fall 1991 semester. At the time of this action the professors had each completed more than thirty years of service at the university.

I. The Institution

The University of Bridgeport is a private, coeducational institution located in Connecticut's largest city, some fifty miles northeast of the city of New York. Founded in 1927 as the Junior College of Connecticut, the institution in 1947 became the University of Bridgeport; a new charter from the state legislature authorized it to grant the baccalaureate degree. In 1951, the university awarded its first master's degree, gained accreditation from the New England Association of Schools and Colleges that same year, and entered into a period of dramatic expansion. Colleges of Arts and Sciences, Business, Nursing, Education, and Engineering were added. In 1977, the university acquired the former Wethersfield School of Law. Two years later it inaugurated its first doctoral program. From its rather limited origins, the university had become a multipurpose institution.

The rapid expansion of the University of Bridgeport was followed by a decline in the 1980s. In 1969, student enrollments stood at a high of more than 9,000. Twenty years later, during the 1989-90 academic year, enrollments had declined to 5,200 full- and part-time students (exclusive of the law school). By the fall of 1990, student enrollments had dropped to 4,300. The following year the number was down to 3,800, and in the spring of 1992, enrollment was estimated at 2,200. As of the fall of 1992, student numbers had declined to a reported 1,400. These losses in student enrollments cut across all of the colleges except the law school. During this same period the number of full-time

faculty members also declined significantly, from approximately 175 (excluding the law school) in the spring of 1990 to some one hundred members by the fall of 1992.

From 1974 until August 1992, the University of Bridgeport faculty was organized for the purpose of collective bargaining, with the AAUP chapter as the local bargaining agent. That eighteen-year period was marked by a history of contentious relations between the administration and the faculty union, as was evidenced by several strikes that accompanied negotiations for successor agreements after 1974.

Dr. Janet Greenwood became president of the University of Bridgeport in 1987, after having previously served for eight years as president of Longwood College in Virginia. President Greenwood resigned her position in November 1991, and was succeeded by Dr. Edwin H. Eigel, Jr., who had been provost and vice-president for academic affairs under Dr. Greenwood as well as under her predecessor. Dr. Eigel's successor in that position was Dr. G. Lansing Blackshaw, who was formerly dean of the School of Engineering. Since June 1991, Mr. Colin Gunn, a local attorney, has chaired the university's board of trustees.

II. Factual Background

On March 12, 1990, President Greenwood announced that the University of Bridgeport's board of trustees had approved a recommendation from the administration to "restructure areas of the university" in order to improve its financial situation. The plan included the "merging of administrative offices and physical consolidations, as well as termination of contracts of some UB faculty members." The accompanying guidelines cited enrollment decreases as necessitating reduction of the full-time faculty budget by \$3 million, a sum which could be met by terminating the services of approximately fifty faculty members. Terminations were to become effective on June 30, with no provision for severance pay. The administration asserted that its proposed actions would balance the university's budget for the first time in four years.

The AAUP chapter challenged the administration to demonstrate that a *bona fide* state of financial exigency existed. Since the overwhelming majority of the fifty faculty members proposed for release were tenured, the chapter charged the administration with violating the standards for notice set forth in the collective bargaining agreement, which provided for a year of notice and an additional year of severance salary. On April 21,

¹The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the Association's staff, and as revised, with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A it was subsequently sent to the faculty members at whose request the investigation was conducted, to the administration of the University of Bridgeport, and to other persons concerned in the report. In the light of the responses received and with the editorial assistance of the Association's staff, this final report has been prepared for publication.

the chapter filed suit in federal district court, seeking a temporary restraining order and an injunction against the execution of the threatened terminations. The judge ordered the parties to negotiate the issues while enjoining the university from implementing its plan. On April 24, the administration and the chapter reached a settlement by which the university agreed to honor the notice requirements in the bargaining agreement should it seek to terminate any tenured faculty appointments during the term of the extant agreement.

The three-year collective bargaining contract that was then in force was set to expire on August 31. Two days after the April 24 settlement, the chapter voted 74 to 4 not to work without a contract if negotiations for a successor agreement were not concluded by the end of August. On May 1, the administration announced that it would not lay off any faculty members, provided that the chapter agreed to a 30 percent reduction in overall faculty compensation for the 1990–91 academic year. Additional concerns soon surfaced, including several relating to the future role of the faculty in institutional governance. The administration had long chafed at its loss of “managerial flexibility” under the bargaining agreement. On August 27, President Greenwood was quoted in the local press as having asserted that the union had too much control, preventing the administration from dealing effectively with the fiscal crisis.

During negotiations over the summer, the administration proposed major changes in the provisions of the 1987–90 collective bargaining agreement. Those changes were rejected by the chapter, which focused on five issues in voicing its opposition. The first involved what the chapter perceived as potential threats to academic freedom, including the proposed deletion of a provision that “the members of the bargaining unit must remain free to practice their profession in the performance of their work at the University without interference or harassment because of their opinions and beliefs.” The second issue concerned the proposed removal from the agreement of all contractual safeguards of faculty governance rights and thus the elimination of the union’s role as the guardian of Association-supported governance standards. The third revolved around the standards for notice of termination of tenured appointments on grounds of financial exigency, with the administration proposing that such terminations could be effective upon thirty days’ notice with no provision for additional severance pay. The fourth concerned the proposed exclusion of all governance and faculty personnel disputes from the grievance and arbitration process. The fifth related to compensation: throughout the negotiations, the administration had called for cuts in compensation, averaging 30 percent from the level of the previous contract, which the chapter deemed unacceptable.

The changes desired by the administration were later embodied in a “Final Proposal” which was subsequently imposed on the faculty. A day before the expiration of the agreement, the chapter offered to continue its non-salary provisions and to sub-

mit the salary issue to binding arbitration. An overwhelming majority of the faculty voted to support the chapter’s proposal, but on August 31 the administration rejected it.

The next day, less than a week before the beginning of classes, the chapter went on strike. Originally, some 125 of the 175 members of the AAUP chapter participated in the strike. The chapter leaders felt confident that they could prevail as they had in past disputes. The administration, however, was equally determined and responded quickly. In early September, Provost Eigel issued a statement addressed to “All Striking AAUP Bargaining Members”: “You are hereby notified that work is available at the University on a regular basis under the terms of the University’s last offer to the Union.” He continued: “In the event you...decide not to return to work, please be advised that the University will immediately begin hiring permanent replacements.” On September 8, the administration presented union negotiators with its “Final Proposal.” On September 10, Provost Eigel, in a memorandum to the university community, announced: “Clearly, bargaining has reached an impasse on all issues addressed in this Final Proposal, after good faith bargaining on our part. The Administration has notified UB/AAUP that it intends to implement the items in this proposal effective Wednesday, September 12, 1990.” The chapter again offered to return to work, provided the terms of the previous agreement were honored, with bargaining to continue on the salary issue. Its offer was rejected.

By mid-September, faced with the administration’s threat of hiring permanent replacements, more than a third of the striking faculty members returned to the classroom. The administration had stated that those faculty members who chose to return would be employed subject to their acceptance of the agreement as altered by the “Final Proposal” and to their agreeing to a substantial cut in salary and benefits according to a set of complicated compensation alternatives. Returning faculty members were never given a full copy of the contract as altered by the “Final Proposal.” They were simply required to sign a form stating which salary and benefits options they chose. Meanwhile, thirty-nine “permanent replacements” were hired. As of the end of the fall semester approximately seventy strikers, down from the original 125, continued to maintain picket lines at the university.

Throughout the rest of the 1990–91 academic year and into the fall of 1991, as student enrollments continued to decline, the fiscal problems of the university worsened. Seeking to escape from threatened bankruptcy, the board of trustees in early October entered into discussions about a possible affiliation arrangement with the Professors World Peace Academy (PWPA), an organization founded in 1974 by the Unification Church, headed by the Reverend Sun Myung Moon. Reportedly, the PWPA would invest \$50 million in the institution and guarantee one thousand students per year in return for control of the university’s governing board. The proposed affili-

ation created an immediate uproar in the academic and outside communities. Faced with this mounting tide of protest, the trustees voted unanimously on October 21 to reject the proposed affiliation.

III. Declaration of Financial Exigency

The university's fiscal crisis continued to deepen throughout the fall, and on November 11 Janet Greenwood resigned as president. Provost Eigel was appointed interim president, and Dr. Blackshaw was named acting provost and vice-president for academic affairs. On November 26, Connecticut newspapers reported that the university might be forced to shut down the next day unless it could secure permission from the courts to tap funds from its restricted endowment. In late November a state judge ruled that the university could use \$1.3 million of the endowment to cover immediate payroll and other expenses to keep the institution in operation through December.

Also on November 26, President Eigel announced that the board of trustees, having declared the institution to be in a state of financial exigency, had authorized a drastic cut in undergraduate and graduate programs effective at the end of the spring 1992 semester. Some thirty programs, including nearly all those in arts and sciences, were affected. The arts and sciences curriculum was essentially reduced to core courses. The School of Business, the School of Engineering, the College of Professional Studies, and the College of Chiropractic were left largely untouched. The School of Law was not affected.

On December 12, the *Hartford Courant* ran a story on the University of Bridgeport with the headline, "Final Exams May Be Final Indeed." On the previous day Provost Blackshaw issued a memorandum, entitled "Layoff of Tenured and Non-Tenured Faculty," which he addressed to the college personnel committees, deans, and directors. Tying the necessity of the layoffs to the planned phaseout of programs, the provost announced that the administration had determined the number of faculty members designated for release:

I am requesting the CPCs [College Personnel Committees] to work with [Acting] Dean [Joseph] Nechasek and the Directors to review these figures and, consistent with the number of faculty to be laid off, to identify, through the use of objective criteria, specific faculty whose retention is essential for the Spring 1992 semester and specific faculty whose retention is essential for the Fall 1992 semester to carry out the programs operating during and after retrenchment and elimination, respectively.

After enumerating the list of criteria to be employed in determining which faculty members should be laid off, the provost indicated that he was operating under a tight schedule:

I am committed to begin issuing individual layoff notices in accordance with the provisions of the University's Final Proposal by the end of the day on Monday, December 16,

1991. In order to issue such notices within that time frame, I need your response to this memorandum by no later than the end of the day on Friday, December 13, 1991. I recognize this timetable leaves you a relatively short period of time to perform an extremely critical task, but I am sure you appreciate the fact that the University is itself in a critical position.

The college personnel committees refused to participate, and therefore responsibility for designating the faculty members in the College of Arts and Sciences whose services were to be terminated fell to Acting Dean Nechasek. On December 15, 1991, the university issued thirty-day termination notices to twenty-five faculty members, including twelve with tenure, among them Professors Braun and Ehmer.

IV. The Cases of Professors John R. Braun and Richard H. Ehmer

Professors Braun and Ehmer had each completed more than three decades of service as faculty members in the University of Bridgeport Psychology Department when they were notified in December 1991 that their appointments were being terminated in thirty days.

Professor Braun, who earned his doctorate at the University of California at Berkeley in 1957, joined the University of Bridgeport faculty in 1961 at the rank of associate professor. The following year he was granted tenure and promoted to full professor. He served as department chair from 1961 to 1972. Professor Ehmer, who earned his doctorate at the University of Rochester in 1953, preceded Professor Braun at Bridgeport by a year, having begun as associate professor of psychology in the fall of 1960. Granted tenure in 1962, he was promoted to full professor in 1967. Like Professor Braun, he served a term as department chair.

During their many years on the faculty both Professors Braun and Ehmer taught a wide range of undergraduate and graduate courses in psychology. Both initially went on strike in September 1990, but returned when the administration began to appoint "permanent replacements." They continued to teach throughout the 1990-91 academic year and during the fall semester of 1991.

On December 15, 1991, less than three weeks after the administration had announced its decision to terminate numerous graduate and undergraduate programs at the university, Professors Braun and Ehmer were told to see Dean Nechasek. In the dean's office they were handed identical letters:

As you are undoubtedly aware, the University of Bridgeport is in a state of financial exigency. Accordingly, survival of the University requires, in part, that the University reorganize itself immediately to focus on its academic strengths and to modify, reduce, or eliminate some of its programs. As a result, I deeply regret to inform you that the University

has no choice but to terminate your employment effective January 15, 1992.

Professors Braun and Ehmer protested this decision, which, they later stated to the investigating committee, came as a total surprise to them. On December 19, Professor Ehmer wrote to Provost Blackshaw. Citing his thirty-one-and-a-half years at the University of Bridgeport, his service both to the Psychology Department as chair and to the university in various capacities over the years, he reminded the provost that he was "the senior member in the six-member...Department...and second in seniority in the Social Science Division." Referring to the provision in the previous collective bargaining agreement regarding seniority, which had not been superseded by the administration's "Final Proposal" of September 1990, he ended his letter by requesting "that the...agreement be followed and that the erroneous layoff notice be rescinded restoring me to my rightful place on the faculty." Professor Ehmer met subsequently with Dr. Blackshaw on December 23 and with the provost and Dean Nechasek together eight days later. According to Professor Ehmer, the only reasons given on these two occasions for the action taken against him were financial.

On December 24, Professor Braun also wrote to Provost Blackshaw, likewise protesting the decision to terminate his services. After citing his more than thirty years on the university faculty, his publications, and the versatility of his teaching at the institution, he concluded: "I believe that I have been unjustly terminated and formally request rescission of this matter." In his letter he asserted that he had taught "many more different courses than anyone else in the department. This is not a claim that I theoretically could teach almost any course we offer; it is an assertion that I have already done so." He also reminded the provost that he had "substantial seniority" over each of the tenured professors in psychology who were being retained.

On January 6, 1992, Provost Blackshaw replied to Professor Ehmer's December 19 letter, again asserting that the decision was mandated by financial exigency. He referred to the thirty days of notice as "both adequate under the Administration's Final Proposal and appropriate considering the University's dire financial condition."

Also on January 6, Professor Ehmer filed a grievance under the university's "Final Proposal." Professor Braun filed a similar grievance two days later. Both professors alleged that the administration had violated Article 10.3(D) of the 1987-90 contract—an article retained in the "Final Proposal"—which stressed the priority to be given to seniority as a criterion for the retention of faculty members in any layoff decision. They also complained that the decision to terminate their services resulted in significant part from impermissible discrimination on the basis of age. A hearing into the matter, held on February 12, led to a February 26 letter from the university counsel, George H. Mihalakos, rejecting the grievances.

Anticipating that the administration would be unwilling to

reverse its decisions in their cases, Professors Braun and Ehmer had previously filed complaints with the Connecticut Commission on Human Rights and Opportunities (CHRO) and the federal Equal Employment Opportunity Commission (EEOC). Professor Braun filed his complaint with the EEOC on December 31, 1991, and with the CHRO three days later, charging age discrimination as a major factor in his layoff. According to the report of the CHRO officer who investigated his claim, the university responded by denying the discrimination charge, citing the fiscal crisis, and stating that Professor Braun was selected for release because his higher-level courses were being eliminated, leaving only core curriculum and basic studies course offerings in the Department of Psychology. The investigating officer, reporting on August 4, 1992, did not find "reasonable cause" for the complaint. Professor Braun appealed for reconsideration, and in June 1993 the CHRO reversed its previous finding. This reversal was sustained in a November 1993 ruling, and a conciliation conference has been scheduled.

Professor Ehmer filed his complaints with both the CHRO and the EEOC on January 27, 1992, likewise charging the university with age discrimination. In his case, in a report issued on October 13, 1992, a different CHRO investigating officer determined that "there *does* exist reasonable cause for believing that a discriminatory practice has occurred" (emphasis in original). A hearing on Professor Ehmer's case was held on March 1, 1993. As of this writing the case is progressing through additional steps prior to further CHRO hearings.

V. Resolution of the Financial Exigency

The drastic measures adopted in December 1991 and January 1992 had not ended the university's financial crisis. Indeed, in the months that followed the situation worsened. The administration attempted, without success, to negotiate a takeover by Sacred Heart University. It was similarly unsuccessful in its efforts to prevent the law school, whose faculty had voted in November to pursue an affiliation with Quinnipiac College, from severing its ties. The Professors World Peace Academy renewed its earlier affiliation proposals in late winter, as the prospects for other solutions to the fiscal crisis dimmed. By the spring of 1992, the institution was faced with a \$22 million debt. Observing that the proposed affiliation with the PWPA would preserve the university as an entity instead of requiring it to be parcelled out among other local institutions, the board of trustees voted on April 15 to pursue negotiations. On April 25, the board voted to accept the offer of affiliation. Board Chair Colin Gunn was quoted as saying that "the only choice we had was this or to close down."

The agreement, signed on May 28, 1992, called for the payment of \$50.5 million to the university over a period of five years (through the 1996-97 academic year). The money would fund existing programs and permit the restoration of many of

the programs cut the previous fall. Further funding could be provided for special programs initiated by the PWPA. On August 5, the University of Bridgeport's fifteen-member board of trustees was expanded to thirty-one, through the election of sixteen members of the Professors World Peace Academy, giving the PWPA a majority of the seats on the board.

The agreement concluded between the university and the PWPA in May specified that the administration should resolve its labor disputes. During the summer of 1992, lawyers for the two sides worked out a settlement, which was announced on August 27. All outstanding legal actions involving the faculty union were dropped, the striking faculty members would receive financial payment, and with their positions having either been eliminated or filled by replacement faculty, they would not return to the university. Finally, the union would cease to represent the university faculty. The settlement provided severance pay only for those faculty members (sixty-six in all) who had remained on strike, not for those (such as Professors Braun and Ehmer) who had returned to work after initially going on strike and who had subsequently been released. The settlement marked the end of the longest faculty strike in the history of American higher education, and the first in which "permanent replacements" were appointed.

The conclusion of the PWPA agreement also brought to a head a three-year-old controversy over the university's accreditation. In the fall of 1989, the New England Association of Schools and Colleges (NEASC) had delayed a vote on whether to renew the institution's accreditation. Serious concerns were already being expressed at that time regarding the university's fiscal health, governance structure, and long-range planning process. In October 1990, almost two months after the beginning of the faculty strike, a NEASC team made a three-day visit to the campus. Its report cited continuing concerns over the university's financial condition. In January 1991, the NEASC Commission on Institutions of Higher Education, upon review of the accrediting team's report, recommended that the university be placed on probation. Action on the recommendation was postponed from March until December 1991, when the survival of the institution was very much in doubt. In the spring of 1992, with the University of Bridgeport appearing to be on the verge of closing its doors, the commission recommended that termination of the institution's accreditation—and hence its authority to confer recognized degrees—be effected as of August 15, 1992. The subsequent arrangement with the PWPA, however, rescued the university from loss of accreditation. On June 26, citing the financial support promised by the affiliation agreement and a pledge by the PWPA "to maintain the University of Bridgeport as an independent non-sectarian institution of higher education at which academic freedom will be preserved," NEASC announced that the recommendation to withdraw accreditation was rescinded. Probationary status, however, was reaffirmed, and the university was warned that it would con-

tinue to be monitored throughout the fall of 1992. At its November 1992 meeting, NEASC acted to retain the university on probationary status.

VI. The Association's Involvement in the Braun and Ehmer Cases

Professors Braun and Ehmer turned to the Association's staff for assistance shortly after being notified of their release, and on January 30, 1992, the staff wrote to then-Interim President Edwin Eigel, conveying AAUP's concerns about several apparent departures from applicable Association-supported standards. President Eigel replied on February 25, confining himself to an expression of appreciation for the Association's interest.

Informed about the pending affiliation between the University of Bridgeport and the PWPA and the large infusion of money that was anticipated, the Association's staff, by letter of April 30, called upon the administration to reinstate Professors Braun and Ehmer and their similarly situated colleagues to the positions they held as of the previous December and to give them back pay for the salaries lost as a result of the termination of their appointments. Responding on May 20, President Eigel rejected the AAUP's recommendation, stating that "several factors bear on a decision to reinstate professors who have been laid off," and that the administration was "not in a position at this time to reinstate" any of the affected faculty members. The staff wrote again on May 26, requesting an explanation of the president's reference to various "factors" that affected reinstatement. Replying three days later, Dr. Eigel stated that his previous letter stood and that he had "no reason to communicate further." The staff wrote to him again on June 30 and yet again on July 31, declaring in the latter communication that "We view (and believe that the general academic community would also view) your administration's position in adhering to its original action in the cases of these professors as utterly untenable."

With the Association's concerns remaining unresolved, the general secretary authorized an investigation. The staff so notified President Eigel by letter of September 21. He responded on October 28, questioning the need for the undertaking, stating that six of the twelve released tenured professors had been reinstated and a seventh offered reinstatement, but asserting that there was no work for Professors Braun and Ehmer to do.

The undersigned investigating committee was appointed, and on December 15 proposed dates for the committee's visit were transmitted to the administration, whose cooperation was sought in facilitating the visit. Responding on behalf of the administration, counsel for the university asserted that the investigation would serve "no useful or appropriate purpose," and that the administration therefore would not cooperate. There was an additional exchange of letters, with the administration's position remaining unchanged.

The investigating committee, having examined voluminous available documentation, conducted interviews in a visit to Bridgeport on February 11–12, 1993. The chair of the committee attempted to contact the president by telephone, but his call was not returned. Despite the regrettable lack of cooperation from the administration, the committee met off campus with current and former members of the University of Bridgeport faculty holding varying views on the events that had occurred. The committee believes that it has obtained sufficient information to assess the issues in the cases of Professors Braun and Ehmer and to reach findings and conclusions.

VII. Issues

1. *The Existence of Financial Exigency.* The 1940 *Statement of Principles* allows for the termination of a faculty appointment with continuous tenure, or of a term appointment prior to its expiration, under extraordinary circumstances because of a demonstrably *bona fide* condition of financial exigency. Regulation 4(c) of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* defines a financial exigency as an "imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means" than the termination of faculty appointments. The regulation calls upon an institution to pursue "all feasible alternatives" to termination of such appointments.²

The policy on financial exigency in effect at the University of Bridgeport at the time of the actions in question is set forth in the administration's "Final Proposal" of September 8, 1990. That document offers no definition of financial exigency. Article 10.1(B) permits the university to terminate the appointments of tenured faculty members with thirty days of notice "as a result of a decision by the Administration, based upon its fair and objective assessment of institutional needs and financial conditions, to modify or reduce or eliminate one or more of its educational units (college, division, or department) or educational programs." Article 8.8 permits the termination of non-tenured faculty appointments, also upon thirty days of notice, on grounds of financial exigency.

The investigating committee does not question the genuineness of the fiscal crisis confronting the University of Bridgeport in November 1991, when the board of trustees, on the recommendation of the administration, declared the institution to be in a state of financial exigency. At that point, the "survival of the institution as a whole" was very much in doubt: the university had suffered a precipitous decline in student enrollment; it was having difficulty meeting its payroll; it was seeking court action

²President Eigel, commenting on the text of this report that was sent to him prior to publication, stated with respect to the *Recommended Institutional Regulations* that they "have no application at the University because the University has never adopted them. Hence, any conclusions reached on the basis of such *Recommended Regulations* are useless."

to tap its restricted endowment funds; it slashed program offerings. However they may have differed on other issues, every faculty member who spoke to the investigating committee agreed that the institution was facing a catastrophic financial situation.

2. *The Role of the Faculty in the Decisions to Terminate Faculty Appointments.* Regulation 4(c) of the Association's *Recommended Institutional Regulations* calls for meaningful faculty involvement, early in the process and at every significant stage, in the decision to terminate faculty appointments. Of particular relevance, these standards provide for a primary faculty role in determining the criteria to be used to identify individuals for termination of appointment. They go on to place responsibility for identifying the individuals who are to receive notices of termination in "a person or group designated or approved by the faculty."

On November 26, 1991, as noted above, after the board of trustees had declared the University of Bridgeport to be in a state of financial exigency, Interim President Eigel, with the approval of the board, announced a restructuring of the institution, which included the phaseout and elimination of more than thirty undergraduate and graduate degree programs by the following June. On December 11, four days before notices of termination were issued to some two dozen faculty members, Interim Provost Blackshaw addressed a memorandum to the College Personnel Committees (CPCs) of the College of Arts and Sciences, the School of Business, the School of Engineering, and the College of Professional Studies as well as to several administrative officers. In this memorandum, entitled "Lay-off of Tenured and Non-Tenured Faculty," Dr. Blackshaw stated that the "phase-out [of programs] must begin immediately. As a result, consistent with this planned phase-out, it is necessary that the University lay off some tenured and non-tenured faculty members effective at the end of the Fall 1991 semester and additional tenured and non-tenured faculty at the end of the Spring 1992 semester." "To begin the implementation process," he continued, "we have determined the number of faculty who need to be laid off to accomplish our financial goals in the specific academic areas scheduled for retrenchment or elimination. Attached is a list of programs to be retained effective Fall 1992 semester." The memorandum concluded as follows: "I am committed to begin issuing individual layoff notices in accordance with the provisions of the University's Final Proposal by the end of the day on Monday, December 16, 1991. In order to issue such notice within that time frame, I need your response to this memorandum by no later than the end of the day on Friday, December 13, 1991. I recognize this timetable leaves you a relatively short period of time to perform an extremely critical task, but I am sure you appreciate the fact that the University is itself in a critical position."

The investigating committee found no evidence that any faculty body was involved in either determining the extent of the state of financial exigency or in exploring alternatives to the termination of faculty appointments. As noted above, the "Final

Proposal” placed the aforementioned decisions exclusively in the hands of the administration, “based upon *its* fair and objective assessment of institutional needs and financial conditions” (emphasis added). The faculty played no apparent role in determining the elimination of programs announced by the administration on November 26. While Interim Provost Blackshaw in his December 11 memorandum invited the College Personnel Committees to participate in the process, he made it clear that the administration had already “determined the number of faculty members who need to be laid off to accomplish our financial goals.” The CPCs were invited to review the administration’s figures on the number of faculty members to be released and “to identify, through the use of objective criteria [set forth by the provost], specific faculty whose retention is essential,” but Dr. Blackshaw gave them scant time to complete even this limited task. Citing the need to conform to the provisions of the “Final Proposal,” he emphasized in his December 11 memorandum that the deadline for “issuing individual layoff notices” was December 16 and therefore he needed to receive a response by December 13. With the university then in the midst of the final examination period, the CPCs declined to participate. The investigating committee does not believe that meaningful faculty participation was possible under the constraints dictated by the provost’s memorandum.

The administration could and did argue that it was faced with an immediate and unanticipated crisis where, threatened with the institution’s imminent death, it did not have the time to carry through “meaningful faculty consultation.” The investigating committee does not dispute the assertion that the situation was critical, but it does not see the crisis as having emerged suddenly or unexpectedly on December 11, 1991. By the beginning of that semester it should already have been clear that a drastic condition existed which called for serious consultation with the faculty before decisions of the magnitude announced in mid-December were made.

3. *Selection of Particular Individuals for Release: The Tenure and Seniority Rights of Professors Braun and Ehmer.* Regulation 4(c)(1) of the *Recommended Institutional Regulations*, in discussing the criteria for identifying individuals whose appointments may be terminated, states that “these criteria may appropriately include considerations of length of service.” Regulation 4(c)(3) further provides that “The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.”

Article 10.3(D) of the university’s “Final Proposal” states that, “Within an affected unit, senior tenured faculty...shall be retained over less senior tenured faculty unless it is determined by the dean after consultation with the unit faculty that the senior tenured faculty member is not qualified to replace a particular less senior tenured faculty member whose specialty is re-

quired to maintain program integrity and quality.” Article 10.3(E) sets forth similar conditions for the retention of tenured over nontenured faculty members.

Interim Provost Blackshaw, in his memorandum of December 11, urged that:

In establishing criteria by which to select individual faculty members for retention, the following elements, developed in consultation with the Executive Committee of the Faculty Council, should be stressed with regard to faculty qualifications and versatility: a. teaching proficiency evidenced by student ratings and peer review; b. advising record; c. program integrity and the ability to teach a full load in the retained or retrenched academic programs; d. professional activity and research; e. service to the respective divisions, college, and University, including but not limited to student recruiting; and f. service external to the University which enhances the image of and/or generates resources for the institution.

The investigating committee was severely troubled with these criteria, which call for an assessment—in forty-eight hours and with no semblance of due process—of the relative proficiency of the teaching, research, and service of tenured professors as a significant factor in determining who among them are to be retained and who released. The committee sought to ascertain their provenance, particularly the role of the Executive Committee of the Faculty Council, which Provost Blackshaw cited. Faculty members who spoke with the investigating committee stated that there was no reference to the development of these criteria in the minutes of the Faculty Council. If they had indeed been adopted by the Faculty Council, their adoption seems to have remained a secret to many on the faculty.

A key concern in the administration’s decision to terminate the appointments of Professors Braun and Ehmer is whether requisite consideration was given to their tenure and seniority rights as defined respectively by AAUP-supported standards and by the relevant provisions of the “Final Proposal.”

The two subject professors were the senior tenured members of the University of Bridgeport Psychology Department. Under the terms of the “Final Proposal,” the only justification for terminating their appointments in preference to those of other, less senior members of their department would lie in their inability to replace other “less senior tenured faculty member[s]” or untenured members of the department “whose specialty is required to maintain program integrity and quality.” Under the provisions of AAUP’s *Recommended Institutional Regulations*, tenured faculty members are to be retained over non-tenured colleagues “except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.”

Professors Braun and Ehmer have stated that the administration has never provided an explanation for its decision to single them out for termination of appointment. According to the report issued by the Connecticut Commission on Human Rights

and Responsibilities (CHRO) in connection with its review of Professor Braun's complaint, however, the administration took the position that he "was selected on the basis of his higher level courses being eliminated, while those retained were actively instructing core curriculum and Basic Studies courses," and that, with the elimination of the degree program in psychology, the courses he had taught "were no longer essential." The administration asserted, in the words of the hearing officer, that "there was no dissatisfaction with the complainant's performance." A similar response was given to Professor Ehmer's complaint, the CHRO's report stressing the elimination of programs as allowed under the "Final Proposal."

Unaddressed in the foregoing is the question of the suitability of Professors Braun and Ehmer to teach the remaining courses still offered by the Department of Psychology. The two professors have emphasized their seniority, their versatility in teaching throughout the psychology curriculum, and their experience in having in fact taught the available courses. Professor Ehmer's teaching record shows that during his career at the University of Bridgeport he had taught twenty-six different courses, ranging from Introduction to Psychology to specialized upper-level and graduate courses. The abolition of the psychology major announced in November 1991 led to the cancellation of many advanced and specialized courses. Yet ten of the courses that were at one time or another taught by Professor Ehmer were still being offered in the spring of 1992, the term following his release. Eleven courses that he had previously taught were listed as offerings in the university catalogue for the 1992-93 academic year. Professor Braun has documented thirty-two courses that he taught at the University of Bridgeport throughout his career. Of these, twelve were offered in the spring of 1992; twelve were listed in the 1992-93 catalogue. In addition, Professor Braun has stated that, contrary to what the administration asserted to the CHRO, he had taught courses in the core curriculum.

Although many of the courses taught by Professors Braun and Ehmer were eliminated in the reorganization of November 1991, the investigating committee is unaware of any argument that they were not qualified to teach the remaining courses. In addition, the committee has been informed that someone who had been serving as a part-time instructor at the university was engaged to teach four psychology courses, including a graduate course previously assigned to Professor Braun, during the spring of 1992. The services of this instructor were reportedly continued into the 1992-93 academic year. The investigating committee finds that the administration's assignment of psychology courses to a part-time instructor after it had terminated the appointments of two tenured professors who were qualified to teach the courses in question is unacceptable under the 1940 *Statement of Principles on Academic Freedom and Tenure* and the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*. It finds further that the administration, in selecting the two most senior professors in the Department of

Psychology for release while retaining professors junior to them, failed to adhere to the applicable standard regarding seniority in the administration's own "Final Proposal."

4. *Brevity of Notice.* Professors Braun and Ehmer received notice dated December 15, 1991, that their tenured appointments would be terminated effective January 15, 1992. Under the standard set forth in the Association's *Recommended Institutional Regulations*, they should have received at least one year of notice or severance salary. Paragraphs 8.6 and 10.6 of the administration's "Final Proposal," the governing document at the time the letters of termination were issued, require only thirty days of notice if the administration intends to terminate the appointment of a faculty member, tenured or nontenured, on grounds of financial exigency.

Professors Braun and Ehmer thus received only thirty days of notice, despite their each having served for over thirty years. Efforts by them and by the Association's staff to persuade the administration to extend the period of notice, or grant them at least a year of severance salary, proved unavailing. University counsel, in informing the two professors of the administration's rejection of their grievances, asserted that "the University is not bound by the national standards on financial exigency published by the American Association of University Professors."

A condition of financial exigency at the University of Bridgeport, however, was not to exist for long. In the spring of 1992, less than five months after declaring the institution in a state of financial exigency, the governing board of the University of Bridgeport announced that it had reached the agreement with the Professors World Peace Academy that would provide the university with some \$50 million (\$18 million in the first year) over the next five years and thus alleviate the institution's critical financial condition and ensure its future. Following the announcement of the agreement, Board Chair Colin Gunn is quoted in the local press as having commented that the university could "now begin to put the extraordinary fiscal crisis of half a decade behind us." In late June, the Commission on Institutions of Higher Education of the New England Association of Schools and Colleges, rescinding its earlier recommendation to terminate the accreditation of the university, referred to "new evidence provided by the University demonstrating that it will receive immediate and substantial financial support through an affiliation with the Professors World Peace Academy." President Eigel referred to the agreement with the PWPA as marking "an important development in UB's efforts to return to economic health and a full range of dynamic academic programs." Clearly, by the fall of 1992 the University of Bridgeport was no longer in a state of financial exigency.

In late October 1992, President Eigel, responding to the general secretary's decision to investigate the issues of concern, stated that "I trust you are not using the proposed investigation as a means to persuade the University to reinstate Professors Braun and Ehmer, for, as stated to you in an earlier letter, the University

is not in a position to offer employment to either Professor Braun or Professor Ehmer at this time as it does not have a position available for which either is qualified. Moreover, it does not anticipate having such a position available in the foreseeable future.... We cannot, therefore, justify rehiring faculty for whom we have no work, whether or not they are tenured.”

The Association’s staff thereupon telephoned President Eigel and emphasized, in addition to the concern over reinstatement, heightened concern with the gross inadequacy of the notice provided to Professors Braun and Ehmer now that the financial health of the university was restored. The staff again urged that at least they be paid the twelve months of severance called for in Association-supported standards. President Eigel indicated that he would consider doing so, but the staff did not hear from him again until after he received this report.

The investigating committee considers the actions by the administration of the University of Bridgeport to have been inexcusable at the time, even under a clear condition of financial exigency.³ The committee finds it appalling that the administration, despite the very large amounts of funding the university has received and is scheduled to receive, and despite its having expended money in settling the labor dispute with faculty members who had remained on strike, still has not seen fit to provide Professors Braun and Ehmer with minimally appropriate severance salary after their long years of service.

VIII. Conclusions

1. The University of Bridgeport was in a state of financial exigency in the fall of 1991, when the administration issued notices of termination of appointment, with thirty days of notice, to some twenty-five faculty members. The administration determined the locations of and the criteria for the terminations without meaningful faculty involvement in these decisions. The policies under which the decisions were made provided inadequately for the faculty role that is called for in Regulation 4(c) of the Association’s *Recommended Institutional Regulations on Academic Freedom and Tenure*.

2. In terminating the appointments of Professors John Braun and Richard Ehmer, each with more than thirty years of service at the University of Bridgeport, the administration acted in violation of the 1940 *Statement of Principles on Academic Freedom and Tenure* and in disregard of the *Recommended Institutional Regulations* by terminating their tenure while engaging a part-time instructor to teach courses that they were qualified to teach. The administration’s actions against the two professors also disregarded their rights of seniority under applicable university policies.

³In his comments on the prepublication text of this report, President Eigel asserted that at a time of undisputed financial exigency “it does

3. The scant thirty days of notice that was issued to Professors Braun and Ehmer when the University of Bridgeport was in a financially exigent condition became an unconscionably inadequate severance arrangement once the university returned to financial health.

JOHN E.V.C. MOON (History), *chair*
Fitchburg State College (Massachusetts)

JAMES M. BERGQUIST (History)
Villanova University (Pennsylvania)

Investigating Committee

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report in *Academe: Bulletin of the AAUP*.

ROBERT M. O’NEIL (Law), University of Virginia, *Chair*

Members: WILLIAM P. BERLINGHOFF (Mathematics), Colby College; MATTHEW W. FINKIN (Law), University of Illinois; ROBERT A. GORMAN (Law), University of Pennsylvania; MARY W. GRAY (Mathematics), American University; JEFFREY HALPERN (Anthropology), Rider College; THOMAS L. HASKELL (History), Rice University; BETSY LEVIN (Law), University of North Carolina at Chapel Hill; IRWIN H. POLISHOOK (History), Herbert H. Lehman College, City University of New York; LAWRENCE S. POSTON (English), University of Illinois at Chicago; JOAN WALLACH SCOTT (History), Institute for Advanced Study; ERNST BENJAMIN (Political Science), Washington Office, *ex officio*; JORDAN E. KURLAND (History and Russian), Washington Office, *ex officio*; LINDA RAY PRATT (English), University of Nebraska-Lincoln, *ex officio*; RALPH S. BROWN (Law), Yale University, *consultant*; BERTRAM H. DAVIS (English), Florida State University, *consultant*; JUDITH J. THOMSON (Philosophy), Massachusetts Institute of Technology, *consultant*; WALTER P. METZGER (History), Columbia University, *senior consultant*. ☞

Addendum

As the final text of this report was being prepared for publication, Professor Ehmer informed the Association that the complaint he had filed with the Connecticut Commission on Human Rights and Opportunities has been settled; as to Professor Braun, he reports that a conciliation conference with the CHRO in his case has taken place but that a settlement has not as yet been achieved.

not make sense to insist on severance pay for faculty laid off because we could not afford to pay them.”