Colleges Advised They Need Not Declare ‘Exigency’ to Lay Off Tenured Professors

Administrators at ACE seminars are told they may be unnecessarily limiting their options

By ROBERT L. JACOBSON
WASHINGTON

Most colleges and universities can exercise much more discretion than they realize in laying off tenured faculty members, says a lawyer who has been advising dozens of academic administrators in recent months under the aegis of the American Council on Education.

The lawyer, David J. Figuli, former chief legal counsel for the Montana University System and former general counsel for the South Dakota board of regents, also maintains that many institutions may be unnecessarily limiting their legal options by relying primarily on declarations of "financial exigency" as the basis for terminating faculty appointments.

In many cases, he says, college officials may be legally required to do little more than show that—for any one of several reasons beyond their immediate control—they have had to discontinue an instructional program and thus end the employment of certain faculty members.

As long as the officials have not acted arbitrarily or capriciously, or failed to provide due process, Mr. Figuli says, such dismissals are unlikely to be overturned by the courts.

His advice runs counter to the longstanding position of the American Association of University Professors.

The association's widely endorsed 1940 Statement of Principles on Academic Freedom and Tenure says that, except for "adequate cause" or retirement, tenured faculty members can lose their jobs "only under extraordinary circumstances because of financial exigencies."

Related regulations recommended by the A.A.U.P. have led many colleges to agree that tenured faculty members cannot be let go without cause unless the board of trustees first declares a state of financial exigency.

Mr. Figuli, who specializes in litigation and labor relations at a small law firm in Ohio, bases his contrary view on court rulings in various jurisdictions over the past eight years, and especially on a little-noticed decision last summer by the U.S. Court of Appeals for the First Circuit in a suit against Humacao University College of the University of Puerto Rico.

The case involved two tenured professors of physical education whose jobs were eliminated by the institution's governing council in 1978 after it determined that enc...
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**AAUP Committee Splits over Faculty-Rights Issue**

**WASHINGTON**

A special subcommittee of the American Association of University Professors has split 2 to 1 over proposed recommendations for handling faculty rights in the event of internal campus reorganizations or the merger of two institutions.

In either case, the panel says in a draft statement scheduled to be published next month, "a reorganization cannot be allowed to affect the commitments to term and tenure appointments that institutions have made."

However, the panel conceives that when financial exigency leads to the acquisition of one institution by another, it "may not always be feasible" for all tenured faculty members from the acquired institution to be accommodated.

"Regrettably, as such a situation occurs, the statement goes on, "the association believes it would be counter-productive to require closure of the institution—and the resulting dislocation of its entire faculty and student body—as a necessary precondition to efforts made in good faith by other institutions to acquire the largest possible proportion of its faculty."

The statement is favored by two subcommittee members—Peter O. Steiner, a former president of the AAUP, who is professor of economics and law at the University of Michigan, and Paul Strohm, chairman of the English department at Indiana University. It is opposed by the third member, Walter P. Metzger, professor of history at Columbia University.

In a strongly worded dissent, Mr. Metzger, a member of the association's policy-making council, warns that the proposal "might unwittingly contribute to a debacle we should be straining to avert—the massive elimination of tenured faculty as a piecemeal response to a reduced economy."

Jordan E. Kurland, associate general secretary of the AAUP, said he did not think the association would decide soon whether to adopt the proposal as its official policy. —R.L.J.

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Thomas A. Emmett, special assistant to the president of Regis College in Denver and director of the American Council on Education seminars, agrees with Mr. Figuli that many college officials do not fully appreciate how much discretion they have to discontinue programs, even in the absence of a financial emergency.

Mr. Emmett told participants at this month's seminar that they did not have to "blindly follow" the AAUP's recommended policies.

"There is a very clear problem with some of the guidelines, and it's time to take a look at them," he said.