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VIA ELECTRONIC MAIL

Gregory F. Scholtz, Ph.D.
Director, Department of Academic Freedom, Tenure, and Governance
American Association of University Professors
1133 19th Street, NW, Suite 200,
Washington, DC 20036

Re: Response to Letter of October 7, 2020 to The University of Akron

Dear Dr. Scholtz:

The undersigned counsel and his law firm serve as Special Counsel to The University of Akron (the "University") by designation of the Office of the Ohio Attorney General. Please submit all future communications regarding this matter directly to my attention. I am in receipt of your detailed letter to President Gary L. Miller, dated October 7, 2020 (for convenience, the "Oct. 7 letter" hereafter). Please accept this correspondence as the University's substantive response to the numerous concerns and allegations that were levied against the University by your organization.

The University appreciates your patience in affording the University's Administration an opportunity to review carefully the AAUP's concerns and to prepare a thoughtful, reasoned response. While your Oct. 7 letter invited a timely response, the AAUP did not demand any particular action to be taken by the University within any set time period.

It must be emphasized the University is focused on its operations and delivery of academic programming during the COVID-19 pandemic. The University is also currently navigating a plethora of internal, administrative, and legal disputes involving the Akron-AAUP and several of its former faculty members as, e.g., prosecuting and defending several unfair labor practice (ULP) charges and labor grievances, defending a frivolous lawsuit spearheaded by a group of the University's former faculty, and likely defending another lawsuit challenging the State Employee Relations Board's dismissal of nearly two-dozen ULP charges filed against both the University and the Akron-AAUP by that same faculty group. Within this backdrop, the University is also currently bargaining over a successor agreement with the Akron-AAUP. It is the University's prerogative – indeed, its responsibility – to address multiple pending matters in their respective orders of priority. Please also be reminded that the COVID-19 pandemic continues to ravage Ohio's economy and its public health.¹ Protecting our faculty, students, and

¹ At present, more than 40-percent of Ohio's counties (including the County where the University is located) are one level below a stay-at-home, travel-only-when-necessary recommendation.

community from the effects of this unprecedented global catastrophe remains the preeminent focus of our attention.

In your letter, you indicated that “the information in our possession concerning the situation at the University of Akron has come to us primarily from Akron-AAUP and from media accounts.” (Oct. 7 letter, p.6). Glaringly absent from your letter is any mention of the arbitration decision that disposed of the issues you raised. We think AAUP would be remiss to pursue issues already decided through final binding arbitration, particularly based on incomplete, inaccurate information.

Even though AAUP inherently acknowledged it has incomplete information, AAUP made material conclusions and demanded specific remedial action by the University – reinstatement of terminated faculty members – and threatened censure of the University should this demand not be met. This posture flies in the face of basic notions of due process that every person and legal entity in this country demands and is entitled to, not to mention that it also is wholly inconsistent with the norms of evidence-based discourse which the Academy – and presumably the AAUP – holds in highest value. The University is highly skeptical that any information it provides, no matter how overwhelming, will change the AAUP’s determination to censure the University based on the recent RIF of tenured positions.

The University has no intention of withholding information with respect to the objective, demonstrable circumstances that necessitated sweeping and decisive action to reduce expenses at the University – measures that affected not only faculty and non-faculty alike, but also students.² The University has been fully transparent and cooperative with the Akron-AAUP and with the Faculty Senate throughout this process.

In light of what has occurred, the University questions the AAUP’s intervening efforts in the face of a global pandemic, in the absence of any authority over the University. The AAUP has succeeded in demonstrating only that it seems to be out of touch with what occurred at the University and why, and that it lacks the authority to do anything about it. The AAUP has joined Akron-AAUP in engaging in bad faith tactics, thereby becoming a complicit actor. The AAUP should be mindful that its threatened actions would constitute tortious interference with the University’s current and potential contractual relations with its employees, students, vendors and others, for which the University would strongly consider taking appropriate action. The University also will seek redress from the Ohio State Employment Relations Board (SERB) against the Akron-AAUP to protect the interests of the students and community it serves.

The University invites the AAUP to review and consider the complete record of the recently completed arbitration by and between the University and the Akron-AAUP. At the culmination of those proceedings, a mutually appointed labor arbitrator issued a final and binding decision that resolved the very issues AAUP now desires to address. The University has enclosed for your reference the Arbitrator’s well-reasoned written decision, as well as the briefs and exhibits submitted by the parties for the Arbitrator’s

² Before it even contemplated reducing personnel costs, the University had eliminated three athletic sports, thus disappointing the hopes of the student athletes who participated in those sports.



consideration. The University has only omitted from its production those items which are proprietary and confidential.³

As mentioned above, your Oct. 7 letter omits any reference to even the existence of this arbitration proceeding, let alone its outcome – and here it must be emphasized once more that the Arbitrator decisively, overwhelmingly, and unequivocally upheld the University’s decision to invoke the “catastrophic circumstances” provisions in its labor contract, which was part of the negotiated retrenchment language with the Akron-AAUP. The Arbitrator’s decision was emphatically clear: The University lawfully **applied** the labor contract; it did not subvert or bypass any protections on faculty tenure rights contained in that labor contract.

The AAUP’s unjustified threats are an impermissible collateral attack on the Arbitrator’s award, (which by Ohio statute only the AAUP-Akron has a right to challenge and only under the strict provisions of R.C. Chapter 2711, the Ohio Arbitration Act). Notably, Akron-AAUP published a Question and Answer document on its website for RIF’d faculty on October 24, 2020, that stated,

Is there a chance to challenge the arbitrator’s ruling?

No. The CBA stipulates the agreed-upon method for resolving disagreements is through binding arbitration. This is an example of the risk associated with agreeing to that process. There is no right to appeal in binding arbitration as there is in court. Arbitration law greatly favors the enforcement of arbitral awards. There are only a few circumstances in which an arbitrator’s decision might be challenged, and none of those reasons apply in this case. While we believe this is a terrible decision that ignores fundamental facts that we stressed in our briefs, that is not grounds for vacating the decision.

What is the next step in getting everyone reinstated?

We won’t be able to get everyone reinstated. We will have to work on individual grievances.

Given Akron-AAUP’s position with its own membership, the University requests AAUP reconsider its position and withdraw the October 7th letter. Pursuit of this matter by AAUP would be an unlawful intrusion into the University’s contractual rights and interests. If the AAUP insists upon continued interference in this matter and asserting threats of censure to extract a resolution opposite to that embodied in the recent arbitration decision, the University will pursue every available legal recourse against the AAUP to protect its legitimate interests.

While the University trusts that the AAUP’s review of the comprehensive arbitration records will suffice to alleviate all of the AAUP’s apprehensions as set forth in the Oct. 7, 2020 letter, the University

³ Please be aware that the Akron-AAUP had access to all of the exhibits at all relevant times.



would be remiss to ignore the serious inaccuracies and misconceptions that are evident in the aforementioned letter.

The University Has Taken Decisive and Necessary Actions to Preserve the Institution

Your letter insinuates that the University capitalized upon a convenient excuse – the COVID-19 pandemic – to nullify its labor contract in a deliberate effort to deprive ninety-six full-time faculty members of their “academic freedom” and rights, including sixty-nine tenured faculty members. (Oct. 7 letter, p.1) In doing so, the AAUP clearly mischaracterizes what has occurred at the University over the past seven months and is reiterating the same arguments the Akron-AAUP presented to the Arbitrator, which were duly considered and soundly rejected.

The University is proud of its rich 150-year history of academic and research excellence, of its exemplary faculty and students, and of its service to the Akron, Ohio community and beyond. As a state public university, the University has a statutory obligation to balance its budget, and its continued existence and operations depend on a series of specific revenue streams. (University’s Arbitration Brief, pp.7-8) Over the past decade, the University has demonstrated effective and faithful stewardship of its finances despite substantial declines in key revenue streams and enrollment – in other words, the University has made the tough calls to achieve proportionate, necessary reductions in its expenditures. (Id, pp. 9-14) In normal times, these decisions can be undertaken by a slow, methodical process that includes exhaustive meetings and deliberations by and between the Administration, the Akron-AAUP, the Faculty Senate, the University Council and other stakeholders.

This year is not “normal times.” No one predicted what was in store for the human race in 2020. The COVID-19 pandemic exemplifies the definition of an unforeseeable economic and public health crisis – a catastrophic circumstance.

Ohio’s response to this pandemic launched in earnest on March 10, 2020, and the University acted immediately and decisively to protect its students, faculty, and the institution from the risk of exposure and transmission of this deadly pathogen. As the global economy ground to a sudden, screeching halt, it was apparent that the University would not be immune to the economic fallout. The University began to project a \$65-million budget deficit (a 20% reduction in its operating budget) as of May 6, 2020. (Id, p.29) The existence and severity of this financial maelstrom is beyond any serious dispute. To the extent that the AAUP’s Oct. 7th letter implies that no “catastrophic circumstances” indeed existed at the University, Arbitrator Buettner confirmed the University’s characterization of the circumstances as catastrophic.

As the COVID-19 crisis continued to rage unabated, the University took painful steps across-the-board to secure necessary cost savings and mitigate the jeopardy that the University faced. Sweeping cuts were made, beginning with athletics and extending to the consolidation of academic units, the implementation of new workforce reduction and furlough provisions, temporary diminution of all non-bargaining staff base salaries, increases to employee contributions for insurance premiums, the elimination of retiree benefits for non-bargaining personnel, and more. The University also negotiated and obtained critical concessions from each of its non-faculty bargaining units, which included wage and benefit



reductions, furloughs, and the elimination of retiree benefits from two separate Communications Workers of America, Local 4302 (“CWA”) bargaining units and from the Fraternal Order of Police/Ohio Labor Council, Inc. (“FOP”). (Id, p.47-48)

The catalyst for the AAUP’s Oct. 7th letter was the elimination of 97 faculty positions and the layoff of 67 bargaining unit faculty on August 21, 2020. But this decision did not occur *ex nihilo* or in a vacuum. In downplaying the seriousness of the COVID-19 pandemic, the AAUP’s letter is surprisingly tone deaf.

Shared Governance in The University’s Pandemic Response

A central theme in your Oct. 7th letter is the importance of shared governance in the operation of institutions of higher education. Those principles resonate with the University’s Administration, as all of the University’s senior leaders have vast experience working in public and private university shared governance, and they do not conflict with the negotiated labor contract by and between the University and its faculty’s exclusive bargaining representative, the Akron-AAUP. The layoffs of University faculty in response to the economic crisis caused by COVID-19 did not conflict with shared governance, even if the layoff process was not a formal part of shared governance (which, as discussed below, involves the University’s Faculty Senate as the key instrument of shared governance). The entire process involved the Akron-AAUP, the legal representative of our full-time faculty for collective bargaining purposes only, even if the outcome was not palatable.

The University was in ongoing, regular communication with the faculty and with their representative, the Akron-AAUP, throughout this pandemic. Contrary to the assertions in your letter, the University went above and beyond to involve the faculty and its exclusive bargaining representative in the rapidly evolving and dire economic situation caused by the spread of COVID-19. By April 21, 2020, the parties had entered into an NDA so that the University could share confidential, privileged, and proprietary information that **only its Board of Trustees had thus far received**. The University provided all requested information and documents in a timely manner, and, in many cases, created documents it was not otherwise required to create – facts that were validated conclusively by the Arbitrator.

On May 19, 2020, the University formally invoked Article 15, Section 12 (referred to as the “force majeure” or “catastrophic circumstances” clause) of the collective bargaining agreement and declared its intent to reduce the number of bargaining unit faculty pursuant to that section. Thus, the University did not abrogate the collective bargaining agreement; rather, it invoked the collective bargaining agreement. What occurred here is not the type of situation that the AAUP perhaps has encountered elsewhere, when the educational institution lacked a *force majeure* clause in its labor contract and attempted to abrogate the labor contract by invoking a common law *force majeure* affirmative defense.

In furtherance of their efforts to address the crisis jointly, the parties met on 18 occasions (both before and after May 19, 2020) to negotiate a mutually acceptable path toward achieving the necessary reductions in expenditures. On July 13, 2020, those discussions culminated in a concessionary tentative agreement that secured cost savings in the areas of salary reductions and increases of health care premiums, sharing in the sacrifice made by all other employee groups at the University.



Further evidence of the joint and transparent effort to address the crisis, the University worked in collaboration with the Akron-AAUP to reduce the number of faculty positions recommended to be eliminated on June 24, 2020 by securing as many retirements as possible.

The University's Board of Trustees approved resolutions on July 15, 2020, to eliminate 178 employment positions at the University (including 97 faculty positions). This decision was not taken lightly, nor was it "out of the blue." It was the culmination of extensive negotiations by and between the University administration and the Akron-AAUP. The Akron-AAUP's membership, however, rejected the 7/13/20 Tentative Agreement after being urged to do so by the Akron-AAUP's leadership.

The University was left with a Hobson's choice. With only days remaining before the Fall 2020 semester began, the University had to continue to position itself to withstand significant financial losses. Accordingly, the University moved forward with the elimination of faculty positions that Article 15, Section 12 of the labor contract authorized it to do. Through negotiated contract provisions that permitted retirement-eligible persons to retire, the University succeeded in reducing the eliminated group to 67 positions. Further, the University agreed to the Akron-AAUP's request to extend the timing of the layoffs from July 15 to August 21, so that these faculty members would receive certain benefits.

All of the University's actions in response to the COVID-19 pandemic, therefore, have been consistent with its commitment to address the situation jointly and transparently and with its obligations under the faculty CBA:

1. The University applied a provision in its collective bargaining agreement with the Akron-AAUP that the parties had negotiated in its very first labor agreement and included in every subsequent labor agreement with no attempt made to negotiate its removal or alter its terms.
2. It actively negotiated with the Akron-AAUP to arrive at a mutually-agreeable resolution of the situation.
3. It succeeded in negotiating a Tentative Agreement that would have avoided the dispute that the AAUP now seeks to intervene (only to have the Akron-AAUP's leadership sabotage the ratification vote).
4. The University and the Akron-AAUP jointly selected a neutral arbitrator to resolve the dispute.
5. The neutral arbitrator issued a final and binding decision that upheld nearly all of the University's actions.

Your Oct. 7 letter cites extensively to certain principles and standards set forth in the following documents:

- *Statement on Government of Colleges and Universities*; and
- *1940 Statement of Principles on Academic Freedom and Tenure*

While the University appreciates the AAUP's thoughtful analysis of its own model policies and guidance documents, it must be emphasized that these documents have no controlling effect or authority



over the relationship between the University and its faculty. As the preamble to the *Statement on Government of Colleges and Universities* explains,

The statement that follows is directed to governing board members, administrators, faculty members, students, and other persons in the belief that the colleges and universities of the United States have reached a stage calling for appropriately shared responsibility and cooperative action among components of the academic institution. The statement is intended to foster constructive joint thought and action, both within the institutional structure and in protection of its integrity against improper intrusions.

It is not intended that the statement serve as a blueprint for governance on a specific campus or as a manual for the regulation of controversy among the components of an academic institution, although it is to be hoped that the principles asserted will lead to the correction of existing weaknesses and assist in the establishment of sound structures and procedures. The statement does not attempt to cover relations with those outside agencies that increasingly are controlling the resources and influencing the patterns of education in our institutions of higher learning: for example, the United States government, state legislatures, state commissions, interstate associations or compacts, and other interinstitutional arrangements. However, it is hoped that the statement will be helpful to these agencies in their consideration of educational matters. [Emphasis added].

The Preamble declares that the *Statement* fosters “constructive thought and action,” which is precisely what the University sought to do from the beginning to the end of this situation. The *Statement*, however, is not intended to be a “blueprint for governance” or a “manual for regulation of controversy,” which seems to be precisely what the AAUP seeks to impose upon the University. Nor does the *Statement* attempt to “cover relations with . . . outside agencies [such as] state legislatures,” yet the AAUP seems to ignore that a significant cause of the University’s need to implement faculty layoffs under the “catastrophic circumstances” provision was the Ohio General Assembly’s sudden and serious reduction in the State’s funding of Ohio’s public universities. Thus, the AAUP seems to misapply its own *Statement* in pursuit of this matter.

In your letter, AAUP also claims that “Article 9 of the collective bargaining agreement currently in force between Akron-AAUP and the University of Akron states that the university subscribes to the 1940 Statement, which it quotes at length.” But this is not entirely accurate.

The applicable CBA does not incorporate either of the above-referenced documents as part of the “law of the shop” by and between the Akron-AAUP and the University. Nor does it express the University’s “subscription” to either of those documents in their entirety. Rather, Article 9 expresses several common points of agreement between the University and Akron-AAUP on the issue of academic freedom, and quotes agreed-upon language drawn from the 1940 Statement and from the Statement on Professional Ethics. Put simply, the AAUP has no legal interest whatsoever as a party or third-party beneficiary to the CBA.



Further, while the AAUP advocates for an extension of shared governance to all matters of “faculty status” that is not what the faculty of the University negotiated in their CBA. Article 10 of the parties’ CBA describes, at length, the role of Faculty in shared governance of this institution. These provisions begin with Section 1, which reads in pertinent part:

The government of the University is vested in a board of eleven trustees who shall be appointed by the Governor, with the advice and consent of the Ohio Senate. The authority of government vested by law in the Board shall in fact be exercised by the Board. The Board may consult with Faculty Senate about shared collegial academic governance in such fundamental areas as curriculum, subject matter and methods of instruction, and faculty research. Administrative decisions about the utilization of available resources, organizational structure, the operation and staffing of all auxiliary facilities, and administrative personnel shall be the exclusive prerogative of the Board, consistent with Article 3 (Management Rights).

Notwithstanding the exclusive right of Akron-AAUP to negotiate and reach agreement on terms and conditions of employment, recognized in Article 2 (Recognition), and the right of the University to carry out its ordinary and customary functions of management, recognized in Article 3 (Management Rights), the parties agree that it is mutually desirable that the collegial system of shared academic governance be maintained and strengthened so that faculty will have a mechanism and procedures, independent of collective bargaining, for appropriate participation in the governance of the University. . . .

Authority to govern the University is vested in its Board. “Shared governance” is normative in academic matters such as “curriculum, subject matter and methods of instruction, and faculty research,” but even this negotiated language is permissive, not mandatory. But “[a]dministrative decisions” about resources and structure are, and always have been, the exclusive prerogative of the Board.

The University’s faculty do “have a mechanism and procedures, independent of collective bargaining, for appropriate participation in the governance of the University,” consistent with Article 10. That body is the Faculty Senate. As set forth in the University’s arbitration brief, the Faculty Senate was fully informed and involved in the budgetary decision making to respond to COVID-19. (See pp.28, 31).



The University Was Faced with Catastrophic Circumstances

Your Oct. 7 letter further expounds upon the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure*. In particular, your letter focuses on "Regulation 4c, 'Financial Exigency.'" You also quote from "*On Institutional Problems Resulting from Financial Exigency*." The AAUP seemingly invokes these documents in an attempt to argue that the fallout from the COVID-19 pandemic failed to constitute "financial exigency" as the AAUP defines it. AAUP's beliefs are simply irrelevant. Akron-AAUP and the University submitted this issue to a mutually-selected arbitrator who conclusively decided the COVID-19 pandemic created financial catastrophic circumstances at this University. The issue has been adjudicated – a final and binding decision that Akron-AAUP determined has no basis upon which to appeal.

Of course, it must be emphasized once more that these AAUP guidance documents are not binding authority, nor are these a component of the CBA that governs employment relationships of the University's faculty. The AAUP's repeated assertions about what Regulation 4c "requires" and your concerns that the University "disregarded almost all of the principles and standards set forth in Regulation 4c" are duly noted. However, Regulation 4c was not the standard that the Akron-AAUP and the University collectively bargained. If the University of Akron had disregarded its CBA to follow Regulation 4c, it would have committed an unfair labor practice. Worse, if (as the AAUP clearly wishes) the Arbitrator had disregarded Article 15, Section 12 and applied Regulation 4c instead, he would have "exceeded [his] authority" within the meaning of Ohio Revised Code Section 2711.10, and his award would be required to be vacated on those grounds.

Instead, the Arbitrator properly adhered to the CBA. Article 15, Section 12 of the CBA prescribes the impact of "catastrophic circumstances" on the default retrenchment procedures:

Section 12. The procedure for retrenchment set forth in this Article is designed to accommodate both the orderly change in the University and reductions that must accompany more abrupt changes in circumstances. The parties recognize that catastrophic circumstances, such as force majeure, could develop which are beyond the control of the University and would render impossible or unfeasible the implementation of procedures set forth in this Article. Therefore, this Section 12 shall not be used to accomplish retrenchment as set forth in this Article. If such unforeseen, uncontrolled and catastrophic circumstances should occur, then the University agrees that, before taking any action that could be interpreted as bypassing the retrenchment procedures, representatives of the University will meet with representatives of the Akron-AAUP to discuss and show evidence of the circumstances described above and that this evidence will at least satisfy the requirements outlined in Section 3(A) of this Article and to discuss the proposed course of action.

The Akron-AAUP grieved the University's invocation of Article 15, Section 12 on June 8, 2020. The Akron-AAUP argued that:

- The University had not demonstrated that the present circumstances are sufficient to justify the use of the force majeure clause.



- The force majeure clause did not excuse the University from complying with Sections 6 through 11 of Article 15.
- The University did not discuss its “proposed course of action” with the Akron-AAUP as required by Article 15, Section 12.

The Akron-AAUP sought a stay of the implementation of Article 15, Section 12 unless and until:

- circumstances outside of the University’s control exist which justify invocation of Article 15 Section 12;
- the University complies with Article 15, Sections 6 through 11; and
- the University meets with Akron-AAUP to discuss its proposed course of action.

The parties exchanged briefs and rebuttal briefs, and Arbitrator Jack Buettner issued his opinion and award on September 18, 2020. The Arbitrator determined that the University had properly invoked the “catastrophic circumstances” retrenchment provision, noting in his analysis the severity of the situation:

Section 12 contains a force majeure clause. According to Black’s Law Dictionary, a force majeure is an event or effect, both acts of nature or acts of people, that can neither be anticipated nor controlled. (Abridged 8th Ed., Thompson/West, 2005, p.538) To deny that the COVID pandemic is catastrophic would be to ignore the extent and spread of the disease. It is a worldwide pandemic with worldwide effects. As of September 17, 2020, 6,613,331 total cases were report in the USA with a death toll of 196,277. Ohio alone had 133,046 confirmed cases. (cdc.gov/coronavirus/2019-ncov/cases-updates) The economy is still down 11.5 million jobs from pre-COVID times. Many businesses are in severe distress with large companies declaring bankruptcy and smaller businesses struggling to survive. Unpaid rent is as high as \$30 billion. [The Kiplinger Letter, Forecasts for Executives and Investors, 2020. The Economy. (Vol.97, No. 36), p.1]

(Award pp.19-20). The Arbitrator’s analysis continued:

Having established that a *force majeure* did, indeed, exist, the University needed to satisfy the requirements in Section 1(A):

Retrenchment may be necessary when a judgment made by action of the Board, based upon evidence made available to the Akron AAUP according to the schedules set forth in this Article, indicates one (1) of the four (4) circumstances listed in Section 1 (A)(4) exists at the University.

1. Financial exigency, defined as financial problems so severe that they threaten the University’s ability to maintain its operations at an acceptable level;
2. Significant reduction in enrollment of a college, department, or program continuing over five (5) or more academic semesters (not including



- summer) and which is expected to persist;
3. Discontinuation of a college, department or program;
 4. Action by the Ohio Board of Regents or Ohio General Assembly which requires the University to implement a retrenchment.

According to Article 15, Section 1(A), only one of these four circumstances needed to be present to determine the necessity for retrenchment. The Arbitrator found that “[t]he University showed that at least three (3) circumstances were present, including financial exigency.⁴ Catastrophic circumstances did exist with the COVID pandemic that were unforeseeable and beyond the control of the University, so invocation of Section 12 was justified.” (Award, p.24)

Final Remarks

Contrary to the information provided to you by the Akron-AAUP (Oct. 7 letter, p.4), both the Faculty Senate and the Akron-AAUP were involved extensively in the discussion of the University’s financial situation. There were no fewer than 18 negotiation sessions by and between the University and Akron-AAUP and voluminous information was provided to the faculty via their exclusive representative. The faculty had ample opportunities under the circumstances (which required swift and decisive action) to engage the Board of Trustees and Administration, and they had advance notice of the positions identified by the University for elimination. The faculty had an opportunity to introduce a written assessment of the University’s financial condition before and during the arbitration proceedings -- and did so.

Your letter also accuses the University of institutional racism: specifically, in the targeting persons of color in the faculty layoffs. Such baseless and unsupported allegations inappropriately feed on the emotion of the deep national introspection about race now underway in this country, are dangerous, and have no place in this matter. As Akron-AAUP knows, the University made its decisions informed by academic program needs. No person was targeted based on any personal characteristic. Such accusations are offensive and denied in their entirety. Should AAUP’s defamatory and slanderous rhetoric continue and/or damage the University’s relations with its current and potential employees, students, vendors, alumni, community leaders and elected officials, the University will evaluate pursuing legal action against the AAUP.

As AAUP conceded in the Oct. 7th letter, the propriety of the layoffs is a matter committed to the grievance-arbitration processes of the CBA between the Akron-AAUP and the University. To the extent that the University’s faculty contend that there was any disparate treatment in the layoff process, that matter will be resolved by the mechanisms negotiated by the parties – not by your organization.

⁴ The Arbitrator rejected the Akron-AAUP’s interpretation of Article 15, including its artificial distinction between retrenchment “procedures” (in Sections 2 through 4 of Article 15) and faculty “rights” (Sections 6 through 11). (Award, p.24). The Arbitrator found the application of the retrenchment provision was valid, subject to the University “complying with Sections 9 and 10 which are feasible and possible to implement since there is no immediate financial impact or time frame.” (These two provisions affect the reemployment of laid-off faculty in the future).



The University invites the AAUP to promptly halt and withdraw its threatened intrusions into the collective bargaining affairs of The University of Akron, and to cease its collateral attack on the award of Arbitrator Jack Buettner. The University further encourages the AAUP to review the extensive record from the arbitration proceedings, which establishes conclusively the bases for, and the appropriateness of, the layoff decisions

While the University is open to continuing a dialogue with the AAUP, it cannot do so at this time. The University's highest priority regarding pending labor relations matters involves negotiating and securing a new collective bargaining agreement with the Akron-AAUP. The current collective bargaining agreement expires on December 31, 2020, and the University must be prepared for the possibility that these negotiations will continue through the expiration date and possibly beyond. In addition, actively participating in a dialogue with the AAUP on matters related to mandatory subjects of bargaining and our labor relations with the Akron-AAUP would be an inappropriate intrusion into the University's collective bargaining process. Therefore, it would not be appropriate to actively engage with the AAUP until the negotiations for a new CBA with Akron-AAUP have concluded.

Finally, the University will not rescind the employment decisions that it made to safeguard the University from the catastrophic circumstances of this COVID-19 pandemic, and to the extent that the AAUP is entrenched in its demand for a "resolution" on such terms, the AAUP will be necessarily disappointed. Should the AAUP decide to take its disappointment to a "higher level," then the University will respond with appropriate action.

Very truly yours,

ZASHIN & RICH CO., L.P.A.

/s/George S. Crisci

George S. Crisci

GSC/gsc

Enclosures

cc: The University of Akron (w/o encls.; via electronic mail)

