

**THE NEW YORK STATE CONFERENCE
AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS
FALL MEETING - FRIDAY, OCTOBER 16, 2009**

**Report of the Chair of the
Independent Council**

The Independent Council covers the private universities in the NYS AAUP Conference. As Chair, I have the following issue to raise regarding outside employment and constitutional protections:

Issue: To what extent can our employers (colleges and universities) control our outside employment? It seems to me that the concern should be for whether or not we are fulfilling our regular job duties and not what we are doing with our spare time.

Discussion: I think that the answer is important, because we do not all enjoy the same constitutional protections against abuse. Section 1 of the 14th Amendment states that “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” Hence, public school faculty members (at SUNY Council and CUNY Council schools) cannot be deprived of earning income on the outside [except by contractual agreement], but private school faculty members (at Independent Council schools) do not enjoy the same constitutional protections [UNLESS, they have a specially negotiated clause in their Collective Bargaining Agreements or Faculty Handbooks).

St. John’s University, Queens, NY, a private school, has a local, collective bargaining chapter of AAUP. The Collective Bargaining Agreement sets forth the duties, responsibilities, and obligations of the faculty members to the University, but it and its companion document, the University Statutes, are silent on outside employment. Recently, the Administration at St. John’s produced what it claimed to be a policy against outside employment and sought to enforce it selectively against a few faculty members. I queried the local leadership about the policy and the President, Frank LeVeness, said that he would look into it “right away.” That was August 26, 2009, almost two months ago, and we have heard NOTHING.

It seems to me that the faculty members at St. John’s are in limbo. We are not protected by the Constitution (from the taking of property without our consent), we have weak-kneed Union leaders (who either refuse to investigate issues or investigate them to death until faculty members give up; they never succeed in closing them or putting them to bed; we never get resolutions), and we are at the mercy of the University. On the one hand, the faculty members have nothing in their governing documents that prohibits outside employment. On the other hand, the Administration is free to pull out a policy when it feels the need, try to enforce it selectively, the AAUP takes forever and a day to “investigate” the legitimacy of the policy, but in the meantime,

if the affected faculty member objects, the University can bring the faculty member up on disciplinary charges and have a tenured faculty member terminated for a bogus policy.

Am I missing something?

Steve Goldberg sent me this link,

<http://www.aaup.org/AAUP/protect/legal/topics/conflicts.htm>,

contains a pretty exhaustive discussion of the topic. However, AAUP has not taken an official stand on the issue. Can you please start a dialogue on this issue at the NYS Conference? Does AAUP need to come up with a well-identified, well-articulated policy on this issue to cover, especially, faculty members in schools where nothing has been formally negotiated agreed?

Thank you.

Joyce Furfero, Chair
NYSC Independent Council