

# Report from Ad Hoc Committee to Explore Unionization and Collective Bargaining

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Charge: Weigh both the possible benefits and possible drawbacks of unionization at Missouri State University (Faculty Senate Resolution SR 15-09/10).

Definition of Unionization: The term “unionization” in this document refers both to forming a chapter of a national union on campus and to using that chapter to engage in collective bargaining with the university administration.

Recommendations: The committee recommends adoption of the attached Senate Resolution to disseminate the Report from the Committee on Exploring Unionization to all faculty members.

## Index

<u>Executive summary</u>	3
<u>Committee Methodology used in Researching Unionization Issues</u>	5
<u>Definition of Unionization</u>	6
<u>Legal Issues Regarding Unionization and Collective Bargaining for Missouri Professors</u>	6
<u>Powers of the Board of Governors and President</u>	7
<u>Problem Statement: Issues Precipitating Senate Charge to Investigate Unionization</u>	8
<u>Union Services that Potentially Address Issues Faced by MSU Faculty</u>	9
<u>Cost/Benefit Analysis of Unionization</u>	11
<u>Conclusion</u>	12
<u>Resolution</u>	13
<u>Appendix I: Critical Incidents</u>	14
<u>Appendix II: Strengths and Weaknesses of AAUP, AFT and NEA</u>	17
<u>Appendix III: Salary Comparison between Unionized and non-Unionized Universities</u>	19

## Executive Summary

In its April meeting, per resolution SR 15-09/10, the Faculty Senate Executive Committee was directed by the Faculty Senate to create the Ad Hoc Committee to Explore Unionization (CEU) and investigate drawbacks and benefits of unionization. The CEU met at the end of the Spring semester of 2010, throughout the summer, and weekly in the Fall of 2010. As a first step, the CEU investigated the *Critical Incidents* that preceded the Senate resolution in order to create a *Problem Statement*, which appears in this report. The CEU concluded that the benefits offered to MSU faculty through unionization could best be understood in light of the concerns about shared governance that precipitated the Senate's charge.

To meet its charge, the CEU gathered information from various sources and from a variety of points of view: emails and discussions from faculty members, salary and benefit data from other institutions, both unionized and non-unionized (including peer institutions), and research on the legal implications of unionization in Missouri. The committee also met with the University President, the University Legal Counsel, and the Provost. In addition, leaders of three national unions were interviewed by the CEU—the American Association of University Professors, the American Federation of Teachers, and the National Education Association.

In 2007, the Missouri Supreme Court found that public employees have the legal right under the Missouri constitution to form collective bargaining units. The report describes the implications of MSU faculty exercising that right.

- A decision to form a faculty collective bargaining unit requires a majority vote of *voting* faculty.
- At present Missouri Law does not include a right to strike by public employees.
- However, Missouri law does require that when public employees form a collective bargaining unit that
  1. An employment contract must be negotiated in *good faith*,
  2. The employment contract must be ratified by members of the collective bargaining unit and
  3. The ratified employment contract is legally binding for both parties.
- Changes to the employment contract would require further good faith negotiations to form a new legally binding employment contract.
- Under Missouri law, a vote in favor of a collective bargaining unit does not obligate the faculty member to either join a union or to pay union dues.
- All faculty members in the collective bargaining unit, whether union members or not, are represented by the union in their good faith negotiations with the administration.
- Further, all faculty members in the unit regardless of union membership would be eligible to vote on any contract resulting from the collective bargaining process.

The CEU identified services offered by Unions that could address each issue contained in the *Problem Statement* and developed a list of drawbacks and benefits to unionization. One significant drawback with unionization is the fact that the union will create another administrative structure for faculty. There is also a possibility that unionization might further divide faculty and administration into “us” and “them” and interfere with the mutual commitment, respect, and collegiality necessary for healthy shared governance.

The committee views the legally binding nature of negotiated employment contracts and the requirement of *good faith bargaining* as the primary benefits of unionization, particularly given current economic and political conditions facing higher education in Missouri.

Ongoing discussions about changes to funding may significantly alter the structure of higher education in ways that impact faculty working conditions, academic freedom, faculty control of curriculum, autonomy within universities, and the quality of higher education offered to Missouri's students. Unionization provides faculty with a stronger collective voice for contributing to important discussions during a time when systemic transformations to higher education in general, and to MSU in particular, are on the table.

## **Conclusions**

Given the severity of the challenges facing higher education—as illustrated in part by problems that led to the formation of this committee—and given the potential benefits to faculty unionization at Missouri State University, the committee believes that the question of unionization deserves serious examination and discussion by faculty. Because all faculty members have the right to form a union and pursue collective bargaining, and because such action would take place independently of the Faculty Senate and its committees, it is needless to offer a specific recommendation to Senate regarding unionization. For their part, the committee members agree unanimously that the benefits of unionization outweigh the drawbacks.

## Committee Methodology used in Researching Unionization Issues

We began our process by focusing on the charge from the Senate Executive Committee—to weigh both the possible benefits and possible drawbacks of unionization at Missouri State—and proceeded to investigate the impetus of the Senate’s request for an investigation of unionization. Specific university events that occurred prior to our charge, including the rationale for the charge drafted in the Senate Resolution (and our collective recall of the Senate debate), provided the foundation of a “Problem Statement.” Deliberations among committee members (several of whom had interacted frequently with both the prior administration and board) and information acquired from colleagues allowed us to investigate whether the issues leading to unionization were limited to recent events or have been occurring at MSU over time. The results of these deliberations are documented in [Appendix I](#) to this report.

Several central concerns emerging from our investigation of prior issues appear in our problem statement. Concerns most notably related to the role of faculty in shared governance at Missouri State and about the powers and authority of the Board and central administration. While other more specific concerns were raised, most fell under the two categories listed above, though others—including salary and benefits—were considered as well.

To meet our charge, the committee gathered information from various sources and from a variety of points of view: emails and discussions from faculty members, salary and benefit data from other institutions, both unionized and non-unionized (including peer institutions), interviews with faculty unions, research on the legal implications of unionization in Missouri, and an interview with the University President. In early August, we met with three national unions that represent faculty—American Association of University Professors, American Federation of Teachers, and National Education Association—to gather further information about the process by which a faculty union could be formed and recognized in Missouri and, to a lesser extent, about the process of collective bargaining should a union be formed. We also wanted to discover what support each union could offer faculty; all of the unions were willing and capable of supporting unionization should the MSU faculty choose to seek collective bargaining, but the NEA has the most experience unionizing in Missouri and offers the most extensive services ([see Appendix II](#)).

To gain the perspective of the MSU administration, the committee met with President Cofer, Provost McCarthy, and General Counsel Clif Smart in September. The President stated that if faculty chose to unionize, he would work with the union and the faculty representation within the union, and that he took no official position either in favor of or against faculty unionization. He suggested that the real test was whether a faculty unionized for collective bargaining would help the students and the educational mission of the university, and whether it was in the best interests of the institution as a whole—he asked several times, “does it add value?” President Cofer also noted that he has no direct experience at an institution with a unionized faculty, though MSU does have contracts with both the IBEW and Teamsters on campus.

The following report reflects the results of our process and extensive deliberations, and includes the collective input and best thinking of the entire committee about the issue of unionization at Missouri State.

## **Definition of Unionization**

MSU faculty have a long history of unionizing efforts, including past chapters of the AFT (American Federation of Teachers) and the AAUP (American Association of University Professors) on campus. At present, no union chapter exists on campus although faculty members may join one of the unions commonly representing university professors. The charge by the Faculty Senate is to investigate the issues involved with forming a collective bargaining unit under one of the national unions that represent university professors. Collective bargaining allows the union to negotiate with the university administration on behalf of all faculty members for a legally enforceable employment contract.

Until 2007, it was held to be illegal for public employees in Missouri to form collective bargaining units. A Missouri Supreme Court decision overturned those laws and previous decisions and found that public employees in Missouri were legally allowed to organize for collective bargaining purposes. Thus, unionization in this document refers to both forming a chapter of a national union on campus and to using that chapter to engage in collective bargaining with the university administration.

## **Legal Issues Regarding Unionization and Collective Bargaining for Missouri Professors**

The twin rights of employees to organize and to bargain collectively—that is, to negotiate legally binding employment contracts through elected representatives—are guaranteed by Article I, Section 29 of the Missouri Constitution, adopted in 1945: “employees shall have the right to organize and to bargain collectively through representatives of their own choosing.” However, until 2007, this provision was held by courts to apply only to private sector employees; a series of legal decisions from 1947 onward prohibited public employees from collective bargaining, based on the doctrine that allowing public employees to negotiate with employers directly abrogated legislative discretion in negotiating future contracts.

Public employees were permitted, under the Public Labor Law (1965, revised in 1967 and 1969), to organize, choose representatives, and petition employers for change. However, though the law required that employers “meet, confer and discuss” with union representatives, employers were not required to bargain in good faith with those representatives, were not required to adopt any proposed changes, and could change the terms of the employment agreement, unilaterally, as long as proper procedures were followed in communicating the changes.

In *Independence-National Education Association v. Independence School District* (2007), the Missouri Supreme Court reversed decades of legal precedent, ruling that Article I, Section 29 in no way excluded public employees from collective bargaining, and that such bargaining does not undercut legislative discretion in negotiating future contracts. Furthermore, the Court held that contracts negotiated through collective bargaining are legally binding and are not subject to unilateral revision by employers, opening the door for Missouri public sector employees to elect representatives to bargain collectively the conditions of their employment.

Despite the Supreme Court’s ruling, there are still several legal issues that face collective bargaining for teachers and professors in Missouri. One is the question of strikes. While nothing in the Missouri Revised Statutes explicitly forbids public employees the right to strike, the right to strike is explicitly not granted (MRS 105.530: “Nothing contained in sections 105.500 to 105.530 shall be construed as granting

a right to employees covered ... to strike”), and it is generally held that current legal precedent forbids Missouri public employees to strike. However, it should be noted that the lack of the power to strike does not impinge on the right to bargain collectively in good faith with employers, nor does it impinge upon the fact that collectively bargained contracts are legally binding on both parties.

More importantly, the *Independence-NEA v. Independence School District* decision is so recent that the legal process by which teachers can form collective bargaining units is still unsettled. Though the right to bargain is enshrined in the Constitution, the means by which a bargaining unit can be established is unsettled—particularly for teachers/professors, National Guard members, and State Highway Patrol officers, the three groups excluded from the Public Labor Law. It is therefore likely that further revisions to Missouri law—either through lawsuits and court decisions or through legislative action—will be necessary to formalize the process by which teachers can assert their constitutional right to bargain collectively. But even without the existence of a formal process, unions—including the Springfield Public Schools’ teachers—have successfully formed collective bargaining units on the heels of the Court’s 2007 decision.

For other public employees, the State Board of Mediation is charged with receiving petitions and conducting elections related to collective bargaining, but the three groups listed above are explicitly excluded from requesting action from the Board of Mediation. As a result of that exclusion and in the absence of other legislation outlining the framework by which such elections would take place, employers must cooperate in holding elections to determine a collective bargaining unit. Naturally, such cooperation may be difficult to obtain, but recent local history suggests that even reluctant employers can be persuaded to cooperate if support for collective bargaining is strong. The unionization of Springfield Public Schools’ teachers makes it clear that even though the statutory definition of collective bargaining in the state remains nebulous, there are avenues for successful unionization and bargaining. In 2008, after repeated requests to hold such an election were denied by the Springfield Public School District, the NEA brought suit against the District to conduct the election. Ultimately, the district agreed to cooperate in holding the election that made the NEA the sole bargaining representative for Springfield Public Schools’ teachers.

Not only does this offer an example of how forming a collective bargaining unit can work given existing laws, the local publicity surrounding this case and the victory of the union might lessen potential opposition from administrators elsewhere. In short, the current legal obstacles facing collective bargaining for teachers/professors in Missouri are significantly less daunting than at any point in history, and a blueprint already exists for successfully overcoming the obstacles that do remain.

## **Powers of the Board of Governors and President**

The Missouri Constitution and Missouri statutes establish the authority of the Board of Governors. The Missouri State University Board adopted and regularly amends Bylaws that spell out specific roles and responsibilities. The Bylaws allow the Board to adopt “governing policies” that apply to its members, officers, agents, and employees (G1.01-2 Article II, Section 4b).

The Board has the authority to adopt, amend, or repeal any “governing policies” at any meeting of the Board, effective immediately. Additionally, the Executive Committee of the Board can act for the Board between meetings (G1.01-4 Article IV, Section 5). The Board has the authority to “direct the President to revise Operating Policies” (G1.01-2 Article II, Section 13). The Board also delegates to the President the authority to act for and on behalf of the Board (G1.01-10 Article X, Section 2).

Any authority left to the Faculty is delegated by the Board and presumably can be amended or repealed at any time (G1.01-11 Article 11, Section 2). In addition, the President “shall possess the veto power over all action of the faculty, its committees, or subdivisions” (G1.01-11 Article 11, Section 3).

The *Faculty Handbook* presumably can be amended, repealed, or overturned at any time.

The challenge of unionization is to negotiate policies and procedures that cannot be amended unilaterally by the Board. These policies and procedures would be negotiated and agreed to by both parties, and any changes to those policies must be negotiated. It also should be noted that in our discussion with President Cofer, he expressed a concern that the binding contracts that would result from collective bargaining could be “too binding” and would not allow rapid changes to occur if such changes became necessary.

## **Problem Statement: Issues Precipitating Senate Charge to Investigate Unionization**

### **Issue 1: State of Shared Governance**

Shared governance is a system of checks and balances that allows all of the important constituencies in the university to participate meaningfully in policy decisions, especially those that impact employment conditions and academic programs. As such, shared governance is crucial to a vibrant and well-functioning university. Based on reports prepared by the faculty (e.g., State of MSU Leadership and Faculty Concerns Survey reports from 2001 to present), 2010 Senate Actions (SR 18-09/10; SR 16-09/10), and “Critical Incidents” ([Appendix I](#)), faculty have expressed concerns about the status of shared governance at MSU for a long time. Recent incidents at the University, immediately precipitating the charge to the Ad Hoc Committee, have included actions by the University President to circumvent a shared and collaborative process to revise the personnel policies at Missouri State University—a process deeply entrenched in the university’s history. Problematic even at the level of the Board of Governors, the spirit of mutual respect, community, and common commitment to excellence that is supposed to bring the Board, university administrators, and faculty together to collectively address important university issues is missing.

### **Issue 2: Due Process with Respect to Published University Policies**

As noted above, shared governance relates to how policy and employment processes are enacted. Due process refers to those policies created via shared governance. As illustrated by the “[Critical Incidents](#)” document, administrators have not consistently followed policy or precedent in issues pertaining to revisions of the Faculty Handbook, grievance, and reassignment. Especially problematic are instances where lack of due process rights has resulted in lawsuits against the university. Adhering to rules and policy statements is important for establishing trust between administrators and faculty, for ensuring the fair treatment of faculty, for ensuring that personal conflicts between faculty and administrators do not result in personnel decisions, and, more generally, for faculty and staff morale.

### **Issue 3: Faculty Control of Curricular Matters**

Long-standing policy at MSU and at all institutions of higher education is to cede control of curricular decision-making to the faculty body. At MSU, faculty control of the curriculum is officially granted to faculty by Board of Governors policy and is institutionalized in the Faculty Handbook. Faculty control of the curriculum allows MSU curriculum to be developed, implemented, and evaluated based on professional standards in individual programs.

However, recent incidents have shaken faculty confidence in the administration's willingness to allow faculty to assert its rightful control of curriculum. Some incidents are symbolic, such as the Board's confrontation with a faculty leader after a particular course, championed by the board, did not receive Faculty Senate approval, and the University President's attempt to assert increased control over the deletion of curricular programs based solely on "non-financial viability." Other curricular issues are more local in nature, such as Deans asserting control over curricular programs and program evaluation through staffing decisions made without the consent of the full college faculty. The problem with respect to the curriculum is not one of the university policy but rather of administrators circumventing or not following policy.

#### **Issue 4: Protection and Expansion of Resources used for Academic Programs**

During pressing budgetary times, faculty are concerned with protecting academic resources most important to student learning: 1) hiring and retaining highly productive faculty, 2) procuring and maintaining current and effective technology in the classroom, and 3) prioritizing academic expenditures in classrooms that optimize student learning. Faculty salaries/benefits do not compare favorably to our peer institutions. With respect to other classroom resources, policy decisions that divert larger proportions of revenue to non-academic functions are of concern. One example, as noted in the "Critical Incidents" appendix to this report, concerns the recent practice of the administration to severely cut academic budgets by claiming dire financial emergency and then using the savings to build a reserve fund, which is in turn used to fund buildings (e.g., JQH arena and the new University Recreation Center).

In addition to wages used to recruit and retain faculty, a host of other salary issues exist which are of concern, including salary compression and inversion, equity, merit pay, workload, summer pay, and overload pay. Although not directly salary, the issue of benefits is also of importance in this context. For example, the "Critical Incidents" appendix notes the administration's use of surplus revenues in the benefits fund (dollars directly paid for health and dental benefits by university employees) to fund other initiatives.

#### **Issue 5: Higher Education Issues and Trends in the State of Missouri**

The most pressing state-level issue regards the state's espoused budget crisis and appropriations to higher education. Faculty are concerned that reduced resources create pressures for systemic changes to MSU. Some of the changes occurring as the university adapts to the new fiscal realities may affect the university, faculty, and the quality of education indefinitely. Faculty are particularly concerned about the following issues:

- 1) Even before the severe budgetary crisis hit MSU, administrators attempted to change the employment policies that were put in place to protect faculty under these precise circumstances.
- 2) Program management is occurring at the level of the Coordinating Board of Higher Education rather than locally at the state's universities.
- 3) The academic side of the university, most relevant to the university mission, is not being given appropriate priority.
- 4) The state has historically underfunded MSU on a per student basis when compared to other state institutions.

## **Union Services that Potentially Address Issues Faced by MSU Faculty**

### **Issue 1: State of Shared Governance**

Collective bargaining has the potential to improve shared governance by formalizing the governance process (e.g., policies and procedures for changing policy) and making the results of governance legally

binding. The 2007 Missouri Supreme Court decision requires the administration to bargain in good faith with the union representing faculty on all of the issues that are of concern in the “Critical Incidents” appendix. Once the collective bargaining unit and the administration have agreed to a contract that is then ratified by the faculty, the resultant contract is legally enforceable. Further, the processes through which University policies are changed can be negotiated, defined, and legally enforced through the collective bargaining process.

### **Issue 2: Due Process with Respect to Published University Policies**

As noted in the discussion of Issue 1, unionization results in a negotiated legal employment contract that sets out the terms of employment, including procedures for faculty grievances for violations of the contract. This would include violations of due process rights. Currently, the policy of the university is that the Board has the authority to adopt, amend, or repeal any “governing policies” at any meeting of the Board, effective immediately. Additionally, the Executive Committee of the Board can act for the Board between meetings (G1.01-4 Article IV, Section 5). A negotiated legal employment contract would prohibit the Board from adopting, amending, or repealing policy without collective bargaining.

### **Issue 3: Faculty Control of Curricular Matters**

A legally binding contract also strengthens faculty control of curricular matters by specifying and making enforceable university policy regarding faculty curricular control. With respect to protecting curricular control (or other faculty rights specified in collective bargaining agreements), union membership commonly includes legal representation for violations of the union contract, either collectively or individually.

### **Issue 4: Protection and Expansion of Resources used for Academic Programs**

Protecting academic resources from encroachment is one of the strongest benefits of unionization. Collective bargaining includes all of the issues discussed above including all salary and workload issues. As evidenced by [Appendix III](#), unionization tends to have a largely positive impact on salaries, especially salary increases for current faculty. The Ad Hoc Committee learned that the NEA maintains a large database that documents trends across universities ranging from salaries to proportion of university revenues dedicated to academic resources. Such a resource provides useful information for both faculty and administration with respect to reasonably and realistically making decisions that align resources with the academic mission of the University.

### **Issue 5: Higher Education Issues and Trends in the State of Missouri**

One of the advantages of affiliation with a national union is that it has the resources in place to lobby the state government. In Missouri, this would add another state-level voice for improving the funding for higher education (Missouri is currently ranked 47<sup>th</sup> of 50 states in per capita funding of higher education). Depending on whether that national union represents other public universities in Missouri (currently no 4 year public universities have collective bargaining unions in Missouri although a number have union chapters), it could have the potential to improve MSU’s funding position as well. There are two methods at the state level where MSU’s budget can be positively affected. First, a general increase in funding for Missouri higher education would have a positive impact. Second, a shift of resources toward per student funding formulas would tend to have a positive impact for MSU given low per student funding relative to other state institutions.

## Cost/Benefit Analysis of Unionization

### Pros

- Faculty under no obligation to join the union or pay dues; however, all those in the collective bargaining unit—even those who don't join the union—may vote on bargained contracts
- Collective bargaining for salaries, intellectual property rights, workload
- Faculty decide the composition of the bargaining unit and issues to be negotiated
- Collective bargaining for employment policies, shared governance, promotion & compensation policies
- Collective bargaining agreements *legally binding* for both parties, making that contract enforceable
- Experienced negotiators whose job it is to negotiate (complementing the MSU faculty who rotate into leadership positions)
- National databases assessable for issues as they emerge affecting MSU faculty; helps faculty track university conditions over time and match changes at MSU with national trends
- Knowledge of university system for information gathering (what information is necessary, what form, where it is, persistence in accessing it)
- Legal counsel for professional issues
- Reduced rate for personal counsel
- Two million dollar liability insurance for faculty
- Voice in public policy—linking MSU faculty to the efforts of professional lobbyists on behalf of faculty
- Salary differential between union/non-union universities ([see Appendix III](#))
- Consulting source for local issues—access to national trends
- In periods of institutional transition or times of crisis, union provides a stronger faculty voice

### Cons

- While collective bargaining has been upheld by the Missouri Supreme Court as a state employee right, no statutes for collective bargaining processes currently exist—unclear how effective collective bargaining for higher education can be in Missouri; lack of statutes may also mean long and drawn-out legal battles as faculty attempt to make headway through bargaining
- Difficult and long process in educating faculty, gaining support, organizing
- Dues ranging from \$12.50/month (AAUP) to \$45/month (NEA, after 3 years)
- “Us vs. them” may be accentuated in faculty and administration relationships and such attitudes realistically threaten the relationships that underlie collaboration among faculty and administration.
- Campaign requires engaged faculty who are willing to commit their time.
- Strong leadership among MSU faculty necessary to successfully organize
- Organizing process is usually lengthy and time consuming for faculty active in that process
- Factions within the union may come into conflict (e.g., tenured vs. untenured; instructor vs. tenure track)
- The union creates an additional administrative structure
- Fear that unionization will undermine MSU employee work ethic by protecting low performers and supporting uniformity in the treatment of faculty
- Potential rifts between faculty members who choose to join the union and those who do not

### Other

- Organizing process can be planned over time
- Faculty handbook can be used as a starting point for negotiating employment policy
- Collective bargaining requires a majority of the *voting* faculty members' approval
- Rules for voting for collective bargaining would have to be negotiated with MSU administration

- Relationship between the Faculty Senate and Union can be defined by the MSU faculty, and those who negotiate on behalf of faculty can be decided by MSU faculty
- There is a perception that unions support specific political causes, but no union dues go to political causes.

## **Conclusion**

Given the severity of the challenges facing higher education—as illustrated in part by problems that led to the formation of this committee—and given the potential benefits to faculty unionization at Missouri State University, the committee believes that the question of unionization deserves serious examination and discussion by faculty. Because all faculty members have the right to form a union and pursue collective bargaining, and because such action would take place independently of the Faculty Senate and its committees, it is needless to offer a specific recommendation to Senate regarding unionization. For their part, the committee members agree unanimously that the benefits of unionization outweigh the drawbacks.

## **Resolution**

**Whereas**, the Ad Hoc Committee to Explore Unionization has presented its report to the Faculty Senate (as per Faculty Senate Resolution SR 15-09/10); and,

**Whereas**, this report is of vital interest to all Faculty at Missouri State University;

**Therefore, be it resolved** that the Faculty Senate charges the Chair of the Faculty Senate to distribute the report to all Faculty Members at Missouri State University via the Faculty Senate Website, and as an email attachment.

## Appendix I

### Critical Incidents

Specific university events that occurred prior to our charge, including the rationale for the charge drafted in the Senate Resolution (and our collective recall of the Senate debate), provided the foundation for this list of “Critical Incidents.” Information acquired from committee members (several of whom had interacted frequently with both the prior administration and board) and colleagues provided further information that indicated the issues leading to unionization were not limited to recent events at MSU.

#### **Lack of Shared Governance**

- The Board refused to respond to a Faculty Senate resolution expressing a “vote of no confidence” with respect to the Board’s disregard for shared governance.
- Before the Faculty Senate had considered a proposal from the Task Force on Domestic Partner Benefits or presented it to the Board, the Chair of the Board stated publicly, “it will never fly.”
- The Board requested that the Provost and Faculty Senate provide faculty nominees for the presidential search committee. The Board selected only one of the 12 duly elected nominees to be on the most recent Presidential Search Committee.
- Faculty representation on the 2009-2010 Presidential Search Committee was significantly lower than the previous (2004-2005) Presidential Search Committee.
- The Board refused to respond to the Faculty Senate’s resolution that requested the presidential search committee membership be expanded to include the same percentage of faculty members as the previous presidential search committee.
- When a previous Faculty Senate Chair asked for support to have a faculty member sit on the Board of Governors, similar to the current arrangement that allows a student member on the Board of Governors, one Board member publicly stated “we wouldn’t want the inmates running the asylum.”
- Top down structural changes defining colleges as “cost centers” have moved more decision making to the college level. However, no faculty committees allow faculty shared governance at the college level.
- When committees are formed, including standing, ad hoc, and hiring committees, the common policy is to avoid true faculty representation on these committees by hand-picking select faculty members rather than allowing faculty to pick their own representatives.
- Decisions about which vacant faculty lines to fill at the college level are commonly made without faculty input.

#### **Due Process Violations with Respect to Published University Policies**

- Violating process and precedent, the President submitted a change to the Faculty Handbook directly to the Board of Governors.
- The Board of Governors passed an amendment to change the Faculty Handbook despite being advised by the past Faculty Senate Chair that it violated process and precedent.
- The Board refused to respond to a Faculty Senate resolution requesting that the Board repeal its approval of the amendment to allow faculty reassignment without consent.
- The Board refused to respond to a Faculty Senate resolution requesting that the Board follow its own bylaws when approving changes to the Faculty Handbook.
- Despite Faculty Senate opposition to changes made to the Faculty Handbook using non-standard procedures for the reassignment of faculty without due process, the administration tried to use this same non-standard procedure to change how program elimination occurs on campus. The

Administration requested the power to eliminate programs based *solely* on ‘cost effectiveness,’ with no guarantees that other factors (e.g., importance to General Education, etc.) would be considered, and without the need to consult the Faculty or Faculty Senate. The Administration decided not to pursue these changes after the Faculty Senate inserted language into the proposed Handbook change indicating that all non-financially viable non-academic programs must be eliminated first (e.g., athletics).

- Several Social Work faculty members were “reassigned” without following due process procedures as outlined in the Faculty Handbook.
- The Social Work crisis was labeled by administration as a long-running “faculty” problem, not a problem of accountability involving administrators. No person in an administrative oversight role during the Social Work incident was ever held accountable.

### **Lack of Faculty Control in Curricular Matters**

- The Board has attempted to mandate curriculum (a duty delegated to the faculty by the Bylaws of the Board) by demanding that the Faculty Senate Chair ensure a financial responsibility course be in place in 2010-11.
- The administration has micromanaged course enrollments.
- The administration, both upper and lower, has repeatedly violated the curricular process either by egregiously disregarding deadlines, by pulling curricular proposals from consideration without formally denying them, or by directly submitting proposals in direct violation of the Bylaws of the Faculty.
- The China campus lacks faculty curricular oversight.
- The administration tried to push through an amendment to the Faculty Handbook that allows programs to be eliminated solely for financial reasons. This amendment would change the standard procedure for curricular proposals. The administration has also argued that program elimination is not necessarily a curricular issue.

### **Weak Commitment to the Protection of Resources for Academic Programs**

- During the past several years, the administration has announced a time of financial crisis, which has resulted in severe cuts to academic budgets and flat salaries for faculty and staff. Yet during this same time much of the decrease in academic budgets has been used to subsidize an ever-increasing reserve fund, which has recently been used to help finance a university recreation center. Similar to JQH Arena, the university community has been promised that building the recreation center will not adversely affect the academic mission. However, as noted above, cuts to academics have been used to fund the reserve, which in turn has been used to fund the recreation center.
- The administration has consistently denied access to *actual* (ex post) full year spending figures on a line-by-line basis. The only data provided was *budget* (ex ante) spending figures, which are projections made at the beginning of the year. The University's true priorities are revealed by the amount it *actually* spends. This is the budgeted amount plus or minus additional resources provided by (taken by) the administration after the year has begun. This final increment is "invisible" to the Board, faculty, taxpayers, the press, and others. Only by comparing budgeted amounts and actual amounts spent will it be possible to monitor administration decisions. More specifically, the Board is unable to fulfill its management oversight responsibilities unless it is able to compare actual and budgeted spending figures and the difference between them.
- On multiple occasions, the University President denied several Faculty Senate Chairs’ requests to provide the Chair-elect a seat on the Executive Budget Committee to ensure that the incoming Chair of the Senate has prior experience with the budget process.

- A lack of transparency still exists regarding the funding of the JQH Arena. Although the administration promised that JQH would be self-funding and not adversely affect the academic mission of the university, JQH has not been self-funding during its first 2 years of operation. In a statement released in summer 2010, the administration admitted that the arena had lost money, but claimed that it never promised the arena would be self-funding from the beginning.
- After reducing benefits and increasing family insurance premiums, the administration raided the surpluses in the benefits pool and used the moneys for other purposes, in direct violation of state law and best practices.
- Despite the stated commitment of the prior two administrations to bring MSU faculty salaries to the CUPA averages for comparable universities, significant progress toward that goal has not been made.
- Salary and equity adjustments continue to be made by the administration outside the current merit system, resulting in a handful of faculty receiving fairly large percentage increases with little explanation.
- The compensation to faculty instructing IDS/GEP 101 has remained the same per credit hour from 1996 to present, despite faculty protests, despite the unanimous faculty dissent on the Provost's First Year Experience Committee, and despite a Senate Action receiving unanimous senate support.
- The Provost's *Faculty Workload Policy* stipulates fair faculty compensation for workload to be 2 ½% of salary per credit hour. In the first application of the Provost's workload policy for compensating faculty overload for GEP 101, the Provost sided against that standard for paying faculty, despite a Senate Action.
- A shortfall in the health insurance pool led to the increase of deductibles and costs to faculty and staff. Several years of surpluses in the health insurance pool were allocated by the President for other uses rather than leading to a decrease in deductibles and costs to faculty and staff or to providing a pool to offset future increases. These surpluses were re-allocated despite the protests of a past Faculty Senate Chair and Faculty Senate Executive Committee.
- Administrators returning to faculty are paid at a rate that exceeds what they would have been had they received the top performance evaluations (per faculty merit system) during the length of tenure they served as administrators. Adding such highly paid faculty to departments inflates the departmental averages against which CUPA comparisons are made.
- Academic departments lose faculty lines when administrators return to faculty status, but administration does not lose lines.

## Appendix II

### Union Interviews

#### National Education Association

##### NEA strengths

- Largest national education union
- State and Local offices
- Direct experience with judicial decisions affecting collective bargaining in Missouri. Provided legal resources to successfully overturn ban on collective bargaining by teachers in Missouri (Independence NEA vs. Independence School District)
- Willing and able to pursue legal cases with respect to good faith negotiation and other issues.
- Has higher education board members
- Has presence in higher education in Missouri
- Higher Education Comprehensive Analyses System (i.e., systematic data on higher education).
- Provides the most resources for union membership
- Effective lobbying of state government on higher education issues

##### NEA Weaknesses

- Most expensive (dues top out in four years to \$45 per month)
- Not exclusively a higher education union. Some issues for higher education may come into conflict with traditional education and staff interests.

#### American Federation of Teachers

##### AFT Strengths

- AFT (higher education division) is organized for advancing higher educational issues nationally
- Second largest national education union.
- Have a long history of representing higher education in Missouri (including some non-public 4 year universities)
- Second most resources for union membership
- Would provide both legal resources and organizing resources from state and national level for organizing efforts at MSU

##### AFT Weaknesses

- Currently fewer resources available at the state level. No local resources currently available although these would presumably come if organized with AFT
- Representatives were not as well versed in Missouri Law in terms of organizing. This may be a result of lack of recent experience in organizing collective bargaining education units in Missouri.
- Not exclusively a higher education union. Some issues for higher education may come into conflict with traditional education and staff interests.
- Second most expensive dues

#### American Association of University Professors

##### AAUP Strengths

- Emphasizes local control

- Organization is strictly affiliated with higher education
- Advocates for higher education policy friendly to faculty interests nationally
- Has the most experience historically with faculty shared governance at the university level and related issues
- Least expensive dues (although those dues only support the national organization and not the local chapter)

#### AAUP Weaknesses

- The state organization consists only of part-time faculty members of AAUP chapters affiliated with state universities. No professional staff at the state level. Thus, the AAUP is the least grounded in the state of Missouri, compared to the other unions.
- AAUP is not currently organized as a union although many (approximately 70) AAUP chapters are organized for collective bargaining. AAUP and AFT sometimes work together with specific chapters.
- Fewest resources available to local chapters
- Autonomy so great that committee was left with the impression that AAUP would not be an effective resource for collective bargaining, negotiation, or other issues that would require a strong presence from the 'national' organization. This is especially problematic in Missouri where current state law requires more resources for effective organizing.

**Table 11. Average Salaries and Salary Difference, by Bargaining Status and Discipline, Full-Time Faculty in Public Four-Year Institutions, 2008–09**

Discipline	Average Salaries			Number of Faculty	
	Collective Bargaining	Non-collective Bargaining	Difference	Collective Bargaining	Non-collective Bargaining
Security and Protective Services	\$69,143	\$61,971	\$7,172	511	818
Visual and Performing Arts	65,288	58,452	6,836	3,293	7,790
Agriculture, Agriculture Operations, and Related Sciences	77,889	71,079	6,810	412	1,889
History	67,349	60,657	6,692	1,209	2,934
Natural Resources and Conservation	77,010	70,612	6,398	270	804
Philosophy and Religious Studies	68,577	62,767	5,810	682	1,275
English Language and Literature/Letters	63,414	57,645	5,769	2,986	6,028
Liberal Arts and Sciences, General Studies and Humanities	66,362	61,021	5,341	195	378
Mathematics and Statistics	69,058	63,925	5,133	2,119	4,784
Education	68,169	63,165	5,004	4,676	8,469
Communication, Journalism and Related Services	66,734	61,743	4,991	1,187	2,563
Psychology	70,027	65,079	4,948	1,828	3,608
Library Science	69,536	64,629	4,907	316	310
Foreign Languages, Literatures, and Linguistics	65,052	60,594	4,458	1,349	3,089
Parks, Recreation, Leisure and Fitness Studies	65,491	61,688	3,803	783	1,686
Physical Sciences	71,284	67,662	3,622	2,831	6,154
Computer and Information Sciences and Support Services	84,968	81,563	3,405	1,222	2,572
Social Sciences	70,470	67,066	3,404	3,439	6,581
Public Administration and Social Service Professions	71,270	67,870	3,400	738	1,641
Architecture and Related Services	76,573	73,262	3,311	306	914
<b>All disciplines</b>	<b>72,978</b>	<b>70,135</b>	<b>2,843</b>	<b>43,805</b>	<b>101,876</b>
Engineering Technologies/Technicians	70,846	68,432	2,414	505	932
Biological and Biomedical Sciences	72,701	70,566	2,135	2,387	5,827
Health Professions and Related Clinical Sciences	73,272	71,583	1,689	3,278	12,365
Family and Consumer Sciences/Human Sciences	64,830	64,383	447	356	1,323
Business, Management, Marketing, and Related Support Services	92,588	92,615	-27	3,846	8,721
Area, Ethnic, Cultural, and Gender Studies	70,525	70,927	-402	334	531
Legal Professions and Studies	95,977	96,462	-485	347	1,099
Communications Technologies/Technicians and Support Services	66,873	67,612	-739	37	52
Engineering	89,428	90,382	-954	2,132	6,139
Multi/Interdisciplinary Studies	70,906	74,728	-3,822	178	516

Source: College and University Professional Association, 2009 National Faculty Salary Survey by Discipline and Rank in Four Year-Colleges and Universities.

Note: Sorted in descending order by salary differential. CUPA collects data from a different set of institutions every year; as such, caution should be taken in making year-to-year comparisons. CUPA reports average salaries based on simple averages of institutions, rather than based on the number of faculty.

From: Clery, Suzanne B. and Barry L. Christopher. "Faculty Salaries, 2008-2009." The NEA 2010 Almanac of Higher Education (2010): 7-28