

The Cooper Union for the Advancement of Science and Art and Cooper Union Federation of College Teachers, affiliated with New York State United Teachers, American Federation of Teachers, AFL-CIO. Case 2-CA-17483

5 February 1985

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS

On 15 December 1983 Administrative Law Judge Robert T. Snyder issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs, the Respondent filed cross-exceptions and a brief in support of the order dismissing the complaint, and the New York City Central Labor Council, AFL-CIO filed an amicus brief in support of the Charging Party's exceptions.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent did not violate Section 8(a)(5) and (1) of the Act by withdrawing recognition from and refusing to bargain with the Union. For the reasons set forth below, we do not agree.

The Respondent is a private, state-chartered, tuition-free institution of higher education consisting of three professional degree-granting schools: Engineering, Art, and Architecture. It has a student body of approximately 900, about half of whom are engineering students, and a full-time faculty of approximately 60. In 1974 the Union was certified to represent a unit of full-time faculty members and librarians. Part-time (adjunct) faculty were not included in the bargaining unit. In 1978 the parties entered into their only collective-bargaining agreement, which expired in August 1980. Shortly before the expiration of the agreement the Respondent by its president Lacy informed the Union that it would not negotiate with the Union for a new agreement because it considered the faculty to be managerial employees within the meaning of the Supreme Court's opinion in *NLRB v. Yeshiva University*, 444 U.S. 672 (1980). The issue in this case is whether the faculty employed by the Respondent "formulate and effectuate management policies by expressing and making operative the decisions of

their employer,"² such that they are managerial employees excluded from the coverage of the Act. We summarize below the facts which we regard as determinative of the issues. We review first the formal governance structure for faculty participation in institutional decision making and then actual governance practice.

Formal Governance

The Respondent's charter vests ultimate management and control in a board of trustees. Currently there are 16 trustees, 3 of whom are alumni representatives. There are no faculty representatives. The Respondent's bylaws vest in the president general supervisory powers over its activities, subject to the trustees' control. The bylaws provide that the president's powers include the appointment and removal of administrators, faculty, and staff, and the determination of their duties. The bylaws also vest general supervisory powers over academic affairs and academic officers in a provost. Since 1964 the faculty's role in institutional decision making has been defined formally in a faculty policy manual and a set of "governances." Each professional school has its own governance. The governances have been amended a number of times. Pursuant to the governances, the faculty members of each school meet as a separate deliberative body, collectively referred to as the school's faculty. The governances define the faculty of each school to include, as voting members, the dean and any assistant or associate deans, as well as all full-time faculty members of the school. The dean of each school is designated the permanent chairperson of its faculty with responsibility for calling and presiding over faculty meetings, preparing the agenda, and communicating faculty actions to the president. The governances call for two or three regular faculty meetings each year (depending on the school) and any number of special meetings. The governances also provide for institutionwide joint faculty meetings to be called and presided over by the president. No frequency for such meetings is specified. Each governance provides that it may be amended by a vote of two-thirds of the school's faculty and approval by the trustees.

Under the governances, the duties and responsibilities of the faculties are to be carried out primarily through members' participation in standing committees. Each school has its own administrative, admissions, academic standards, and curricu-

¹ No exceptions were taken to the judge's findings that the Respondent's assistant librarians exercise neither supervisory nor managerial authority

² *Yeshiva*, supra at 682, quoting *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 288 (1974)

lum committees.³ There are also two institution-wide standing committees, Academic Freedom and Tenure (AF&T) and Student Activities, and an institutionwide student-faculty Senate.

According to the governances, the administrative committee of each school is responsible for the "general administration" of the school including financial and personnel matters; for approval of curriculum changes proposed by the curriculum committee; and for nomination of candidates for positions on the standing committees. The administrative committee is required to represent faculty interests and to interpret those interests to the president, and it is to serve as advisor to the dean. The dean of each school chairs its administrative committee. In the Schools of Art and Architecture, full-time faculty members constitute both a numerical and a voting minority on the administrative committees, sharing seats with administrators, students, and adjunct faculty members.

The curriculum committees have responsibility for receiving, formulating, and processing proposed curriculum changes. The curriculum committee in each school must forward proposals for curriculum changes to the administrative committee, which may approve minor changes (such as the substitution of one course for a similar course), but must forward proposals for major changes to the faculty for its approval. The faculty must then submit major curriculum changes which it approves to the president. In the Schools of Art and Architecture, the membership of the respective curriculum committees consists of two full-time faculty members, one adjunct faculty member, and one student as voting members; and the dean of the school, the dean of admissions, and an alumni representative as nonvoting members. The chairperson must be a full-time faculty member. In the Engineering school, the committee is composed of one full-time faculty member from each of the four disciplines. The dean of the Engineering school is designated an "ex officio" member, but the Engineering governance, unlike the governances for Art and Architecture, does not provide that the dean has no vote.

The academic standards committees have responsibility for receiving and considering proposed changes in the grading system and academic standards. Minor changes may be acted on by the committee. Major changes must be approved by the faculty and the president. The committees also have final authority to pass on petitions for readmission from students who have withdrawn or

have been dropped for academic reasons, as well as responsibility for compiling a list of recommended candidates for graduation. In the Schools of Art and Architecture, each academic standards committee is composed of three full-time faculty members, one student, and one adjunct faculty member as voting members; and the dean of the school, the dean of admissions, and the dean of students as nonvoting members. The chairperson must be a full-time faculty member. In Engineering, the committee is composed of four full-time faculty members and three deans. Again, the deans are designated "ex officio," but, unlike the deans on the corresponding committees in the other two schools, are not designated as nonvoting.

The admissions committees are responsible for establishing and reviewing admissions procedures pursuant to institutional and faculty policies. In the Schools of Art and Architecture, the committees are each composed of two full-time faculty members, one student, and one adjunct faculty member as voting members; and the dean of the school, the dean of admissions, and an alumnus as nonvoting members. The chairperson must be a full-time faculty member. In Engineering, the committee is composed of three full-time faculty members, the dean of admissions, and a student as voting members; with the dean of the school as an ex officio member.

The Academic Freedom and Tenure Committee is an all faculty, institutionwide body with limited authority set forth in the faculty policy manual to hear disputes involving alleged infringements of faculty members' academic freedom and termination of tenured faculty allegedly without adequate cause. Adequate cause for termination of tenured faculty is defined as professional incompetence, conviction of a crime involving moral turpitude, or a change in academic program or the existence of a financial condition that requires elimination of the position. Actions of the AF&T Committee are subject to review by the trustees. The committee has no authority to consider types of disciplinary action or other grievance matters beyond those specified in the manual.

The Student Activities Committee is an institutionwide committee with responsibility for formulating, proposing, and monitoring student policy. Students constitute a majority of the voting members; the dean of students is a voting member.

The Senate's role is to study the goals, standards, facilities, planning, development, and problems of Cooper Union, and to serve as advisor to the president. Its voting membership is approximately balanced between full-time faculty members and stu-

³ According to the governances, each school also has a calendar and schedules committee. However, the record reflects that the calendar and schedules committees have been inoperative for most of the 10 years preceding the hearing.

dents,⁴ with four administrators including the president serving as nonvoting members.

An examination of the composition of the governance committees reveals that full-time faculty (bargaining unit) members are a numerical minority on most and are a voting majority on only about half of the committees. In two of the Respondent's three schools, Art and Architecture, full-time faculty members are a voting majority only on the academic standards committees. Full-time faculty members chair most of the committees. However, the administrative committee in each school, which has the broadest authority of any committee (including the authority to review actions of certain other committees and authority to nominate members to the other committees), is chaired by the dean.

The governances give the faculty certain responsibilities beyond those exercised through standing committees and the Senate. These include recommending degree candidates to the president, advising the respective deans on the filling of faculty positions, and recommending candidates to fill vacancies in the offices of dean and president. In the filling of faculty positions, the governances require only that the dean "consult" with faculty members. When a deanship or the presidency is to be filled, the governances call for the formation of a special faculty committee to submit a list of recommended candidates.

The faculty policy manual sets forth certain rights of faculty members beyond the rights and duties specified in the governances. It provides that a faculty member is eligible for sabbatical leave after each consecutive 7 years of service, but that the granting of sabbaticals to eligible members is in the discretion of the president. The manual sets time limits for achieving tenure. It provides that a faculty member should be granted tenure "as soon as he has demonstrated his competence and a satisfactory development of his teaching and scholarship." It encourages faculty members to engage in their own research, writing, artistic endeavors, and professional activities including consulting, so long as such activities do not conflict with academic duties.

Faculty Authority in Practice

Having reviewed the faculty's formally defined status, we now examine the role actually played by the faculty in the affairs of the Respondent during

the approximately 10 years preceding the hearing in the present case.

Prior to 1972 the teaching staff of Cooper Union was organized in departments chaired by faculty members. By action of the trustees that year, taken without faculty vote or other faculty approval, the departments were consolidated into larger divisions, with division heads appointed by the president. The administration thereafter rejected a faculty recommendation that the departmental structure be restored and rejected a separate faculty recommendation that division heads be elected by faculty members.⁵ Among other changes brought about by the elimination of the departmental structure was a decrease in faculty authority over the academically related activities of nonteaching staff such as laboratory assistants and secretaries. In addition to replacing the departmental structure with a divisional structure, the trustees in 1972 also created new degrees in mathematics and science. They also created and filled the position of provost. The faculties did not have an opportunity to vote on or otherwise approve or disapprove these changes.

In 1973 the provost, Kaplan, issued a report recommending increasing class size, increasing the student-faculty ratio, increasing teaching loads, severely limiting grants of tenure, reducing the number of full-time faculty through attrition, and increasing the proportion of adjunct faculty. While the Senate was considering these proposals, they were implemented without faculty approval and over strong faculty opposition. When members of the Senate confronted the provost with the fact that the proposals were being implemented while still under Senate consideration, the provost responded to the effect that the Senate could be most useful by simply approving the proposals. In accord with the provost's recommendation, then president White began rejecting many tenure recommendations even where a candidate had received unanimous faculty support. The decisions denying tenure were made largely for financial reasons, ignoring the exclusively academic criteria for the granting of tenure set forth in the faculty policy manual.

In 1975 the trustees again restructured the institution without faculty participation and over strong faculty opposition. The 1975 reorganization eliminated the divisions and the division head positions, leaving the schools the primary structural academic units. It divided what had been the School of Art and Architecture into two separate schools. It es-

⁴ Two Senate seats may be filled either by full-time faculty members or by adjuncts. Therefore, full-time faculty members may or may not be a voting majority of the Senate, depending on whether those seats are filled by full-time faculty members.

⁵ The Respondent's then president White rejected a governance amendment passed by the faculty of the School of Art and Architecture (then a single unit) requiring division heads to be elected by the faculty.

tablished a new "Faculty of Liberal Arts and Science" (LA&S) entirely outside of the degree-granting schools, placing nearly half the faculty members (some from Art and Architecture and some from Engineering) in the new group. The LA&S faculty members were thereby disenfranchised, no longer having a vote on the faculty of any degree-granting school, or authority to participate in its governance committees. (No governance was established for the LA&S faculty.) Provost Kaplan was designated acting dean of the new faculty. Also in the 1975 restructuring, the trustees eliminated the curricula leading to degrees in mathematics, physics, and distributive science, and eliminated physical education as a regular part of the curriculum. As a result, a number of tenured faculty members were permanently laid off.

Faculty opposition to the changes brought about in 1975 was widespread and sustained, particularly with respect to the creation of the LA&S faculty and the elimination of the degree programs. During a senate meeting in which strong criticism of the 1975 changes and the way in which they were implemented was voiced, White informed the Senate that he was neither required to consult with the Senate nor to accept its advice. The Senate then voted to cease meeting because it was a group without any power. It remained defunct for approximately 3 years, until after the collective-bargaining agreement was entered into. During the same period, the administration successfully resisted an attempt by the tenured faculty members who had been laid off to gain a hearing before the Academic Freedom and Tenure Committee.⁶

Also following the 1975 reorganization, the dean of the School of Engineering, without faculty consideration, promulgated an amended governance for that school. The dean's governance eliminated the administrative committee, delegating all administrative functions to the dean. It also created a new interim curriculum committee chaired by the dean. These amendments apparently remained in effect for approximately 4 years until newly revised governances were issued after the bargaining agreement was entered into.

In the late spring of 1977 President White announced plans for Cooper Union to enter into a li-

brary consortium agreement with New York University (N.Y.U.) and another university under which, among other things, administrative control and purchasing for the libraries of all three schools would be delegated to an N.Y.U. administrator. White asked for faculty response to the plan. The faculties of all three schools strongly opposed implementation of any such consortium agreement, pending further study. They voiced concerns on academic grounds including fear of loss of valuable library materials from Cooper Union's libraries and inability to readily procure new materials for the library. During the summer recess, before the faculties had had further opportunity to consider the matter, and over their expressed opposition, the Respondent entered into the consortium agreement. Two years later, in the summer of 1979, the library consortium agreement was extended prematurely and without notice to the faculty at a time when a faculty committee was at work on proposed revisions to the agreement.

In 1978 an organization responsible for accrediting educational institutions, the Middle States Association of Colleges and Schools, issued a report on Cooper Union, following a detailed review of all aspects of the institution. The report commended Cooper Union in certain areas, particularly the handling of its financial resources, but found serious problems in the areas of faculty morale, faculty governance, long range planning, and the library consortium. The report found that the Respondent's deans were unusually strong and its faculty unusually weak. The report noted that the administration of Cooper Union had asserted the right to take actions affecting the institution in the absence of advice from the faculty or the Senate, and even contrary to such advice and then commented, "No doubt the right exists but to the degree it is exercised, confidence in faculty governance is subverted, and faculty morale declines." The report was especially critical of the Respondent for the morale problems caused by the creation of the academically isolated and disenfranchised LA&S faculty. The report also noted the absence of any provision for faculty review of institutionwide academic policies and indicated that the writers shared the concerns of the faculty that the library consortium would not lead to an improvement in the institution's library services.

The collective-bargaining agreement, entered into in 1978, contained, among others, provisions setting salary levels; stating principles of academic freedom; setting procedural guidelines for the appointment, promotion, and tenure of faculty members; defining workload; establishing a grievance and arbitration procedure; and defining manage-

⁶ The Respondent took the position that the elimination of the degree programs was not a change in academic program within the meaning of the academic freedom and tenure provisions of the faculty policy manual, and therefore was not cognizable by the Academic Freedom and Tenure Committee. The laid-off faculty members sought to gain a hearing before that committee by bringing a state court suit. The Respondent took the position before the state court that the trustees had an unreviewable right to make decisions on academic programs and cited other examples of the trustees having done so without faculty input. The state court denied the laid-off faculty members' request for a hearing before the Academic Freedom and Tenure Committee.

ment rights. Shortly after the agreement went into effect, the Union's president Tulchin and the Respondent's president White jointly issued governances which reflected changes necessitated by the bargaining agreement, such as the elimination of the Academic Freedom and Tenure Committee in view of its functions having been taken over by the grievance and arbitration procedure. Tulchin also entered into discussions with Provost Kaplan concerning the LA&S faculty. These discussions, sanctioned by the Union's executive committee, resulted in a 1979 decision to reintegrate the LA&S faculty into the faculties of the degree-granting schools, reenfranchising them as members of those faculties.

Following the Respondent's 1980 withdrawal of recognition from the Union, the Respondent's new president Lacy revised the governances to reinsert those provisions taken out because of the bargaining agreement and to reflect the structural changes brought about by the reintegration of the LA&S faculty. The faculty did not participate in or vote on these revisions. In conformance with the revised governances, Lacy reinstituted the Academic Freedom and Tenure Committee.⁷ Elected faculty members agreed to serve on that committee under protest. In 1981 Lacy announced certain increases in faculty salary levels. The faculty did not participate in setting the amounts of these increases.

In addition to the major institutional decisions and events outlined above, certain other facts are indicative of the relative authority of the Respondent's faculty and its administration. As described more fully in the judge's decision, faculty members regularly participate, primarily through the governance committees, in decisions regarding admissions, academic standards (including student retention, readmission, and graduation), and curriculum. Yet the effectiveness of the faculty's role in each of these areas is limited. A limitation on the faculty's authority which pervades all three areas is the extent of administration and other nonfaculty representation on the committees, as described above.

In the area of admissions, although faculty members play a major role in setting admissions standards and, in the Schools of Art and Architecture, passing on the applications of individual candidates, goals for the numbers of students to be admitted are determined by the administration. In the School of Engineering, the exact number to be admitted is set by the administration. Further, the dean of admissions testified that he implemented a program

for admissions of minority students in engineering without faculty or admissions committee approval and in the presence of mixed faculty opinion.

In the curriculum area, courses suggested by individual bargaining unit or nonbargaining unit teaching staff are frequently instituted on the approval of the dean without going through the curriculum and administrative committees. In addition to the major curriculum changes noted above brought about by decision of the trustees to create and eliminate degree programs, a curriculum-related change was brought about by the dean of the Engineering school in the area of physics over the unanimous opposition of the full-time physics faculty.⁸

In the area of academic standards, the faculty plays perhaps its strongest role. The governances make decisions of the academic standards committees final in the area of student petitions for readmission. Grade point averages required to remain enrolled and to graduate are set by the committees with faculty approval. Although theoretically subject to administrative approval, there is no evidence that committee and faculty recommendations in this area have ever been overturned. Nevertheless, the authority of faculty members in the academic standards area is mitigated by the admitted active participation and voting—in contravention of the governances—of the deans of admissions and students on all three academic standards committees.⁹ This means that although a theoretical voting majority on these committees, faculty members in fact are a voting minority. Faculty and administrators share responsibility for developing the academic calendar and course schedules, but the deans assign faculty members to teach required courses. Although faculty members have some input, the dean's view prevails in the event of a conflict.

A final limitation on the exercise of faculty authority in academic matters is the ability of administrators in key positions to prevent faculty groups from meeting. The Respondent's president has sole authority to call joint faculty meetings. Following a 1975 joint faculty meeting in which a motion was

⁸ The dean determined that two physics courses should be among the courses used for an experimental program employing innovative teaching methods. The full-time physics faculty, for academic reasons, unanimously opposed using the new program in the physics courses. The dean insisted that the courses be taught in the experimental mode and brought in a retired physics professor to teach them when the full-time faculty members refused.

⁹ We further note that in two instances the dean of the School of Architecture, in contravention of normal procedure and over the apparent opposition of the faculty involved, permitted students who had failed a required fourth year course, which was prerequisite to a required fifth year course, to take both courses simultaneously in their fifth year, thereby also permitting the students to exceed the normal credit limit in their fifth year.

⁷ When Lacy reinstituted the AF&T Committee it had been inoperative for approximately 6 years. Its members had resigned in 1975 during a dispute over whether the committee should hear the complaint of a faculty member who had been denied tenure.

made to censure President White for allegedly interfering with the Academic Freedom and Tenure Committee, White called no more faculty meetings for the remaining 4 years of his presidency. Similarly, the dean of the Architecture school prevented its administrative committee from meeting for a period of 4 years from 1977 to 1981 by failing to call any meetings. During that time the administrative committee's function in reviewing proposed curriculum changes was simply bypassed.

In nonacademic matters, the very limited effective role played by the faculty has been set forth fully in the judge's decision. Certain points in this regard bear emphasis. The faculty has virtually no role in the areas of budget and facilities. Major decisions to sell and renovate facilities and to relocate personnel and activities within them have been made without faculty input or over faculty opposition. Similarly, faculty office space is assigned by the administration and, at least in the Engineering school, even faculty access to ordinary office supplies is restricted. Faculty members have no input into the appointment, retention, or employment conditions of nonteaching staff such as laboratory assistants, shop assistants, library personnel, and secretaries. In regard to the appointment of teaching staff, although the governances call for a consultative faculty role, such a role has frequently been bypassed. Similarly, although faculty members have regularly been consulted on tenure decisions, their recommendations have frequently been reversed. Faculty members have no role in granting sabbatical leaves. In the selection of deans, the faculty role called for in the governances has sometimes been ignored. In the selection of a president to take White's place in 1979, the procedure for faculty input called for in the governance was not followed.¹⁰ Other administrative positions have been created and filled without faculty input.

The Legal Standard—*Yeshiva* and Its Progeny

In *NLRB v. Yeshiva University*, 444 U.S. 672 (1980), the Supreme Court found that the faculty members were managerial employees excluded from the coverage of the Act. It defined managerial employees, as both the Board and the Court previously had, to be those who "formulate and effectuate management policies by expressing and making operative the decisions of their employ-

er."¹¹ The Court refined this definition by holding that managerial employees "must exercise discretion within or even independently of established employer policy and must be aligned with management" and normally must "represent management interests by taking or recommending discretionary actions that effectively control or implement employer policy."¹² The Court held that the purpose of excluding managerial employees, like the purpose of excluding supervisors from the Act's coverage, is to assure employers of the undivided loyalty of their representatives.

The Court found that the faculty at Yeshiva, through participation in faculty meetings and on faculty committees, determined each school's curriculum, academic calendar, course schedules, admissions and matriculation standards, teaching methods and grading policies, and sometimes determined tuition, the size of the student body, and the location of a school. The Court concluded that the faculty's control of academic matters was absolute. In nonacademic matters, the Court found that the faculty played the predominant role in decisions on faculty hiring, tenure, sabbaticals, termination, and promotion. The Court noted that although the final decisions on such personnel matters are made by the administration, the faculty makes recommendations in all cases and "the overwhelming majority of faculty recommendations are implemented."¹³ The Court also noted that, at least in some of the schools, budget requests were made by faculty, and that in the case of one school such requests had never been rejected. The Court found unpersuasive the fact that many faculty decisions were subject to rarely exercised veto power in the administration. In concluding that the Yeshiva University faculty were managerial employees, the Court relied primarily on their extensive authority over academic affairs, but also noted their predominant authority in nonacademic matters. The Court noted that at other institutions, unlike Yeshiva, faculty members may be nonmanagerial, depending on the extent of their authority, commenting, "It is plain, for example, that professors may not be excluded merely because they determine the content of their own courses, evaluate their own students, and supervise their own research."¹⁴

Since the Supreme Court decided *Yeshiva*, the Board has determined the managerial or nonmanagerial status of college and university faculty members in a variety of faculty settings. For example, in

¹⁰ Instead of forming the special faculty committee called for in the governances to submit names of qualified candidates to the trustees, a large number of candidates were screened and interviewed with no faculty input. The Senate was then permitted to interview and make recommendations on the top two candidates previously selected by the administration. The candidate whom the Senate recommended, Lacy, was chosen by the trustees.

¹¹ 444 U.S. at 682, quoting *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 288 (1974).

¹² *Id.* at 683.

¹³ *Id.* at 677.

¹⁴ *Id.* at 690-691 fn. 31.

Ithaca College, 261 NLRB 577 (1982), the Board found that the faculty, through participation in both institutionwide and divisional bodies, determined curriculum, admissions policies, academic standards, class size, course schedules, teaching assignments, graduation requirements, and other academic matters. The Board noted that although recommendations of institutionwide academic policy subcommittees composed entirely of faculty members must be approved by a committee on which students and administrators also participate, the student-faculty-administration committee had invariably approved the recommendations of the faculty subcommittees. In concluding that the faculty controlled curriculum changes, the Board noted that, although the deans in some schools must approve curriculum changes, the dean in one school had approved all of about 500 such changes recommended by the faculty. The Board also found that the faculty controlled the hiring of faculty members and deans, faculty tenure, and had an effective voice in facilities planning and budgetary matters. The Board concluded that the faculty were managerial employees under *Yeshiva*.

By contrast, in *Bradford College*, 261 NLRB 565 (1982), the Board found that the faculty were non-managerial where governance documents indicated they had substantial authority, but in practice they had little. The Board found that the faculty did not effectively determine teaching loads, salaries, budget, the filling of administrative positions, faculty evaluations, or certain faculty personnel actions. The Board also found that the administration had canceled an academic session without faculty approval, had sometimes altered grades given by faculty members, and at least in some cases had failed to follow faculty recommendations for the hiring of new faculty members. In determining that the faculty lacked effective authority, the Board noted a statement of the president of the college to the effect that it was the administration and not the faculty which set academic and administrative policy. The Board also noted an accrediting agency's report which found disregard for stated procedures and for faculty participation in the administration of the college. The Board concluded, "In sum, while the faculty and division chairs have the written right to make recommendations, the record shows that such recommendations were often ignored or reversed by the president, by the academic dean, or by both with respect to curriculum, admission policies, graduation of students, course loads, course scheduling, grading of students, facul-

ty hiring or retention, tuition, and faculty salaries."¹⁵

In a case which, like the present one, involved the faculty of a professional degree-granting institution, *College of Osteopathic Medicine & Surgery*, 265 NLRB 295 (1982), the Board found that the faculty were managerial employees. There the faculty had drafted its own constitution providing for monthly faculty meetings, and had established faculty committees. All voting members of many of the committees, including those concerned with promotion, tenure, postgraduate education, and student promotion and evaluation, were elected by the faculty. In addition to determining curriculum and other academic matters, the college's faculty also was instrumental in bringing about a fundamental change in academic program (conversion from a 3-year to a 4-year course of study). Further, the faculty had considerable authority in faculty hiring, rank, promotion, and tenure decisions. The Board concluded that the faculty had "almost plenary authority in academic matters and significant input into important nonacademic matters."¹⁶ Citing *Yeshiva*, the Board held that the fact that many faculty actions were in the form of recommendations with final authority resting in the administration was not determinative since "faculty recommendations are almost always followed."¹⁷

Analysis

In the instant case, the judge concluded that under *Yeshiva* and subsequent Board decisions the faculty of Cooper Union have sufficient authority to formulate and effectuate policy to be excluded from the coverage of the Act as managerial employees, and consequently recommended dismissing the complaint. Our disagreement with the judge's conclusion and recommendation stems from our disagreement with certain of his factual findings and from our disagreement with his application of *Yeshiva* principles to the facts of this case.

The judge based his conclusion that the Respondent's faculty members are managerial employees partly on his findings (1) that the faculty predominate in "almost all" of the governance committees; (2) that the administrative committees play a central role in faculty involvement in both academic and administrative (financial and personnel) matters; and (3) that significant faculty input into nonacademic matters was shown in the Union's 1979 negotiations with the Respondent resulting in

¹⁵ *Bradford College*, 261 NLRB at 566-567. The Board also noted that faculty were not granted tenure as a factor indicating lack of faculty authority.

¹⁶ *College of Osteopathic Medicine & Surgery*, 265 NLRB at 297.

¹⁷ *Id.*

the reintegration of the Liberal Arts and Science faculty into the degree-granting schools. These key findings misinterpret the evidence. It is clear, as noted above, that even according to the terms of the governance, full-time faculty (bargaining unit) members constitute a numerical minority on most of the governance committees and constitute something less than a voting majority on about half of them. The proportion of faculty members who vote on the committees is further reduced in some cases by administrators voting on committees in contravention of the terms of the governance.

We further disagree with the judge's finding that the faculty's role on the administrative committees is indicative of extensive faculty authority. First, as the judge noted, each administrative committee is chaired by a dean who sets the agenda and may prevent the committee from meeting, as the dean of the School of Architecture did for 4 years. Second, as noted above, the academic standards committee of the largest school, Engineering, apparently was entirely eliminated for a 4-year period by the dean's unilateral governance amendment. Third, the record reflects an extremely limited role played by the administrative committees, when they are functioning, in personnel, financial, and other nonacademic matters. Finally, full-time faculty members constitute a voting minority on the administrative committees in the Schools of Art and Architecture.

Although the judge found, and we agree, that the faculty play a weaker role in nonacademic than in academic matters, he found a significant instance of faculty input into nonacademic decision making in the Union's role in negotiating the 1979 reintegration of the LA&S faculty into the degree-granting schools. While these negotiations did represent faculty involvement in matters which had both academic and nonacademic aspects, we note that the reintegration and reenfranchisement of the LA&S faculty represented a return to the status quo ante which had been pressed by the faculty in a variety of forums for the 4-year period since the administration created the separate faculty. Further, the Respondent's agreement to return to the status quo ante came only after the Middle States Association accrediting agency had strongly criticized it for the isolation, disenfranchisement, and consequent demoralization of the LA&S faculty. Under these circumstances, we do not think it indicative of strong faculty involvement in institutional policy making that the negotiations succeeded in 1979. The entire episode of the creation of the LA&S faculty, its persistence as an isolated group for 4 years, followed by its reintegration into the rest of the institution's governance system, is more illustrative of

the ability of the administration to effectively resist faculty pressure than of the faculty's active participation in institutionwide decision making.¹⁸

Although the Respondent's faculty clearly exercise considerable authority in academic areas such as curriculum, admissions, academic standards, course assignments, and scheduling, such authority not only is not absolute as was the authority of the *Yeshiva* faculty, but frequently has been made ineffective by the administration in the variety of ways described above. Of particular significance in this regard are the administration's creation and elimination of entire degree programs without faculty input or over faculty opposition,¹⁹ the exclusion from academic governance of a large proportion of the faculty for a number of years, the amendment of governance without faculty vote,²⁰ creation of a special admissions program without faculty approval, and the key roles played by administrators in chairing the faculties, chairing the joint faculty, chairing the administrative committees, and participating actively in other committees. Also highly significant is the fact that the administration first entered into and later extended the library consortium agreement over massive faculty opposition based on academic grounds. In this context, we regard the fact that faculty members are actively involved in making more routine academic decisions such as the substitution of one course for another and, in the Schools of Art and Architecture, the admission of individual applicants does not rise to the level of "represent[ing] management interests by taking or recommending discretionary actions that effectively control or implement employer policy," or "formulat[ing] and effectuat[ing] management policies by expressing and making operative the decisions of their employer" within the meaning of *Yeshiva*. It is clear that the Cooper Union faculty have considerably less effective authority in the academic sphere than did the faculty in *Yeshiva* and the faculties in various Board deci-

¹⁸ Further, we do not regard the faculty's participation in the Academic Freedom and Tenure Committee as indicative of a strong faculty role in nonacademic matters in view of the fact that that committee did not function from 1975 to 1981, and in view of the Respondent's role in preventing it from hearing certain issues involving faculty tenure prior to that time.

¹⁹ In this respect, the present case is similar to *Bradford College*, supra, where the elimination of an academic program without faculty input was a factor relied on by the Board in finding the faculty nonmanagerial.

²⁰ In this and the other ways, noted above, where stated governance requirements for faculty input have been overlooked by the administration, the present case bears further similarity to *Bradford College*. Similarities also include accreditation agency reports critical of the relative lack of faculty authority in each institution and statements by the respective presidents minimizing faculty authority.

sions following *Yeshiva* in which the faculty have been held managerial.²¹

Moreover, unlike the *Yeshiva* faculty and the faculties involved in subsequent Board decisions, the Cooper Union faculty lacks substantial input into nonacademic matters such as budget, facilities planning, and personnel decisions. In this regard we note particularly that decisions on the hiring, promotion, tenure, and retention of teaching staff are frequently made in the absence of faculty recommendations, and when they are made following faculty recommendations, those recommendations are frequently rejected.²²

For the reasons stated above, we conclude that the Respondent's full-time faculty members are not managerial employees under *Yeshiva*, but are employees entitled to the protection of the Act.²³ Accordingly, the Respondent was required to bargain with the Union as the certified representative of the Respondent's full-time faculty and librarians. Therefore, we conclude that, by withdrawing recognition from the Union and thereafter refusing to bargain with it, the Respondent has violated Section 8(a)(5) and (1) of the Act, as alleged.

THE REMEDY

Having found that by engaging in the above-described conduct the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist therefrom and from any like or related unfair labor practices, and to bargain on request with the Union.

ORDER

The National Labor Relations Board orders that the Respondent, The Cooper Union for the Advancement of Science and Art, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

²¹ For example, in *Ithaca College*, supra, the Board relied on the invariable adoption of faculty recommendations in academic areas as indicative of faculty authority. In the present case, faculty wishes in academic areas have frequently been ignored. Similarly, in *College of Osteopathic Medicine & Surgery*, supra, the Board relied on 100 percent faculty composition of key committees and faculty initiation of a major change in the entire academic curriculum as indicative of faculty authority. In the present case, by contrast, only 1 of some 14 faculty committees is 100 percent faculty in composition, and it was inoperative for most of the 10 years prior to the hearing, and major changes in academic curricula, such as creation and elimination of degree programs, have been made without effective faculty input.

²² This pattern of ineffective faculty voice in faculty personnel decisions stands in contrast to the strong role played by the faculty in such cases as *Ithaca College* and *College of Osteopathic Medicine & Surgery*.

²³ In light of our finding that the Respondent's full-time faculty members are employees entitled to the protection of the Act, we further find that the Union is a labor organization within the meaning of Sec. 2(5) of the Act.

(a) Withdrawing recognition from and thereafter failing and refusing to bargain collectively with the Union as the exclusive bargaining representative of the employees in the bargaining unit described below.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement; and provide the Union, on request, information necessary for collective bargaining:

All faculty on full-time appointment including instructors, assistant professors, associate professors, full professors and librarians and assistant librarians but excluding all other employees, including the president, deans, assistant deans, acting deans, division heads, acting division heads, visiting faculty, secretaries, guards, library head, library assistants, library technicians, researchers, laboratory managers, directors, administrators, administrative assistants, administrative counselors, controller, registrar, provost, maintenance employees, laboratory technicians, laboratory assistants, engineering technicians, shop assistants and all supervisors as defined in the Act.

(b) Post at its facility in New York, New York, copies of the attached notice marked "Appendix."²⁴ Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

²⁴ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT withdraw recognition from and fail and refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Cooper Union Federation of College Teachers, affiliated with New York State United Teachers, American Federation of Teachers, AFL-CIO as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain with the above-named Union as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All faculty on full-time appointment including instructors, assistant professors, associate professors, full professors and librarians and assistant librarians but excluding all other employees, including the president, deans, assistant deans, acting deans, division heads, acting division heads, visiting faculty, secretaries, guards, library head, library assistants, library technicians, researchers, laboratory managers, directors, administrators, administrative assistants, administrative counselors, controller, registrar, provost, maintenance employees, laboratory technicians, laboratory assistants, engineering technicians, shop assistants and all supervisors as defined in the Act.

THE COOPER UNION FOR THE ADVANCEMENT OF SCIENCE AND ART

DECISION

STATEMENT OF THE CASE

ROBERT T. SNYDER, Administrative Law Judge. This case was tried before me on 31 days during the period from January 4 through March 4, 1982, at New York, New York, pursuant to a complaint issued by the Re-

gional Director for Region 2 of the National Labor Relations Board on April 30, 1981. The complaint was based on a charge filed by Cooper Union Federation of College Teachers, affiliated with New York State United Teachers, American Federation of Teachers, AFL-CIO (CUFCT or the Union) against The Cooper Union for the Advancement of Science and Art (Respondent or Cooper Union). The complaint alleges, in substance, that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act by withdrawing recognition, about June 26, 1980, from the Union as the exclusive collective-bargaining representative of employees in a unit certified by the National Labor Relations Board (the Board) and by failing and refusing thereafter to recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees in the unit.

Respondent, by its answer, denies the alleged violations and as affirmative defenses contends that all of the unit employees are supervisory employees and managerial employees, thereby excluded from the categories of employees entitled to the benefits of collective bargaining under the Act, and that the described unit is an inappropriate bargaining unit.

All parties were given full opportunity to participate in the proceeding to introduce all relevant evidence, to cross-examine witnesses, to argue orally, and to file briefs. Respondent, the General Counsel, and the Union each filed extensive posthearing briefs. Respondent thereafter filed a reply brief, which, by subsequent order over objections of the other parties, I determined to receive and review and to which I provided the Charging Party and the General Counsel an opportunity to respond. Both parties have filed responsive briefs. These briefs have all been duly considered.

Leave having been sought by the New York City Central Labor Council, AFL-CIO to file a brief amicus curiae in support of the Charging party in this proceeding, such leave is hereby granted, and the brief it subsequently filed has also been duly considered.

On the entire record in this case, and from my observation of the demeanor of the witnesses, I make the following

FINDINGS AND CONCLUSIONS

I. JURISDICTION

Respondent is a New York educational corporation chartered by a special legislative act, "Chapter 279 of the Laws of 1859," with its offices and educational facilities located in New York, New York, where it is engaged in the operation of a private, not-for-profit educational institution. Its gross annual revenue from all sources exceeds \$1 million, excluding contributions, which, because of limitation by the grantor, are not available for operating expenses. Annually, Respondent in the course and conduct of its operations, purchases and receives at its facilities goods and materials valued in excess of \$5000 directly from points outside the State of New York. The parties admit, and I find, that Respondent is, and has been at all times material herein, an employer engaged in com-

merce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

At the opening of the hearing, Respondent was permitted to amend its answer to admit the status of the Union as a labor organization within the meaning of the Act. However, in view of its position consistently maintained throughout the proceeding, that the employees who make up the unit regarding which it has, since June 26, 1980, refused to bargain are not employees within the meaning of the Act, and since membership in the Union is limited to employees employed by Respondent in the bargaining unit, I do not deem Respondent's admission regarding the Union's status as a labor organization as controlling. That status will turn on my conclusions regarding the employee status under the Act of the members of the bargaining unit based on the record in this case, ruling on which will, accordingly, be deferred until that conclusion is made in a later portion of this decision.

III. THE REPRESENTATION PROCEEDING AND COLLECTIVE-BARGAINING HISTORY

On April 11, 1974, in Case 2-RC-16460, the Regional Director for Region 2, based on a petition previously filed by the Union, approved a Stipulation for Certification Upon Consent Election providing for a representation election in a bargaining unit of Respondent's employees, including all faculty on full-time appointment, including instructors, assistant professors, associate professors, full professors, librarians and assistant librarians, but excluding all other employees, including the president, deans, assistant deans, acting deans, division heads, acting division heads, visiting faculty, researchers, laboratory managers, directors, administrators, administrative assistants, administrative counselors, controller, registrar, provost, maintenance employees, laboratory technicians, laboratory assistants, engineering technicians, shop assistants and all supervisors as defined in the Act.

Thereafter, pursuant to an election held on October 15 and 16, 1974, in which the Union received a majority of the valid ballots cast, on October 24, 1974, the Regional Director for Region 2 issued a Certification of Representative, certifying the Union as exclusive representative for the purposes of collective bargaining of Respondent's employees in the unit previously described.

Bargaining between the parties commenced in early 1975 and continued for close to 100 sessions until March 1978, when agreement was finally reached on the terms of an initial agreement. In 1976, when negotiations broke down, services of a Federal mediator were sought. The mediation effort, which extended for a year into the fall of 1977, was unsuccessful. A series of ad hoc meetings followed between Michael Wurmfeld, associate professor of architecture, then secretary of the union and member of its bargaining team, at times accompanied by several other members of the faculty, and President John F. White, who had not previously been directly involved in negotiations. These meetings finally led to the breaking of the impasse and final agreement on terms of an agreement. Substantive contract terms as they relate to the

nature of faculty authority in various academic and non-academic areas will be examined at various later points in this decision.

Agreement was finally consummated on April 11, 1978, with the terms made effective from that date until August 31, 1980 Pursuant to a wage reopener clause, subsequent negotiations resulted in agreement made on September 25, 1979, on wage rates for the contract year beginning on September 1, 1979, through August 31, 1980.

President White retired and was succeeded by a new President, Bill N. Lacy, on January 1, 1980. In May 1980, during the course of an informal union discussion in his office, President Lacy informed Eugene Tulchin, associate professor of art and union president, that since he was fairly new at Cooper Union he would really appreciate not opening up the whole contract and wished to extend the union contract for 1 year without any changes except for a salary reopener. Tulchin responded there might be some problems, made reference to the Supreme Court ruling in *Yeshiva University* which had issued in February 1980, and said he was reluctant merely to be left without any protections in a successor agreement. At Lacy's suggestion, Tulchin prepared proposed language representing the sense of the parties that the Cooper Union faculty did not fall under the definition of management as set forth in *Yeshiva*, and submitted a draft to Lacy, at a subsequent meeting, who said he would consider it.

When Tulchin left for Europe early in the summer of 1980, without resolution of the problem of the Union's concern for some protection from the impact of *Yeshiva* or other issues he had discussed with Lacy concerning the length of a new contract and salaries, he advised Lacy that Professor Wurmfeld and Thaddeus Gatz, a professor of humanities, treasurer, and member of the Union's executive board, were authorized to continue talks in his absence.

By letter dated June 9, 1980, the Union, by Wurmfeld, its secretary, informed Lacy of the availability of its negotiating team at any time after July 1, 1980, to begin negotiations. In a responsive letter dated June 26, 1980, Cooper Union, by Lacy for the first time, asserted the faculty's claimed managerial status as the basis for a decision not to meet for the purpose of negotiating a renewal of the present contract, thus effectively withdrawing recognition and refusing to bargain any longer with the Union. In the letter, Lacy stated, in part, "I have conducted an investigation into the applicability of the *Yeshiva* decision to Cooper Union, and I have conscientiously pondered the content of the Court's reasoning. As a result I have come to the conclusion that continued recognition of the [Union] under the [Act] is inconsistent not only with the law, but also with the conditions necessary to foster full faculty participation in policy making within the school."

In a later letter dated July 8, 1980, distributed to the faculty, Lacy amplified his views, concurred in by the board of trustees, which led him to the decision to withdraw recognition. He stated that part of the reason for his decision was the basic incompatibility and contradic-

tion between the policy making role of the faculty and unionization. Lacy also noted that because of its size and special professional character, the faculty's managerial role was a precondition of quality education. This position was also asserted by Lacy in a meeting he held with faculty members Wurnfeld and Gatzka the same day. On August 1, 1980, the charge which led to the issuance of the complaint herein was filed by the Union.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Cooper Union was founded by Peter Cooper as an educational institution before the Civil War. It was chartered in 1859 by an act of the New York State Legislature. It has always been maintained as a tuition-fee institution. Its operating funds are derived from gifts, grants, endowments, and the like. One major source of funding is the income derived from its ownership of real estate, both improved by buildings and unimproved, in the vicinity of the facilities and in midtown Manhattan.

The institution is located at Cooper Square, New York City, and consists of three buildings: the Foundation Building, the Hewitt Building, and the Engineering Building. Cooper Union also has maintained a facility called Green Camp at Ringwood, New Jersey. In the 1970s, the improved portion of this property was sold.

Peter Cooper's purpose in establishing Cooper Union, as set forth in its charter, was to create a school of design and engineering equal to the best schools "now established or, hereafter, to be established."

B. Organizational Structure of Cooper Union

The charter vests ultimate authority in a board of trustees, whose membership was fixed at 16 in bylaws adopted May 12, 1972. Three members are nominated by the Cooper Union Alumni Association. The remainder are nominated and elected by the board itself. Between regular meetings, held quarterly, and special meetings convened at the request of the chairman or on written request of any three trustees, its powers are exercised by an executive committee consisting of the chairman, the chief policy officer, and four trustees. Other committees include a finance committee, a nominating committee, and such other committees as may be created from time to time as deemed desirable.

The bylaws also provided for the establishment of various officers of the institution with prescribed duties who exercise their powers and duties with the approval of the trustees. They include a president, the chief executive officer, a vice president for business affairs, a secretary, a treasurer responsible for managing investments, a provost, the chief academic officer who exercises general supervisory power over the academic affairs and over the academic officers subject to the control of the president and trustees, an assistant secretary, and an assistant treasurer. The president and provost may, and the secretary shall, attend all meetings of the board. The president's duties include appointment or removal from offices, with the approval of the board, of such administrative officers, faculty, and staff as may be necessary and to prescribe the power and duties incident to such positions,

with the approval of the board. He also may attend and vote at all committee meetings.

As described in the faculty policy manual, effective April 2, 1964, Cooper Union is organized in divisions: the Division of Adult Education, at that time the School of Art and Architecture, the School of Engineering, and at that time the Museum for the Arts of Decoration. The manual noted the School of Art and Architecture and School of Engineering offered curricula leading to baccalaureate degrees in architecture, engineering, fine arts and science. Evening sessions of the School of Art and Architecture offered programs leading to certificates in architecture and fine arts. Reference was made to a Division of Graduate Studies being established in the School of Engineering.

C. The 1964 Governances

The 1964 faculty policy manual is described in a foreword as a revision of the 1957 "Policies and Procedures for Teaching Personnel of the Cooper Union." It includes in appendices the governances of the then School of Art and Architecture and the School of Engineering. The preamble of the governances described them as documents defining the functions, rights, responsibilities, and authority of the faculty.

In article I, section 2, of each governance, the faculty is recognized as the professional group responsible, collectively and as individuals, for the educational programs of the respective school as approved by the trustees and interpreted by the president. The faculty shall exercise its responsibility by providing instructions, participating in committee work and administrative work associated with the instructional programs, fostering creative scholarship, advancing professional education, considering and acting on other matters of common academic interest, and advising the president.

The governances are noted as becoming effective on their approval by the board of trustees.

In article II, the membership of the faculty is defined as including the dean and his associate or assistant and three members of the adjunct teaching staff, in addition to all full-time faculty. Various administrators are listed as ex-officio members of each faculty and at meetings of the joint faculties. The respective deans of the two schools are chairmen of their respective faculties and the secretaries are to be elected by the respective faculties.

In article III, "Meetings," two regular meetings per academic year, in October and April, are specified. Special meetings may be called by the chairman acting on his own, and shall be called by him when voted by the faculty, petitioned for by three members, or requested by a standing committee or the president. Joint meetings of the faculties may be called by the president or by the deans of both schools acting under direction of the Senate. The president shall normally preside, and in his absence, the chairman of the Senate shall do so.

Article IV lists faculty duties and responsibilities as including implementation of the educational program and other matters itemized in article I, making recommendations for awarding degrees, and other honors and awards, and advising with respect to appointments and

promotions. As to the latter responsibility, department heads, after consultation with members of the department, shall recommend a candidate to fill the staff vacancy. On a department head vacancy, the dean shall appoint a committee to include two members of professional rank to advise the dean, who shall recommend a candidate to the president. Acting department heads shall be named on the dean's recommendation after consultation with faculty.

Recommendation to select a new dean shall come from a committee consisting of all department heads and one member from each department, who shall prepare a list of qualified candidates for the president. To fill the office of president, a committee consisting of the deans, department heads of the two schools, and the business officer shall prepare a list of persons it deems qualified for the trustees, submitting specific recommendations at its request.

Article VI requires amendments be approved by a vote of two-thirds of the faculty.

D. Committees Under the Goverances

Standing committees include the administrative, curriculum, admissions, academic standards, calendar and schedules, Student Activities, and Academic Freedom and Tenure, the latter two being joint committees for both schools. When elected by the faculty, a slate of nominees is to be prepared by the administrative committee and circulated to the faculty 2 weeks prior to the April meeting at which additional nominations may be made from the floor. Normally, each committee shall have three members, with the president and dean as ex-officio members. Standing committees report to the faculty, but may tender a report to the administrative committee for evaluation and guidance.

In addition to schoolwide and the two joint committees, the governances provide for an institutionwide body—the Senate. Under the 1964 governances, it consisted of the president, deans of the two schools, two members elected by the faculty of each school who shall be heads of departments, and one member elected by the four from a slate nominated by the president. The chairman and vice chairman are the two deans, alternating each year.

As described in the governances, the Senate shall concern itself with the study of goals, standards, and physical facilities. It shall study problems that involve the two schools and their relationship with other divisions. It shall also concern itself with educational trends, and with planning and development, and advise the president.

A review of the makeup and role of the standing committees under the 1964 governances now follows:

1. Administrative Committee

Membership to include dean as chairman, associate or assistant dean, heads of departments and director of evening session. Responsibility is for general administration of the operations of the school, and for matters not delegated to nor within the pur-

view of other standing committees and shall serve as advisor to the dean.

In carrying out their duties of administration of financial and personnel matters, the activities of members of the committee shall reflect the interests of the faculty.

In addition, it may receive reports of standing committees, evaluate them, and make recommendations to the faculty for appropriate action.

It may also establish ad hoc committees of the faculty

2. Curriculums Committee

Committee made up of heads of departments offering curriculum leading to degrees and director of evening session.

Its responsibility is for policies relating to the formulation of curriculums, and it shall approve new curriculums and major revisions of curriculums. It is also responsible for coordinating and planning revisions of curriculums.

The procedure for adoption of a curriculum is as follows: A proposal is prepared by the curriculum committee and forwarded to the administrative committee for its review and possible revision and then placed on the agenda of the next regular faculty meeting. If approved, it is transmitted to the president who, if he approves, shall notify the dean, and if he does not, shall return the proposal to the administrative committee with his comments.

If the president fails to act, on recommendation by the administrative committee, the Senate may make a direct approach to the board of trustees.

Minor revisions of curriculums involving changes of subject title, or substitution of subject in the same general subject-matter category, shall be acted on by the curriculum committee after consultation with appropriate department heads, and shall be effective after approval by the administrative committee.

3. Admissions Committee

Membership includes director of admissions and three members elected by the faculty.

It shall establish and continually review general principles with respect to admission of students under policies approved by the board of trustees and shall review administration of faculty rules and policy by the admissions office.

It shall also carry out long-range studies of the correlation between the admissions process and the success of students in curriculum departments. As an aid it may request necessary statistical studies by the admissions office.

4. Academic Standards Committee

Made up of one representative from each department of instruction. Three members elected to serve terms of 3 years. The dean of students and registrar are ex-officio members.

It is responsible for defining the grading system, recommending standards and regulations for aca-

ademic performance, reviewing petitions from students, and recommending candidates for degrees.

As to grading system, academic standards, and regulations, it shall receive and consider individual faculty proposals for changes, submitting major changes for approval by the faculty and then the president. Minor changes, such as changes in wording for clarification, may be acted on by the committee and reported to the faculty.

The committee has final authority to take action on petitions for reinstatement from students who have resigned, withdrawn, or been dropped for failure to maintain required academic standards. In making decisions in this area, it shall be guided by the specific circumstances, potential benefit to the student, and the currently existing state of enrollment.

In May, the committee receives from the registrar a list of candidates for graduation who have attained the necessary standing and have satisfied all other academic requirements in their respective courses. It reviews the list for possible addition or deletion and has final responsibility for certifying the candidates for graduation by a favorable vote by recommending their approval to a May faculty meeting.

5. Student Activities Committee

This committee is a joint one, made up of one member elected by Engineering and another by Art and Architecture, dean of students, and director of Green Camp. It shall prepare a policy, study, evaluate, and report periodically to the faculty on how the policy is meeting the needs of students and objectives of the institution.

6. Calendar and Schedules Committee

The committees of each school, acting jointly, are responsible for working out details of the calendar, consistent with requirements of accreditation agencies and taking into account special needs of other divisions and the institution's administrative offices, and coordinating schedules between the two schools.

A prospective calendar for the following academic year is presented to the faculty at a meeting in February. The calendar each committee finally adopts is forwarded to the Senate for final action.

The committee also prepares assignments of instructors to classes and schedules of day and evening classes based on information furnished by heads of departments.

7. Academic Freedom and Tenure Committee

It consists of four members having rank of professor or associate professor, with representation from both schools and elected by the joint faculties. The Senate prepares a slate of nominees for election.

Its first responsibility is to formulate and recommend to the joint faculties a code to be followed in proceedings concerning the fitness of a member of

the faculty. In doing so, it shall be guided by the principles adopted jointly by the Association of American Colleges and the American Association of University Professors.

The code shall be submitted to the president for review by the Senate and transmitted to the board of trustees. Upon approval by all parties, it shall become official policy of Cooper Union.

Appendix III to the 1964 faculty policy manual sets forth principles and procedures concerning academic freedom and tenure. The document has as a stated purpose the ensuring of agreement on the procedural methods of preserving academic freedom and tenure rights. The preamble notes that the responsibility of formulating principles and policies that bear on the freedom and security of faculty members should be shared by both the faculty and the administration in order that the experience and wisdom of each may be utilized.

In a discussion as to acquisition of tenure, the manual notes that "The services of each faculty member on a probationary appointment should be evaluated by the Administration in order to determine whether he should be continued on a probationary appointment or be granted tenure." A maximum period of service required for achieving tenure is listed for each faculty rank, ranging from 7 years (for instructors) to 2 years (for professors).

Procedures regarding timing of notice of nonrenewal of a probationary appointment and provisions limiting dismissal of tenured faculty for adequate cause, as defined, are next set forth.

The document next describes procedures to be followed in hearings on dismissal of a faculty member or in cases of a claim of suppression of academic freedom by means other than threats of expulsion or unjust withholding of tenure or promotion. Provision is made for a hearing committee made up of the members of the Academic Freedom and Tenure Committee. When either the administration or faculty member requests review of his dismissal as a member of the tenured faculty or probationary appointee, or claims other suppression of his academic freedom, the hearing committee should inquire informally into the situation, effecting an agreement if possible. Failing an agreement, the committee should determine whether, in its view, formal proceedings should be considered. A detailed hearing procedure is outlined, if formal proceedings result, on joinder of issue arising from the president's statement of grounds for dismissal and the faculty member's written response or in the case of a particular breach of academic freedom arising from the faculty member's claim and the administration's response. In case of dismissal the administration bears the burden of proof. Both parties may appear by representatives, present testimony, and confront adverse witnesses, and informal presentations may be made, by statement outside the hearing, where appropriate. The committee may proceed to decision with or without availability of the record. It should make explicit findings with respect to each ground of removal presented or means of alleged suppression of academic freedom. The committee's decision should be transmitted to the trustees by the president, and, according to the document, its acceptance

would normally be expected. If the trustees do not sustain the hearing committee on the record of the proceeding, the matter should be returned to the committee with objections specified for its reconsideration.

E. Structural Changes in Organization of the Institution During the 1970s and Their Impact

During the 1970s, Cooper Union grappled with many of the problems facing institutions of higher learning in the United States resulting from growing inflation and increased costs, and the ongoing debate about the relevance and usefulness of the traditional colleges curricular and experience and proposals to modify the Cooper Union professional curriculum in art, architecture, and engineering. Furthermore, Cooper Union, as an institution specializing in engineering, architecture, and art education, but with a strong humanistic bent, has continually faced the issue of how to integrate the arts studies into its curriculum. This issue has raised a host of related questions having to do with the kinds of degrees the institution should grant, the number and content of required liberal arts studies, the placement of faculty teaching in the traditional liberal arts and science areas in its degree-granting schools, and the role such faculty should or may play in the governance committee structure which as has been shown, has been structured on a school-by-school basis.

As early as 1965, the then called department of humanities, since 1961 located within the School of Engineering with its own chairman, was reorganized by assignment for administrative purposes to the president. In a memorandum dated November 5, 1965, directed to the deans and humanities chairman, the then president Richard F. Humphreys acknowledged that the manner in which the department of humanities can best participate in the organizational structures of the School of Art and Architecture and the School of Engineering and Science was a subject that was under discussion for many months. Humphreys next referred to the proposal he attached which Professor Haselton, humanities chairman, formulated "after consultation with his faculty." That process did not involve putting to a vote of the humanities faculty the proposal to reorganize their department.

Professor Thaddeus Gatz, professor of humanities in literature and music appreciation, testified that Professor Haselton presented to the faculty the proposal, the imminent occurrence of the change, but as a conclusion already reached. Besides the president assuming direct administration of the department, the members of the department were assigned to the two schools, with all rights, privileges, and responsibilities provided in the faculty policy manual, except the right to vote at meetings of the faculty. With respect to joint faculty committees and joint meetings of the faculties, the humanities faculty were entitled to full participation, including the right to vote and serve on all joint committees and the Senate.

By April 1969, Humphreys had died and an interim president, Henry T. Heald, was serving in his place. A complaint from the Humanities faculty to the Academic Freedom and Tenure Committee that they had been disenfranchised by the 1965 reorganization was made to interim President Heald. By responsive letter to the com-

mittee dated April 16, 1969, Heald disputed that the AF&T Committee had jurisdiction and suggested, instead, that the way to improve the situation was by study and action with administration and faculty working together to develop a new program for the governance of Cooper Union.

Heald was succeeded by new President John F. White later in 1969. After personally receiving complaints from the humanities faculty, he formed an ad hoc committee on structure to deal with this and other organizational problems. It included the deans of the two schools, some students, adjuncts, and members of the full-time faculty, all apparently appointed by the president to advise him, outside the governance structure. By memorandum dated October 15, 1969, White, on behalf of himself and the trustees, advised that the Humanities faculty—five in Art and Architecture and seven in Engineering and Science—would immediately regain their vote and that another suggestion of the committee on structure to permit faculty and student representatives of a proposed new Senate to observe discussions of the board of trustees was approved for 1 academic year, limited to one faculty member and one student. The caveat was added that during trustee executive sessions representatives would be excluded.

On February 8, 1971, the board of trustees issued a policy statement entitled, "Cooper Union For the Seventies and Eighties." Among other groups whose input was acknowledged was the faculty through the Engineering and Science faculty advisory committee and the administrative committee of the School of Art and Architecture. At the same time, the trustees acknowledged that they had had the advisory services of Heald, Hobson and Associates, and a group of educators they had brought to the Cooper Union to assist in their assessment. Heald was the same educator who had recently a few years prior served as interim president. The policy statement examined and analyzed in depth the goals and aims of the institution and how they could best be achieved in light, in particular, of the present, and anticipated future, difficult financial situation, made more difficult because of its tuition-free operation. Among other changes proposed in engineering were revisions of the curriculum, requiring common first-year and almost totally common second-year studies, with design of individualized programs thereafter, increasing minimum class size to 35, adding a fifth year leading to a masters degree, and merging the present four departments into one division of engineering with a chairman appointed by the dean and president from a slate of two to four selected by tenured members of the division. Science and mathematics curriculum were to be consolidated, with a single bachelor of science degree offered, graduate study in those areas to be eliminated, and the physics, math, and chemists in the present chemical engineering faculty merged into a single science and math division. Recognizing the limited size and scope of social science and humanities offerings and that they provide a service and not studies leading to a degree, the trustees proposed the present humanities department become the Division of Humanities and Social Sciences and become a part of the faculty.

the School of Engineering and Science, with a chairman chosen in the same way as those of engineering and science and mathematics

For students in Art and Architecture the report urged a minimum 30 credit hours in the humanities and social sciences, with 18 of these being electives, and the students be permitted to take science, math, and engineering courses. The trustees also concluded that the architecture department be merged with painting and Sculpture and Photography and Design.

The trustees also urged development of a single governance for this entire faculty, with the Senate changed to include a faculty each from art and architecture, engineering, science, and math and one from the humanities faculty, and three students each from art and architecture, engineering, science and math, and humanities.

Prior to the issuance of the trustees' statement, the Faculty Advisory Committee of the School of Engineering and Science, chaired by Stephen Haselton, who was also chairman of humanities, and staffed by seven other faculty, two of whom were department heads, and the dean had issued its own lengthy report on January 22, 1971.

A major recommendation of this committee was a new academic administrative structure reconstituting the faculties into three divisions: a Division of Engineering, a Division of Art and Architecture, and a Division of Sciences and Liberal Arts. The new division would include all members of the present Departments of humanities, mathematics, physics, and physical education, together with pure chemists. Each division was to be administered by a faculty member elected by members of his division or rotating for a stated term who would report to a single appointed administrative officer (dean, provost, or vice president). The basic administration of the educational program in each major field of study would be handled by a standing committee of the faculty with its own elected chairman.

By open letter from the department of humanities to the trustees and president dated March 31, 1971, signed by 11 of the 12 humanities faculty, including Haselton, the members expressed strong criticism of the trustees' characterization of them as being unable to develop and teach a proper elective program and of the proposal, claimed most damaging (and contrary to the faculty advisory committee's recommendation), of withdrawing the humanities department from the School of Art and Architecture and placing it wholly within the school of Engineering and Science. The Humanities faculty reminded the trustees that 6 years before they were removed from the same administrative position now proposed and urgently advised the trustees to reconsider and continue the present administrative location of the department, now approximately divided in its membership between the two professional schools.

After it appeared to Chairman Haselton that the trustees had disregarded and would continue to disregard the report and recommendation of the faculty advisory committee and at the same time the trustees and outside consultants and advisors had been working on a plan without his knowledge (or that of other faculty) which was

clearly going to be followed, he resigned at the end of the 1970-1971 academic year

By memorandum dated October 9, 1972, the board of trustees informed the Cooper Union community of their decisions about the development of the institution in the coming period. They broke down into three areas. Regarding structure, the present School of Art and Architecture would consist of two divisions, Art and Architecture, and the School of Engineering and Science would consist of two divisions, Engineering, including all members of engineering departments except chemists, and Science and Mathematics, including all members of departments of physics and math plus the chemists. A fifth division of Humanities and Social Sciences would consist of all present members of the department of humanities, who would continue to be represented on the faculties of the two schools as at present. Two to four candidates to become division heads would be recommended by the faculty to the deans of the respective schools, for appointment by the president before December 1, 1972, for a term of 3 years. The division heads would thereafter convene meetings of their respective divisions to organize internal structure, present curriculum proposals to appropriate faculty, and handle other matters. Division heads were also to make budget and personnel recommendations to the respective deans in conjunction with current department heads after consultation with relevant faculty members

Since the preexisting academic departments had now been consolidated into five divisions, the position of department head was abolished. According to Professor Knapp the loss of department heads and the departmental structure meant a loss in local professional faculty control over many details of the day-to-day administration of the curriculum. Previously, faculty in each subject academic department had input in establishing a laboratory budget, local control over laboratory technicians who were assigned, or at least, associated with particular laboratories in particular disciplines, the services of a local departmental secretary, continuous coordination with other departmental members in developing changes and modifications in curriculum, and day-to-day involvement in housekeeping matters relating to the academic department. All of these local controls and direct participation in subject curriculum were lost on the elimination of the department setup. Faculty concern with and criticism of the changes wrought in 1972 have been continuously voiced in informal groups and directly with the dean over the subsequent 10-year period, particularly in Engineering, but to no avail.

As to degrees and curricula, new degrees to be offered would be a B.S. with a major in the various engineering options; a B.S. with a major in mathematics; a B.S. With a major in distributed science; and a B.S. with a major in architecture. Curriculum proposals for these degrees were to originate in the relevant divisions for presentation to the appropriate faculties at the earliest possible time following appointment of the division heads.

Regarding governance, the trustees wrote that the Senate would be asked to form a committee to draft a new governance in keeping with the new structure. On

the report of the committee, the Senate was to propose the governance to the faculty and the trustees for approval.

Associate Professor of Architecture Michael Wurmfeld testified without contradiction that when these structural changes took place effective for the academic year 1973-1974, the faculty did not participate in recommending or voting as a body on them. Wurmfeld stated that the structure was changed by a memorandum from the president. The faculty of which he was a member—of the School of Art and Architecture—did not vote to make the change for departments to divisions, nor did it recommend the change, nor did any governance committee deal with the matter. Neither did the faculty of Architecture—when it became a separate division—vote to recommend John Hejduk as division head of Architecture, although he had been department head of architecture prior to the change.

In June 1973, at a meeting of the faculty of the then School of Art and Architecture, under consideration were amendments to the governance which had been prepared by the administrative committee after having received recommendations from the ad hoc committee on governance, appointed by the dean. One of the proposed amendments provided that when there is a vacancy in the post of division head (the position newly created by the trustees), a committee predominated by full-time faculty shall prepare a list of qualified candidates for the dean; the president and dean shall then present a slate to the members of the faculty, who shall elect the head of the division by a majority. When the post of division head is unfilled for an interval, the dean, in consultation with members of the division, shall promptly recommend to the president a member of the division to serve as acting division head.

Provost Kaplan spoke against the amendment, believing that the position differed from department head and the ultimate choice should be by the administration. By letter dated September 13, 1973, White informed Dean Sadek of the School of Art and Architecture that the trustees, at its September 12, 1973 meeting, approved the amendments to the governance previously submitted, with the exception of the one concerning division head. The trustees specifically disapproved the amendment dealing with the method of appointment, believing that while the appointee should be acceptable to both the faculty and the administration, "the level of administrative and academic responsibility of the position is such that the appointment should be made by the President, after consultation with the dean, from a slate presented by appropriate members of the faculty."

As a consequence of the administration's rejection of the faculty's proposal, now including the division head as an administrator, the makeup of the curriculum committee of the School of Art and Architecture after adoption of the 1973 amendments included only one full-time faculty member.

After Haselton left the institution, Humanities Professor Leo Kaplan was appointed by White as acting head of the department of humanities to succeed him. While Kaplan had informal faculty support for the position, he was named without faculty vote. Then, in April 1972,

Kaplan was named as the institution's first provost and academic vice president by the board of trustees. The position of provost was created, and Professor Kaplan was selected to fill it, without any consultation with, recommendation or vote by, the faculties of Cooper Union.

When the Division of Humanities and Social Sciences was created in 1972, Professor Raymond Brown was appointed its acting chairman. By memorandum dated May 21, 1973, the members of the faculty of the division unanimously recommended Brown as the permanent chairman after a report and recommendation of a department search committee headed by Humanities Professor Richard Bowman. That recommendation was never followed by the administration.

In May 1973, Provost Kaplan presented a report he had prepared to the Senate, since 1971 made up of student and faculty representatives as recommended by the trustees. In it, Kaplan presented quantitative data bearing on possible policy decisions to be taken because of mounting deficits and the need to economize to assure the continued viability of the institution. Kaplan had been asked by White to prepare a report outlining his thoughts on optimizing the allocation of Cooper Union's limited resources while cutting costs without sacrificing quality. Key factors examined were (1) student-faculty ratios, (2) class size, (3) teaching loads, and (4) tenure. Kaplan saw the possibility of a reasonable increase in the student-faculty ratio, particularly in Engineering and Science where a combination of dropping enrollment and faculty increases had led to more than a 15-percent increase in the ratio. In light of the marked increase in proportions of class sections of exceptionally small size over the last decade, Kaplan saw some improvement likely in judiciously combining small sections but little likelihood in avoiding small classes in a small school offering an appropriate variety of courses. Kaplan was hopeful that real savings could be accomplished through increasing teaching loads for full-time faculty, many of whom no longer had administrative duties as department heads since their abolition on the 1972 reorganization into divisions. On tenure, Kaplan was convinced the data on the ratios, class size, and teaching loads reinforced the position recently taken by the board of trustees severely limiting grants of tenure if any meaningful reduction in the proportion of faculty on tenure was to be achieved while reducing the absolute size of the faculty. Kaplan suggested that policy should continue over a 5-year period.

In sum, Kaplan recommended reducing full-time equivalent faculty between 10 and 15 by attrition over the next 5-year period without replacement of retiring faculty and increasing teaching loads, a severe policy on granting of tenure over the same period; and reasonable, selective increases in class size on a case-by-case basis.

The provost insisted on the witness stand that before preparation of his report, he had held many discussions with individual faculty members, particularly senior members in Humanities, on limiting full-time faculty and increasing hiring of adjuncts, and with many people, he had raised the subject of teaching loads, particularly asking members of the Humanities Department if they could tolerate an increase in load. Nevertheless, at no

point in his report does Kaplan acknowledge any input from faculty in his discussion and resolution of the issues raised in light of the analyzed data. Neither did Kaplan claim that his own recommendations were previously disclosed to the faculty

The Senate continued discussions on the report into the 1973-1974 academic year. By that point it had become obvious to a number of the faculty members of the Senate that the recommendations in the report were already in the process of being implemented. When this was brought to Kaplan's attention the provost responded that he thought the Senate could be useful by a resolution that would advocate support of the recommendations made that were being implemented. Various faculty members, among them Professor of Electrical Engineering Ralph Knapp, then a member of the Senate, stated objections to being put in the position of being a rubber stamp to an action that was already being put into effect.

Thus, at a Senate meeting held December 18, 1973, a first draft of a resolution for adoption by the Senate prepared by its chairman, Richard Bowman, was circulated for discussions. It noted at the beginning of its preamble: "The major difficulty in preparing this resolution is that the Senate is being asked now to advise on actions previously adopted by Trustees and Administration without consulting the Senate." As an example, the preamble went on to note that although the Faculty was told no teaching jobs would be lost because of adoption of the new divisional structure, a considerable credibility gap was created when subsequently eight well-thought-of teachers were denied tenure. Further noted was the sacrifice of a uniquely favorable financial position by the \$10 million renovation of the Foundation Building rather than following spendthrift education practices. The preamble continues. "The Faculties, too, have felt that they were greeted by ukase from on high, rather than playing a responsible part in decision making."

The draft resolution went on to recommend more study and consultation prior to diminishing the size of the faculty by 1 to 15 members; to recommend a need for the Senate to increase its competence in studying balance sheets and financial reports in order to offer competent advice on the data compiled by Provost Kaplan (a Senate request for an administration-supplied accountant to aid its study of the provost's report had been rejected), to dispute an increase in teaching load which did not take into account other needs, such as for diversification of faculty and participation in committee work; and to reject any increase in class size because of a resulting decrease in variety of courses offered. The draft concluded with language highly critical of the apparent adoption by the trustees of the provost's report calling for more discussion in a variety of areas, including the dangers and desirability of restricted tenure policy, effective decision making by trustees in academic areas, standard fiscal approach to educational policy in a free tuition private college, converting faculty into predominantly adjunct part-time status, violating governance and having no new governance, and continuing the dichotomy of the Cooper Union in two uncooperating and misunderstanding professional schools.

By the senate meeting of March 5, 1974, the issue of collective bargaining had been interjected and predominated in the Senate's consideration of a response to the provost's May 1973 report. When Bowman's December 1973 draft resolution came up for continued consideration, Senator Tulchin urged the Senate to consider and endorse the concept of collective bargaining in dealing with the various issues raised in the provost's report. After a ruling by the chairman that consideration of the matter was in order, Senator Knapp, at the request of several senators, distributed materials announcing the formation of the CUFCT, a meeting of its organizing committee held in February, and a collective-bargaining election petition. On a motion made by Tulchin, seconded by Knapp, and subsequently rephrased following discussion, the Senate adopted by a vote of seven in favor, none opposed, and one abstention, the following resolution, proposed as an addition to Bowman's original draft resolution

The Senate recommends to the faculties and notifies the administration that the issues raised in the Provost's May 1973 report should be dealt with in the formal procedures of collective bargaining.

During consideration of the motion, both Dean Sadek of the School of Art and Architecture and Dean Volpe of the School of Engineering and Science questioned the legality of their presence during the debate and excused themselves from the meeting.

It is thus apparent that the economic problems confronting the institution in the early 1970s as well as the provost's report, unilaterally prepared, issued, and implemented, dealing with these problems in terms of restricting tenure and increasing adjunct faculty and teaching loads crystallized faculty discontent with administration handling of these concerns with limited and belated faculty input to the point of encouraging faculty collective bargaining on the one hand and energizing the Senate to serve as a focal point of faculty sentiment for an independent and effective faculty voice on broad academic policy and structure on the other hand. The interest in collective bargaining led almost immediately to the filing of the representation petition and to the lengthy bargaining history following union certification and ultimately to the initial contract entered in 1978. As will be seen, in 1979 the CUFCT played a significant role in a later continued restructuring of the institution involving in particular the place and relationship to other faculty of the Humanities members. The faculty interest in strengthening the role of the 1972 revamped faculty-student Senate continued to be frustrated when a subsequent reorganization of the institution announced in 1975 was implemented without consultation with it, and its voluntary involvement in a matter of alleged breach of academic freedom in the case of Professor Gormley also in 1975 led to White's rejection of its role in the matter. White also expressed the view at a meeting of the Senate held March 4, 1975, that the faculty policy manual did not require that the president must consult with the Senate or that he must agree with the Senate's recommendations. As a consequence of these continued defeats in making

its voice heard in matters of significance in academic and financial policy areas, the Senate at a meeting held December 2, 1975, adopted a motion that since it was a group without any powers it should cease to meet any longer. No further Senate meetings were held until after adoption of the 1978 collective-bargaining agreement.

In a memorandum dated November 15, 1973, White addressed faculty and students about his concern that the trustees report for the seventies and eighties which had been designed to open a dialogue about the future role of the institution had not led to a resolution of the continuing issues still troubling it. Chief among them was the place of the liberal arts, social science, and other general education features in the professional curriculum and the administrative, organizational, and structural relationships between them. Since conflict and irrationality continued to mark the faculty's consideration of these concerns, the president now assigned the provost to undertake a thorough study of the general education program. To assist him, he also appointed a special committee under the provost's chairmanship, consisting of the two academic deans and the five division heads. Their charge was to develop a philosophy and rationale of general education in the professional curricula, to outline the general principles of an appropriate curricula approach to achieve it, and to recommend an effective organization, structural relationship, and administration of this program within Cooper Union. Their report should have been available for the faculties and president and trustees by early in the 1974-1975 academic year. The president urged all persons and groups of the Cooper community to communicate their views to the committee.

In view of the charge of the president's special committee, Architecture Professor Michael Wurmfeld had serious reservations about accepting the chairmanship of the Curriculum Committee of the School of Art and Architecture at its meeting held November 19, 1973. He believed that the president's announcement of November 15 precluded a review by the faculty of the humanities curriculum, and, in fact, constituted an improper superseding of the authority vested by the governance in the curriculum committee. Professor Wurmfeld sought clarification of the work of the curriculum committee from Dean Sadek. The dean stated that the three representatives from the School of Art and Architecture on the president's special committee would be bound by the recommendations of the A&A curriculum committee, and that the A&A curriculum committee should concern itself with what it believes are the general studies requirements within professional programs and how a complementary program can be developed for the degree requirements, leaving for the special committee the questions of organization, structural relationship, and administration.

By memorandum dated January 23, 1975, White announced a further reorganization of the institution and elimination of certain programs. He referred to consultation and discussion involving every part of the Cooper community of ways of overcoming its serious financial problems which had taken place for at least the past 5 years. He noted discussions with the faculty as a whole beginning with the 1970s and 1980s report, and in the

Senate, but without any positive cost-cutting plans being proposed or endorsed. He made no mention of the report of work or his special committee of administrators appointed November 15, 1973. The decisions taken by the trustees were as follows:

I. Programs

A. Cooper Union will discontinue immediately the admission of students to curricula leading to degrees in mathematics, physics, and distributed science. Current third and fourth year students in those disciplines will be permitted to fulfill academic requirements and will be granted Cooper Union degrees. Current first and second year students in these programs may continue through the 1975-76 academic year and will be offered the option of transferring into the School of Engineering, subject only to the condition that choice of a particular engineering curriculum will be limited by the maximum number that can reasonably be absorbed.

B. Effective July 1, 1976, the physical education program will be discontinued. A limited health program will be continued and those activities will be reassigned to the Office of Student-Services.

II. Organization

Effective July 1, 1975, the Cooper Union will consist of three degree-granting schools, each with a dean as its responsible administrative officer:

Art	George Sadek
Architecture	John Hejduk
Engineering	Chor Weng Tan

Each of the above degree-granting faculties will have primary responsibility, as usual, for such matters as curriculum, faculty status, academic standards, granting of degrees, admissions, and so forth.

In addition, the Faculty of Liberal Arts and Science—including art and architecture history, science and mathematics, humanities and social sciences—will provide the necessary academic studies in these disciplines as required by the three degree-granting schools in their several curricula. Provost Leo S. Kaplan will serve temporarily as acting dean of this faculty. It is essential that adequate representation from the Faculty of Liberal Arts and Sciences be provided on the relevant committees of the degree-granting schools so that the vital cooperation needed to optimize our educational efforts can be realized. The current elected student and alumni representatives should also be assigned to appropriate committees of the several schools for the same reason.

It will also be necessary to start work immediately on an overall governance for the Cooper Union in order to incorporate these changes and to provide a codified format for the required all-Cooper Union committees. Meanwhile, those committees now in existence, e.g. the Academic Freedom and

Tenure Committee, will continue to function as constituted.

III. Other Reductions

In conjunction with the changes announced above, major curtailment of expenditures will be effected throughout every section of activity within The Cooper Union. [Emphasis added.]

President White went on to note that the decisions he was announcing were taken after a great deal of agonizing and soul searching but that they represented, in his opinion and that of the trustees, what was absolutely essential to continue the school in a form consistent with its historic past.

Humanities Professor Thaddeus Gatza recalled one meeting which members of the humanities faculty held with President White during the 1974-1975 academic year relating to the status of humanities curriculum at Cooper Union. This was during the year in which the math and science degree programs were eliminated and the faculty of Liberal Arts and Science was created.

President White asked members present to express their views about the position of the faculty of Liberal Arts and Science and Chemistry Professor Avi Kornblum asked White if the administration had considered the possibility of having Cooper Union Engineering School students take their nonprofessional courses in humanities, physics, chemistry, and mathematics at another institution such as New York University because Cooper Union already had a relationship with it. As Professor Gatza noted, this would, in effect, be doing away with the faculty of Liberal Arts and Science at Cooper Union. President White replied that the administration had considered that possibility. It considered it in economic terms, and found that it was cheaper to retain the present faculty, and have students take their courses at the Cooper Union than have them take them elsewhere, and perhaps have Cooper Union pay for the tuition for those courses. Professor Kornblum asked in effect whether their jobs were in jeopardy, and White said no, as long as it was determined that they were cheaper labor than was available outside. The faculty never considered nor did the administration ever propose that the faculty consider whether it was economical to have students take courses at NYU and eliminate faculty members.

With respect to the terms of the 1975 reorganization, Provost Kaplan confirmed that the faculty was opposed to the termination of the degree program in mathematics among others but that the board of trustees, the provost, and president all recommended its elimination and it was eliminated.

After sophomore students in physics complained to the administration they were permitted to continue in the physics degree-granting program along with the juniors and seniors. Freshmen students in the degree-granting program of the physics department were ultimately permitted to transfer to the School of Engineering, mostly into the electrical engineering curriculum.

Electrical Engineering Professor Knapp and Humanities Professor Thaddeus Gatza confirmed that there had been no faculty input into the trustees' determination an-

nounced by President White to terminate the physics, math, and distributed science degree programs. At a regular faculty meeting of the School of Engineering and Science held on March 11, 1975, a motion was adopted by a vote of 18 to 7 in which the faculty expressed criticism to the president and trustees as to their decision to discontinue degree programs, describing the unilateral actions taken with negligible faculty consultation as serious violations of generally accepted standards of college governance and a breach of Cooper Union's own governance. The faculty called upon the trustees and the administration to suspend the decisions announced and to initiate intensive discussions among all segments of the Cooper Union community to seek viable ways of meeting the current crises. The resolutions were not acted upon by the administration.

The minutes of the Senate meeting of February 4, 1975, contain a paragraph relating to President White's January 23, 1975 memorandum. In it, Chairman Bowman stated that "the administration had no consultation whatever with the Senate concerning the 23 January memorandum. No disagreement with this statement by the Chairman was voiced. All senators participated in the far ranging discussion." By memorandum dated March 12, 1975, and addressed to Senate Secretary Jamell Ahmad, Provost Kaplan sought to correct the minute's references to the Senate's consideration of the president's announcement of reorganization and program eliminations. Kaplan, referring to his own statement at the Senate meeting, stated that "it was a matter of interpretation, to say the least, as to whether there had been consultation." Kaplan went on to note the consultations on academic and financial questions which had taken place over a period of years between all groups at the Cooper Union, including trustees, administration, faculty, students, the Senate, AAUP, etc., as well as alumni, and expert consultants. The provost did not claim that the specific changes in organization and degree-granting subjects made effective July 1, 1975, had been the subject of any prior notice to, or consultation with, the Senate or any other faculty body.

Prior to the 1975 changes, the Art history faculty had been located in the School of Art and Architecture and the professors of physics, mathematics, and chemistry had been in the School of Engineering. The new faculty of Liberal Arts and Science comprised 26 of the 58 total full-time faculty complement in the whole institution. These 26 faculty members played no role in the creation of their new body. They were now excluded from membership on the committees of the three degree-granting schools, and had no vote in the meetings of the faculties of those schools.

The new faculty of Liberal Arts and Science, without governance, periodically held their own meetings, initially chaired by the acting dean, Provost Kaplan. After objections were raised to the existence of the faculty and the provost's role by the third meeting, the group elected Professor Julius Klerer as acting head and he called meetings subsequently.

Before Klerer was elected as acting head, Acting Dean Kaplan had notified the LA&S faculty of a meet-

ing for December 9, 1975, the agenda for which included the selection of an academic standards committee, designation of representatives to other faculties as requested by them, and selection of a secretary of the faculty. At the meeting, the members present voted by a one vote margin to place other items on the agenda relating to the structure and positions of the LA&S faculty ahead of Kaplan's. As he had another engagement, he left. A few days later, by memorandum dated December 12, 1975, Acting Dean Kaplan informed the faculty that in order to serve the current needs for a committee on academic standards he had appointed four faculty members he then named to serve temporarily in this capacity.

At a meeting of the Liberal Arts and Science faculty held on February 17, 1976, a resolution was adopted by a vote of 15 to 0, without dissent, which criticized the administration for continuing as acting dean its chief bargainer in dealings with the Union, thereby creating a conflict of interest in which the provost is supposed to exercise independent judgment in articulating the needs and recommendations of his faculty and also at the same time the positions of the administration in bargaining. The resolution recommended appointment of a new dean in consultation with the LA&S faculty. This resolution was ignored and the provost continued as acting dean until 1979 when the faculty of Liberal Arts and Science was dissolved, the science and mathematics faculty were returned to the School of Engineering, and the humanities and art history faculty became the department of humanities with their own chairman.

At another meeting of the LA&S faculty held on March 23, 1976, another resolution was adopted by a vote of seven in favor, two opposed, with two abstentions, which urged the administration to restore the status quo ante of including the members of the newly created faculty in the degree-granting schools with full rights of participation in governance committees. The initial paragraph of the resolution noted that the so-called faculty of Liberal Arts and Science "was created by fiat as a repository of the disenfranchised, with neither consultation nor the processes of mutual cooperation which should characterize academic decision making, the group having no status in the Faculty Governances and its members having no legitimate institutional functions." The faculty also resolved to attend all meetings of the faculty and committees to which they were previously assigned or elected and to continue fully to participate and vote in fulfillment of their academic responsibilities. There was no administration response to this resolution.

There were subsequently proposals in the form of memoranda forwarded to the deans of the three respective schools and through them to the respective faculties to have the LA&S faculty members included as voting members on the committees of the degree-granting schools to which they had been previously assigned. Chemists and mathematicians sought reassignment to Engineering, and the rest of the humanities faculty sought full reinstatement divided between the two other schools. These requests were also ignored.

Finally, on November 23, 1976, the LA&S faculty approved, by a vote of six to none with one abstention, a draft governance. This proposal was likewise ignored by

the administration. The anomaly here was that only a faculty already covered by a governance could amend a governance provision by a vote of two-thirds of its members, subject to approval by the board of trustees. Since the newly created LA&S faculty had no standing under the existing governances, and they were not added to the governance when created by the administration, the members themselves lacked the authority to add themselves as a unit to the governance structure.

At the same time that the members of the newly created faculty started protesting their exclusion from the governance and full participation in the faculty deliberative processes, the dean of the School of Engineering took unilateral action to bring that school's governance into conformity with his view of the structural changes made since 1972 and to reconstitute certain committees which reflected abandoned titles.

In a memorandum dated September 18, 1975, Dean Tan reconstituted his school's committees, without invoking the governance amendment process, in light of the recent restructuring and until the governance was finally revised or rewritten. Certain committees, admissions, academic standards, Student Activities, calendar and schedules, and Academic Freedom and Tenure, he formed, as he put it, "in reasonable agreement with the Governance in terms of the new school organization." Since the heads of departments no longer existed, he found it impossible to form two other standing committees—administrative and curriculum—and, instead, announced he was appointing an interim curriculum committee to act on pressing academic matters and assumed the day-to-day administrative responsibilities himself. When special administrative matters arose, he would either convene the entire faculty for a meeting or appoint another interim committee to deal with the issues.

Since the governances were not formally revised thereafter until President Lacy issued new ones in 1981 (except insofar as the 1978 collective-bargaining agreement contained terms and conditions of employment in effect superseding related governance provisions), Dean Tan's unilateral governance amendments continued in effect to 1981.

According to Professor Knapp, whose testimony in this regard was not contested, certain significant changes were made by Dean Tan in the 1964 governance. For one thing, the terms of office of the members of the newly constituted committees were to be for 1 year or until the governance was finally revised, whichever came first, whereas the earlier terms had been for 3 years. The admissions committee now had alumni representation, without vote, a change from before. The academic standards committee which had apparently added two students since 1964 did not specify whether they had a vote although in the preexisting governance they had none. The faculty members were now listed as representing disciplines, not departments. Student Activities, a joint committee, was now listed as containing among faculty one member from Engineering and one from either Art or Architecture, instead of one from Engineering and one from Art and Architecture. The Committee on Academic Freedom and Tenure, another joint com-

mittee previously comprising four members elected from Engineering and Art and Architecture by the joint faculties, now listed seven faculty members who had tenure and two adjunct members with at least three from the School of Art and Architecture and at least three from the School of Engineering and faculty of Liberal Arts and Sciences. The interim curriculum committee now listed the dean as chairman, and contained one representative from each of the degree programs in the School of Engineering; two from the faculty of LA&S, one of whom shall be in mathematics or science and the other in humanities and social science; two students elected by the School of Engineering student council; and two alumni. Whether students and alumni could vote was not disclosed. Neither were represented on the original 1964 committee, which comprised only heads of departments with the chairman presumably selected from among their number.

On August 22, 1975, President White individually wrote eight tenured professors, formally notifying them that as a result of the discontinuance of several of the institution's academic programs, their appointments on the faculty of Cooper Union were terminated effective August 31, 1976. Five of the professors made written request on October 28, 1975, for a hearing pursuant to the principles and procedures concerning academic freedom and tenure as set forth in appendix III of the faculty policy manual. It appears that the request was made directly to the Committee on Academic Freedom and Tenure, which constitutes the hearing Committee once the AF&T committee makes a recommendation for formal proceedings approved by the president. By letter dated November 13, 1975, President White denied their requests for a hearing, stating that "it is our considered opinion that the action of the Board of Trustees to eliminate degree programs in Mathematics, Physics, and Distributed Science was exclusively within its area of responsibility," and that, accordingly, a hearing under these circumstances is neither appropriate nor required by the terms of the governance. The committee to which the request for hearing had been made did not respond, and, according to Professor Knapp, the matter was taken out of their hands by President White before they responded.

On denial of a hearing, the five professors brought suit in the Supreme Court, New York County, State of New York, against Cooper Union (*Baker v. Cooper Union of Science and Art*), alleging that they were entitled to an injunction against their terminations until they were granted a hearing pursuant to article III of the manual to determine whether their terminations were for adequate cause. Cooper Union moved for summary judgment dismissing the complaint on the ground there was no triable issue of fact and that it was entitled to judgment as a matter of law. President White submitted an affidavit in support of the motion.

In addition to asserting that the discontinuance of the programs was not a "change in academic program" within the definition of "adequate cause for dismissal" in appendix III, but, rather, involved the elimination of three entire academic degree-awarding programs, President White, in his affidavit, referred to two other pro-

ceedings in which the institution's unilateral authority to take this action was upheld. In one, the Acting Regional Director for Region 2 of the NLRB dismissed a charge filed by the CUFCT on February 5, 1979, claiming that Cooper Union was required to negotiate with it prior to making the decision to eliminate the programs. In this dismissal letter dated April 23, 1975, the Acting Regional Director stated, *inter alia*, "It appears that the decision by the Employer to restructure the College and discontinue certain educational programs was an entrepreneurial decision and therefore not one that required prior bargaining with your organization," citing *General Motors Corp.*, 191 NLRB 951 (1971). Other, unrelated allegations were also dismissed by the Acting Regional Director in the same letter. The General Counsel's Office of Appeals denied an appeal from the refusal to issue complaint. In the other proceeding, a justice of the same court dismissed an action brought by Cooper Union students in the eliminated programs and alumni seeking to enjoin the program eliminations until the affected students obtained their degrees, the court recognizing that the trustees' decision was a proper exercise of its powers.

In the *Baker* suit, Cooper Union's motion for summary judgment was granted. After concluding that the appendix III hearing procedures do not apply to plaintiffs' situation, the court noted that even assuming plaintiffs had a right to a hearing, it would result at most in an advisory, nonbinding recommendation to the trustees. The court also referred to Cooper Union's "Charter and Indenture" under which it is the trustee's function to determine whether, when, and what programs should be offered or eliminated and their exclusive right to determine how the objects and purposes for which Cooper Union was established are to be implemented. The court added that "in point of fact, the Trustees have often eliminated or implemented programs in the past without first consulting any other group at Cooper Union. In the past fifteen years many similar changes have been made exclusively by the Trustees."

Among the other tenured professors terminated by letter on the restructuring and program eliminations, Professor of Physical Education Stephen P. Baker was subsequently reemployed as the director of health and recreation. The faculty neither participated nor voted on the decision to terminate Baker or the others, nor did it vote on Baker's subsequent appointment.

By memorandum dated May 22, 1978, addressed to the full-time faculty, President White dealt with the continuing problem of the administrative structure and organizational location of the current faculty of Liberal Arts and Science. He referred to a December 1977 request from the academic deans, the provost, and himself to Professor Bowman to poll the faculty in the hope a generally acceptable administrative solution could be achieved. The president then described two resolutions adopted by the faculty at a special meeting held in April 1978. The first recommended incorporation of its members into the degree-granting schools in varying and seemingly contradictory numbers, and the second proposed establishing the LA&S faculty as a nondegree-granting faculty and appointing four members each to the Art and Architec-

ture faculties and nine members to the Engineering faculty.

The president went on to describe three other suggestions as to placement, participation, and structure made to him in the course of subsequent meetings be held with the several faculty groups. These groups comprised in all 35 members of the Cooper faculties, including 10 from Engineering, 5 each from the faculties of Art and Architecture, and 15 of the presently constituted faculty of LA&S. The president next summarized the weight of opinion of each group toward the five proposals, concluding that a commonly supported solution was impossible to achieve at this time. President White found this regrettable and even harmful to the prospects for collegiality and a common purpose search for solutions. He stated that in the absence of a coming together with the faculty on this matter, ultimately an administrative decision must be made. He tabled further consideration of the matter until the fall when he would reraise it with the hope that the differences between the several faculty groups could be resolved.

Associate Professor of Art and Union President Eugene Tulchin testified that pursuant to article XXV, "Meetings," of the collective-bargaining agreement, effective March 1978, he had been meeting regularly with Provost Kaplan. That article provided that the president of Cooper Union, or a designee, and the president of the CUFCT, or a designee, shall meet at least once each month to discuss and consult on matters affecting the terms and conditions of employment of bargaining unit members and on any other matters related to the agreement, unless both parties agree that no meeting should take place in any particular month.

Along with issuance of President White's report to the faculty in May 1978, on the continuing unresolved problems involving the LA&S faculty, union members among that faculty were complaining to Tulchin that they were disenfranchised and without a vote in the faculties and requested him to do something now that they had a union contract.

At one of their monthly meetings, Provost Kaplan told Tulchin that he really did not want to be the acting dean of the LA&S faculty and would love to be relieved. In the light of the president's memo, the union members' expressions of concern for their participatory exclusion, and the Provost's desire to be relieved of his responsibility, Tulchin now asked Kaplan if he was amenable to working with the Union in solving this problem. The Provost said he was.

Tulchin next obtained permission from the Union's executive board to pursue this matter. At his next meeting with the provost, they agreed to proceed to seek a solution together and to keep their discussions completely off the record. Tulchin asked Kaplan what absolute conditions he needed to have that were not negotiable, so that he would try and work out a solution incorporating that. The provost said one condition would be that the humanities group be an identifiable entity, and a second condition was that the president would appoint a person to be in charge of that group. Beyond that, the provost said he was open to suggestions. Tulchin stated he did not believe Kaplan's absolute needs were unreasonable or

impossible to comply with and he went on to offer several suggestions to the resolution of the problem.

Tulchin's ideas were discussed and, ultimately, agreement was reached on the following terms. The science faculty would return to the School of Engineering and be assigned to that faculty, the other faculty members would be assigned to the faculty of the School of Art, School of Architecture, and School of Engineering in numbers that would be reasonably equitable relative to the numbers of full-time faculty in each of those schools, and the person responsible for the humanities area would be a member of the bargaining unit. On this last item, the union position, as expressed by Tulchin, had been that if the person to head the humanities was from within the institution, and it was a full-time administrative position, the Union wanted an additional instructor hired to replace the successful candidate, but that if no replacement was to be hired, then the position would be bargaining unit work, and the occupant would be included in the unit. Kaplan replied at a subsequent meeting that Cooper Union did not wish to go outside and hire a full-time person, nor did it wish to hire a full-time faculty member to substitute, and then agreed that the person to head this area would be included in the unit.

Tulchin and Kaplan next came to a further understanding in principle that the occupant of the position would have a reduced teaching schedule and additional pay, without getting into the specifics. When each voiced the view that the new head had to be acceptable to his principal, the Union and the administration, respectively, agreed that they would find a person acceptable to both of them. They then reviewed candidates from among LA&S faculty members, and, after Tulchin had tentatively agreed on three names and felt out one but was advised by the Union's executive board that in doing so he had exceeded his authority, he later reported that either of two candidates would be acceptable to the Union, and the provost chose Professor Bowman from that list.

Finally, Tulchin and Kaplan discussed the mechanism for Professor Bowman's achieving appointment to the position. As Kaplan had insisted on the incumbent being appointed to the position, Tulchin suggested that the humanities group nominate candidates. The provost guaranteed that if Professor Bowman's name was on the list of nominees, he would be the individual selected. They next discussed the appropriateness of the idea of the restructuring being given to the Senate. Tulchin said he would line up the union votes in the Senate. Kaplan said, "I have a few chips outstanding there, and I can call them on this issue of the restructuring." The two then reiterated their agreement and shook hands on the deal.

These discussions took place prior to the Senate meeting of January 19, 1979. Before that meeting, Tulchin had met with other Senate members of a subcommittee appointed by the Senate to recommend the restructuring of the faculty of LA&S. Tulchin and one other member of the subcommittee were union executive board members. The subcommittee also included two other faculty members, one of whom was not a member of the Union,

and two students. The Senate contained at least one other union executive board member.

At the meeting, Tulchin sat with Provost Kaplan (who attended along with Deans Tan and Sadek) at one side of a large square table. To Tulchin and Kaplan's surprise, in addition to the subcommittee's proposal, appendix A, the Senate was presented with another recommendation, appendix B, emanating from the LA&S faculty. One major difference between the two was that the faculty's proposal provided that the head of a reconstituted humanities group be a dean, a title expressly excluded from the certified bargaining unit, while the subcommittee's proposal listed the head as an elected coordinator. Tulchin testified that the provost expressed himself in strong language critical of the faculty members who had reneged on a promise to him to go along with the understanding. With certain changes, among them regarding nomenclature—Tulchin getting the provost's approval in a side bar conversation for giving the new humanities grouping the title of department and then speaking up in favor of such language—a third recommendation, appendix C, retaining most of the concepts of appendix A, was adopted.

It provided that the physics, chemistry, and mathematics faculty would become members of the faculty of the School of Engineering; humanities, social sciences, and art history faculty would constitute the faculty of humanities—with the understanding it would be a department with its own department head, elected for a 3-year term; members of the department would be assigned to the three schools in a manner, if possible, reflecting their preferences, with full voting rights in the school assigned and functioning under the governance; members of the three schools would participate in the department's curriculum committee; department members' recommendations would be sought on appointment, reappointment, promotion, and tenure as required by the Cooper Union-CUFCT agreement; the chairperson (or department head) would meet regularly with the three deans, be ex-officio member of the three schools and their administrative committees, and preside over departmental meetings, handle teaching assignments and scheduling, handle student matters, and recommend a draft departmental budget and monitor the budget approved; governance changes would reflect the foregoing and the humanities faculty would draft its internal rules or bylaws compatible with the collective-bargaining agreement.

About a week after the Senate meeting, Tulchin and Kaplan met again to discuss the terms and conditions under which Professor Bowman would hold the position. They agreed that the additional salary for the department head of humanities would be \$5000 and that the reduction in workload would be slightly less than half the normal teaching load.

By memorandum dated February 21, 1979, President White addressed the Cooper Union faculties about the reorganization of the Liberal Arts and Science faculty. The reorganization follows in every respect the deal made between Tulchin and Kaplan as adopted by the Senate. The chemistry, mathematics, and physics academic staff will become members of the faculty of the School of Engineering, and the humanities and social sci-

ences academic staff will become members of the three degree-granting faculties. Given the present level of staffing, four will become members of the Engineering faculty and two each will join the Architecture and Art faculties. These assignments will reflect balanced representation of the two disciplines and individual preferences. They will carry the full privileges of those faculties.

The humanities and social science group, for their own administrative and curriculum planning purposes, will be designated as the humanities department. A member is to be nominated by them to the president for appointment to a 3-year term as chairperson. The chairperson's responsibilities follow those specified in the Senate resolution. On curriculum matters, departmental faculty will serve on the other schools' committee, and representatives from those schools will participate in its curriculum considerations.

Certain governance changes were recommended relating to enlargement and cross-representation on school curriculum committees and the chairperson's inclusion on administrative committees. The president ended by expressing his gratitude to the student-faculty Senate for the diligent, evenhanded, and openminded assistance they provided in structuring this reorganization.

Provost Kaplan, as departing dean, next called a meeting of the humanities faculty pursuant to the president's request to receive nominations for the position of chairperson and preferences on assignments. Professor Richard S. Bowman was the only candidate nominated and received the faculty's unanimous vote for the position. Shortly afterward, President White appointed Bowman as chairman of the department.

Humanities Professor Gatz, CUFCT treasurer and member of its executive board, corroborated, in broad outline, Tulchin's testimony, in particular, as to his representing, reporting to, and receiving input from the Union's executive board on his negotiations with the provost regarding restructuring of the humanities grouping with a head recommended by them and to be included in the bargaining unit. Associate Professor of Architecture Wurmfeld, union executive board member and member of the Senate, also confirmed that the Senate in January 1979 implemented and formalized an administration-CUFCT agreement on humanities restructuring. As testified by Wurmfeld, through the fall of 1978 the Union's executive board had debated the best resolution of humanities structural requirements and kept abreast from Tulchin's reports of his meetings with Kaplan and ultimate commitment, including its submission to the Senate where the Union's board members on the Senate would vote as a group. The Union's executive board also later came to a consensus to support Professor Bowman as chairman and authorized Tulchin to propose Bowman in his meetings with the provost.

Provost Kaplan denied that Tulchin ever advised him that he was negotiating with him during the course of their frequent meetings held with respect to the 1979 humanities restructuring and the selection of a chairperson for the new department. Yet, Kaplan's testimony otherwise appears to corroborate various facets of Tulchin's

narrative regarding the nature of their discussions. Thus, Kaplan recalled seeing Tulchin fairly often during that period. He also confirmed Tulchin's claim of influence in the Senate's consideration of selection of a chairperson and their narrowing consideration between the two of them to Professor Bowman and one other professor. At one point, Kaplan testified that without explicitly setting it forth, "I think he [Tulchin] understood that I understood that there were a number of members of the executive board of the Union on the Senate, and he was on the Senate too, so that he had some influence with those people." It is also clear that Kaplan did not specifically deny holding discussions with Tulchin at or before the January 1979 Senate meeting with reference to the form the restructuring should take. Neither did Kaplan explain why it was Tulchin, in particular, with whom he was meeting alone on a frequent basis or why the subjects of their discussions related to the choice of a humanities department head and the restructuring of the humanities grouping. I am compelled to conclude on the record before me that Tulchin's testimony is basically accurate and that Kaplan was well aware that Tulchin was representing the CUFCT and he was representing the administration in their off-the-record discussions, that they included reaching agreement on the form of the restructuring of the faculty of LA&S, including unit inclusion of its new head, and the manner in which the faculty input into these decisions would be expressed and approved.

F. Adoption of the 1978 Governances

In 1975, at President White's direction, his assistant and secretary to the board of trustees, Callcote Kindler, compiled a single document bringing up to date the 1964 governances by inserting on typed pages all amendments made between 1964 and 1975 to the governances. She did this by reviewing the minutes of the faculty meetings containing amendments they adopted and trustees' minutes approving the various amendments. She also crossed out those words and sections in the original which had been changed or modified, and referred to the appropriate amendment appearing on the following page. These handwritten crossings out and some notations were made by Kindler, and others were made by the president and represented his interpretation of application of the governances to the new structural change in 1975 when the three schools and faculty of LA&S were created. The president consulted with the provost on these interpretations.

The governance documents with the insertions, amendments, and interpretations remained solely in the possession of the administration for its use, and were not made available to the faculty, although, as earlier indicated, from time to time President White requested the faculties to address major revisions of the governances in light of the restructurings, particularly those in 1975.

According to Union President Tulchin, corroborated by Provost Kaplan, after the 1978 collective-bargaining agreement was executed in March of that year, the two of them got together pursuant to its terms to make changes in the governances to bring them into conformity with article XXIII of the agreement and to make minor changes to bring them into conformity with the

existing structural organization of the institution. Article XXIII provided: "The application of the Governances shall not affect subject matters covered under this Agreement. In other matters (i.e., matters which do not fall within the definition of 'Terms and Conditions of Employment'), the Governances of each faculty (i.e., Art, Architecture, Engineering) as they currently exist or, in the case of the Arts and Sciences Faculty, as established in the future, shall remain in full force and effect pursuant to the terms of each Governance, respectively." In meeting with the provost, Tulchin was acting under authorization by the Union's executive board to conduct negotiations, including those relating to the governances.

For the first time, a member of the faculty, Tulchin, saw a compilation of all of the governances, as amended since 1964, in one document. Together, he and Kaplan reviewed the amended and revised compilation for the purpose of seeking agreement on those portions which affected terms and conditions of employment dealt with in the union contract, removing them from the governances, and to arrive at an agreed-upon version of the governances. Both Tulchin and Kaplan made markings on the document as they went along, reflecting their agreements on deletions and modifications in language of the governances.

According to Tulchin, he and the provost worked from the original compilation of 1964 governances with changes and typed revisions contained in a looseleaf bound folder and bearing the title "Faculty Governance and Interpretation June 1975." Provost Kaplan believed the working document he and Tulchin reviewed was a Xerox copy of the looseleaf bound volume. I conclude that Tulchin rather than Provost Kaplan is correct here, and that, indeed, the two of them were working from and worked up the original compilation of materials.

During their discussions, at least one difference arose between them, regarding the continued inclusion of the administrative committee in the governances. The Union wanted the committee abolished and the Provost countered that if the administrative committee was removed then the curriculum committee should also be out. Tulchin objected to this latter proposal. As a result of their continued negotiations over the matter, a compromise was reached whereby the administrative committee was retained in all school governances but certain preexisting language providing that "the activities of the members of the committee shall reflect the interests of the Faculty [and] . . . shall seek to interpret these interests to the President through the Dean or through representative on the Senate" was deleted.

The end result was that Tulchin and Kaplan reached agreement on all changes and modifications, a clear copy of the revised governances was prepared, it was checked over, and a covering letter to accompany issuance of the new governances was prepared, dated September 12, 1978, signed by Tulchin, as president of the CUFCT, and White, as president of the institution, and was attached to the front page of the new governances. The letter noted, *inter alia*, that the governances were in conformance with article XXIII of the agreement, and that changes were made to bring them into conformity with

article XXIII and with the existing structural organization of the Cooper Union.

Among other changes which appear in the 1978 school governances are the following: In article I three members of the adjunct teaching staff, elected by all part-time teachers for terms of 1, 2, or 3 years, are included as members of the faculty; ex-officio members, including the president, all deans other than of the school itself, and adjuncts, are specifically denied the vote; officers of the particular faculty now include a parliamentarian; students shall be represented at faculty meetings by three student members of standing committees elected by such students and they shall have a vote each; one alumnus as representative from the Alumni Association shall attend faculty meetings, without vote; deleted are paragraphs describing the faculty members' advisory responsibility in recommending appointments and promotions of department members (covered in the collective agreement) and department heads (eliminated in the early 1970s); deleted in article V are references to the committees on calendar and schedules (covered in part in an academic calendar, article IV, of the collective-bargaining agreement) and Academic Freedom and Tenure (covered in an "Academic Freedom and Responsibility," provision, article II, which tracks to a considerable extent the substance of the academic freedom described in appendix III to the 1964 faculty policy manual and in other articles dealing with dismissal of tenured faculty, article XIX, discipline, article XX, and grievance and arbitration procedures, article XXII, which permit grievances and, if unresolved after two preliminary steps, arbitration of all unresolved disputes concerning the application, the interpretation, or the reasonableness thereof or other claimed violation of any term or condition of the agreement, not excluding disputes concerning dismissal or discipline for conduct claimed protected under article II); committees now include as ex-officio members alumni representatives and student representatives; the Senate includes two faculty members elected by each school's faculty, including the faculty of LA&S (still in existence at this time in 1978), two elected student undergraduates from each school, the ex-officio members, the president and school deans shall be nonvoting members, and the term of faculty members is to be 3 years except at the first election one member from each faculty to be elected for 2 years and the term for student members shall be 1 year; each committee, in addition to including the school's dean, the dean of admissions and records, and alumnus, as ex-officio nonvoting members, also includes two full-time faculty, one part-time faculty, and one student, except that the dean chairs the administrative committee and votes and on all committees except administrative, and the chairperson shall be a full-time faculty member.

G. Current Complement of all Employees and Students by School

In July 1980, at the time of Cooper Union's withdrawal of recognition from the CUFCT, the School of Engineering had a complement of between 30 and 35 full-time faculty, including a handful of humanities faculty assigned to the school, the School of Architecture had approximately 9 full-time faculty, including 2 humanities

members assigned, and the School of Art had approximately 8 full-time members of the Art faculty, including 2 humanities faculty assigned. In the 1981-1982 academic year, the student body, institutionwide, comprised approximately 1000 undergraduate students, including 175 in the School of Architecture, 420 in the School of Art, and the balance, 405, in the School of Engineering.

In addition to full-time faculty, there were adjunct faculty hired in each school from time to time to teach individual courses and relieve full-time faculty on leave of absence or sabbatical leave for a semester or academic year. At any one time, adjuncts probably equaled or exceeded the number of full-time faculty. Professor Wurmfeld estimated that in the School of Architecture alone, anywhere between 20 and 50 adjunct faculty had been hired in the 10 years since he became a full-time member of the Architecture faculty in 1972.

Besides full-time and adjunct faculty, the institution also employed shop and laboratory assistants or technicians, four to five shop assistants and a shop supervisor in the School of Art alone, a small complement of professional and clerical library employees, administrative assistants and clerical support employees for the deans and other administrators, and a maintenance staff.

H. Administration of the Library System After 1976

1. Cooper Union's entry into the library consortium

Until 1977, Cooper Union maintained its own independent library services. A working collection for Art, Architecture, and Engineering was (and is presently) located on the first floor of the Foundation Building. Library services were under the direction of a head librarian, who was assisted by a number of assistant librarians, a few clerks, and a complement of student part-time workers.

By memorandum dated March 14, 1977, President White, in an attempt to dispel rumors of the elimination of library services at Cooper Union, disclosed to the Cooper Union community for the first time that there had been discussions among Cooper Union, New York University, and The New School for Social Research (including Parsons Institute of Design) in order to explore the possibility of entering into some sort of cooperative library arrangement.

In a letter to President White dated April 20, 1977, responding to his invitation made at a meeting with students and faculty on March 24 to express their views on the matter, the faculty of the School of Art transmitted a resolution adopted unanimously at its regular, semiannual meeting held on April 19, including, inter alia, the conclusion that in order to preserve the viability of their educational programs, the jurisdiction over the Cooper Union library should remain exclusively with Cooper Union and no part thereof is to be delegated outside this school.

At the meeting with faculty, President White gave a capsule history of the discussions underway among the three institutions to enter a cooperative venture and to computerize their collections, including the solicitation of grant money to finance the venture. He assured the

faculty that they would have adequate opportunity to give advice before the arrangement was completed, but that the final decision would be made by himself and the board of trustees. It was in this context that the Art faculty adopted their resolution.

In response to that resolution, White assured the faculty by letter of April 25 that under any plan Cooper Union would retain full jurisdiction over its own library, and the other concerns expressed in the resolution would be satisfied. But White now advised, "As soon as an agreed upon proposal is reached . . . the faculty and students *will be informed* and your suggestions . . . given serious consideration." (Emphasis added)

In a formal 7-page document transmitted to the Cooper Union community under date of May 5, 1977, White set forth the basic plan for possible cooperative delivery of library services among the three institutions, and welcomed all suggestions and recommendations which would be seriously considered by the administration and trustees. A deadline of June 1 was set for receipt of all comments. At the heart of the agreement was NYU's undertaking the purchase and cataloging of all new materials, installing an automated, on-line circulation system, and including the Cooper Union and New School libraries in its own computer output microfilm catalog program. These services were to be provided for a fee to be paid by Cooper Union and New School. All libraries of the three schools except certain NYU professional school libraries were to open to normal access by all students and faculties at the three institutions. The agreement delegated administrative responsibility and authority for all library operations at Cooper Union and New School to the dean of libraries at NYU, on behalf of and subject to the approval of each school president—thus, the Art faculty's concern over loss of jurisdiction by Cooper Union over its library. The agreement was to terminate after 3 years on August 31, 1980. It was later extended in 1979 to August 31, 1983.

At a special meeting on May 17, 1977, the faculty of the School of Architecture unanimously adopted a resolution critical of the minor consideration given to the educational aspects in the president's report. In its letter to the president informing him of the resolution, the faculty also advised of a resolution unanimously adopted on April 28, requesting the formation of an elected library committee. The faculty now requested that the president's report of the agreement not be implemented until the formation of this committee and its study of the proposal. At this time, and since 1976, an ad hoc library committee had been serving, appointed by the president. It was not until 1980 that the administration approved a Senate plan for a new faculty-student selected library committee.

In a letter to the trustees dated May 24, 1977, Professors Richard Bowman, the chairman of the library committee, and Thaddeus Gatz of the humanities faculty urged that no decision be made on the cooperative library services proposal until all the faculties had adequate time to study it and respond with suggestions and recommendations. The letter agreed that the June 1 deadline for comments was impossibly abrupt and precipitous, given the limited time in May for last classes,

final exams, senior grades, and end of month holiday. The letter further claimed that the administration had achieved the May 9 proposal while rejecting the involvement of its own professional librarians, faculty library committee, and faculty and student body in general. It (the administration) had done so with the argument that there was nothing to discuss until a foundation responded with an award to the application for a grant. The letter went on to raise a number of questions, among them ones regarding the ultimate disposition of the 48,715 volumes in the humanities, social sciences, general science, and mathematics categories, and whether an adequate working collection would be retained on site. Two other members of the four-member library advisory committee, as well as other influential faculty members, joined the protest by separate memos and letters in the period of late May to June 1.

Union President Tulchin also requested an opportunity of Provost Kaplan to discuss the library venture as having a significant impact on terms and conditions of employment and on March 11 urgently requested a meeting to discuss the matter. There is no evidence that the Union had any separate opportunity to contribute comments other than that provided to the faculty generally as described.

2. Continuing faculty-administration conflict over the consortium

In spite of this overwhelming faculty sentiment opposing entry into the consortium without adequate faculty deliberation and consideration, the agreement, without change, was executed by President White on June 16, and by the other two presidents on June 16 and 17, 1977, and shortly thereafter at its July meeting was approved by the Cooper Union board of trustees.

Faculty opposition to the consortium continued unabated. There were faculty expressions of concern and disapproval when the head librarian *informed* the members of the library committee in May 1978 of the standing orders of books dropped and the over 100 periodical subscriptions not renewed for 1978. In November 1979, the faculty members of the president's library advisory committee presented to the administration a draft recommendation for changes in and discontinuance of certain procedures under the library agreement. These included the return to Cooper Union of the placement and processing of all purchase orders for new materials, the reviewing and cataloging of new materials by Cooper Union library personnel, no transfer of any materials to the NYU Bobst library, the return of the administration and authority over Cooper Union's library to Cooper Union, and the renegotiation of the annual payments of more than \$40,000 to NYU as Cooper Union's share in the library consortium.

The draft recommendations had earlier been presented to the NYU library dean. In an August 1979 memorandum that dean castigated the committee for proposing "the reversion to a completely localized library operation at Cooper Union while retaining full access and privileges at NYU Bobst Library for Cooper Union's faculty and students" and he suggested such an approach was

contrary to the basic purpose and objective of the consortium. He hoped that dialogue with the committee would turn to matters of substance in implementing the objectives of the agreement.

Both the faculties of the Schools of Art and Engineering advised the NYU library dean that they had unanimously adopted resolutions at their fall 1979 meetings supporting in general the draft recommendations of May 1979 of the library advisory committee. As noted earlier, in 1979 the agreement was extended without change in substance, for an additional 3-year period, to August 31, 1983.

Earlier, in June 1978, President White informed the library committee that the position of head librarian had been eliminated, effective July 1. The notice also advised that the administration was advertising for a librarian specializing in engineering and science to replace a retiring assistant, and, further, that a librarian would be selected shortly to perform onsite administrative and coordinating duties under the NYU dean's supervision. A week prior to this written announcement to the committee, its then faculty chairman, Professor Ralph Knapp, had been summoned to the president's office and told of the decision to eliminate the head librarian position and retire the incumbent. Knapp asked if financial provisions had been made for the head's last year and White said he would receive his full salary for that year. Professor Knapp testified to his discomfort and difficulty it caused him with the committee arising from what he perceived as a mischaracterization as to his participation in these matters when, at the foot of his memo to the committee, the president stated, "Your chairman was consulted on this matter in advance." Knapp testified he believed the president took advantage of him in that statement when he had only been informed of decisions already made.

At the hearing the parties entered into a stipulation. (1) that Cooper Union decided to institute a new position of coordinator of library services and established the job duties of the position; (2) the institution negotiated with the Union the salary for that position, with the understanding that a portion of that salary would be that which the person had earned in her position as librarian, and in addition an added sum for performing administrative duties of the position; (3) the institution furnished to the Union at its request a description setting forth the duties of the new position; (4) Union President Tulchin sought to have a search made for a coordinator to avoid the possibility of a sex discrimination charge in discussions with the provost; (5) a search was made, and a Mrs. Vajda, an assistant librarian, was selected for the new position.

In January 1980, the new president, Bill Lacy, approved in writing to the chairman of the student-faculty Senate the Senate's motion to establish an ad hoc library committee, and to include the appointment of the present faculty members of the president's library advisory committee. Lacy noted that while these members were appointed by the president, they were elected by their respective faculty constituencies. He approved the change immediately. The Senate committee which had been approved at its October 30, 1979 meeting had heard Professor Hans Haacke, the then library advisory committee

chairperson, severely criticize the administration for its failure to fulfill the mandate of the committee to advise on the establishment of policies and procedures to provide a more excellent, efficient, and economic library service by its and the NYU dean's withholding relevant information from it and by excluding it from specified important policy discussions, in particular the 3-year extension of the consortium agreement while the committee was drafting recommendations for what it assumed to be the eventual negotiation of the agreement. The decision to establish the ad hoc committee was viewed during the debate as enhancing the faculties' role and potential influence on the library consortium policies. The record contains no evidence that faculty influence increased or was felt after the establishment of the ad hoc committee.

3. The work of the library staff and their relations to faculty and students in work study programs

The certified unit includes librarians and assistant librarians.

Assistant librarian Irene Perry testified that she was hired by Vajda in July 1980. Her specialty is in engineering. There are two other assistant librarians, each having a different subject specialty. The staff also includes 3 full-time clerks, 2 part-time clerks, and 15 student part-time workers.

Perry spends 3 hours a day providing reference assistance and research assistance in engineering and general reference areas. The other 4 hours of her workday are divided among her other responsibilities. These include collection development in engineering, stock maintenance, maintenance of the card catalog, processing of new acquisitions, serials (periodicals), and documents, handling of student workers, and advising and assisting the library coordinator in the preparation of reports and project planning in her capacity as liaison with NYU library and technical liaison with its engineering school.

The three full-time clerks have a number of different duties: one works at the circulation desk, charging and receiving books and entering data into the circulation computer; another is secretary for the library, physically processing books and the periodical collection, and performing other miscellaneous clerical duties; and the third acts as assistant to the coordinator, placing book orders, handling petty cash, and doing some accounting.

One of the two part-time clerks assists in the slide library, typing headings and mounting slides, and the other is the evening circulation attendant. The library opens at 8:45 a.m., Monday through Friday, and closes at 10 p.m. on Monday, 8 p.m. on Tuesday and Thursday, and 6 p.m. on Wednesday and Friday.

All of the clerks report to Vajda. The coordinator hires them, gives them time off from work, keeps their time records, schedules their work hours and days, and disciplines them when deemed necessary. Perry does not prepare any work evaluation of the clerks, and has never recommended a clerk's promotion or removal. Once a week, on Monday evenings from 5 to 10 p.m., Perry is in charge of the library in the absence of Vajda. During

Vajda's summer and other vacation time, the three assistant librarians rotate as librarian in charge.

At the direction of Vajda, Perry, along with the other assistants, has helped train the part-time clerks. It appears that the jobs of both the full- and part-time clerks are quite routine in nature. A very small percentage of Perry's time—less than 10 percent—is spent instructing clerks in particular work tasks. On one occasion, in the spring of 1981, her recommendation to terminate a full-time clerk for an unreported absence of several days was not followed. Instead, the individual was warned and docked pay for the absence. Perry, as most senior assistant librarian, neither hired nor recommended hire of the other two assistant librarians. In the case of one of them, with whose hiring she was familiar, no faculty participated in interviewing or recommending hire. Perry does not sit on any governance committee of the institution, Dean Tan having denied a request made by the library coordinator, Vajda, that she sit on the School of Engineering curriculum committee.

The parties stipulated that the three assistant librarians receive substantially equivalent salaries and the library coordinator earns a substantially higher salary.

Of the approximately 15 part-time students, half at the time of the hearing were in a work study program, with 80 percent of their salaries paid by the institution's financial aid office and 20 percent paid out of the library budget. Their work applications are screened by the aid office which applies a need criterion to them.

Approximately 25 students apply for these positions each semester. Perry interviewed each of the candidates for the fall 1981 semester, questioned them about their work background and the hours they were available for work, and then recommended for hire to Vajda the 15 students who were ultimately employed.

There is relatively high turnover among the students, 5 of the 10 initially hired in the fall of 1981 having been replaced before or at the completion of their work term. Perry's recommendation not to continue two students in the second semester of the 1981-1982 school year was followed by the coordinator. While employed they check identification of library users and see that books are not removed without authorization. They also act as pages placing books back in their proper places on the library shelves. The students are not assigned to work for a particular assistant librarian.

Perry trains the students, providing them with a manual describing the two different functions and regularly checking to see they are doing their job correctly. Vajda also participates in the day-to-day training of the students. Perry and Vajda together review work performance to determine whether students who wish to return are retained for the second semester in a school year. Perry also maintains time and attendance records on the students except for the student assistant in the slide library, who reports to another assistant librarian in art, and, when students are late or absent from work without excuse three times, has, with the concurrence of Vajda, terminated them in accordance with the disciplinary regulation set forth in a written instruction sheet provided the students on their commencement of employment. Perry updated and thoroughly rewrote the in-

struction sheet which, with the approval of Vajda, was thereafter posted. The updating clarified the penalty for unexcused lateness or absence from work.

Perry spends approximately 5 percent of her time evaluating, interviewing, monitoring, and working with the student assistants. The students are paid an hourly stipend of either \$3.50 or \$3.65. Further, unlike the librarians, who receive an annual salary paid monthly, at a substantially higher rate of pay, they receive no fringe benefits and only 2 of the 15 student workers continue working during the summer recess. The assistant librarians receive a paid vacation, sick leave, and medical insurance, among other fringe benefits.

None of the librarians employed by Cooper Union are members of the faculty nor do they participate in governance committees. Neither the librarians nor the faculty supervise or evaluate the work of the other nor does either have anything to do with determining the vacation schedule, salaries, fringe benefits, overtime hours, or any other terms or conditions of employment of the other. They, of course, do come into professional contact and work relationship from time to time in terms of faculty recommendations on additions to the collections in their subject fields and in faculty arrangements to use or borrow texts or books in the collections.

I. Faculty Participation in Academic Matters

1. Administrative matters

a. Appointment of presidents, deans, and other administrators

In 1968, the minutes of a joint faculty meeting held that September report that the then chairman of the board of trustees addressed the members present, informing them that following the sudden death of President Humphreys, Dean Teller had been appointed administrative head of Cooper Union and had agreed to serve up to 90 days in that capacity while the trustees continued their search for a new president. Dean Teller then made further remarks, including an announcement of the formation of an advisory committee to the board of trustees for the selection of a president, composed of division heads, heads of departments, and three faculty members, one elected from each academic division. President White was ultimately selected as the new president by the trustees sometime thereafter. It is clear that the division heads referred to administrators of the divisions (schools) of the institution, holding broad managerial responsibilities.

When President White submitted his resignation in 1979, the trustees retained an executive search firm to assist in the preliminary screening process. The Senate minutes of March 13, 1979, include reference and discussion of a report by Provost Kaplan of the institution's executive search. The "weeding out" process being conducted by the search firm was then underway, 80 applications having been received in response to an ad appearing in the New York Times. Kaplan indicated in response to an inquiry that the Senate would have input in the selection process. The input of the faculty-student Senate ultimately took the form of conducting interviews

of the two final candidates and endorsing the selection of the candidate who was chosen as the president to succeed White, Bill Lacy. The July 16, 1979 letter to the chairman of the board of trustees endorsing Lacy's selection shows that due to the fact that the meeting with the two candidates took place during the summer, 12 faculty members, not all of whom were duly elected Senators, participated.

The 1978 governance provides that when faced with the task of filling the office of president, a committee shall be formed consisting of the heads of educational divisions and the vice president of business affairs. This committee shall submit a list of qualified candidates to the trustees for their consideration. Thus, faculty were excluded from the process, except for the limited role the Senate was permitted to play, and except for some reference in the minutes of the engineering administrative committee meeting of February 12, 1979, to the Dean's solicitation of Engineering faculty input in the selection process and a reference to the fact that names of candidates could be directly submitted to the trustees, dean, and the administrative committee.

According to Professor Hans Haacke, whose testimony in this regard went largely un rebutted, there were a number of instances when the faculty was not consulted concerning the appointment of administrators. The position of provost was created and filled in 1970 or 1971 without input of the faculty. The position of dean of the School of Architecture was created and filled in 1975 without faculty input. The position of associate dean for health, recreation, and safety was created and filled in the late 1970s without faculty consultation. The position of dean of admissions and registrar was created and filled in the early 1970s without faculty input. When Dean Sadek left his position as dean of the School of Art during the 1980-1981 academic year the faculty was not consulted. Testimony supported the conclusion that Sadek resigned under fire after a private consultation with the president following his meeting with a delegation of students demanding Sadek's resignation. Sadek subsequently returned to full time teaching and, effective in the fall of 1981, was appointed director of the design center of Cooper Union, a unit of the institution established in approximately 1979 to perform typesetting and typographic work for in-house publications as well as for nonprofit outside clients. The faculty had no role in establishing the design center, the creation of which had been initiated by Sadek when he was still Art School dean. Neither was the faculty consulted on Sadek's appointment following his resignation as dean.

Following Dean Sadek's resignation, in accordance with the 1978 governance, Professor Corwin, as senior member of the Art School faculty, became acting dean. As senior member Corwin also served as chairperson of the three-member governance committee which made a search for a new dean and presented one candidate, Lee Ann Miller, who was in fact appointed dean of the Art School.

In 1972, at a time when the School of Engineering had been restructured as a division, the faculty participated in a division meeting held on October 25, which, *inter alia*, voted to recommend to the administration a successor

head of the division to succeed then Dean Vopat. The minutes disclose that the faculty first voted unanimously to define the word "majority" in the rules previously adopted for the election of a slate for division head to mean a majority of the faculty members of the division. Next, as a result of a split first ballot, the two candidates receiving the least votes were eliminated. A second ballot yielded seven votes for Tan, nine for Wallace, and lesser votes, five and six, for the two other remaining candidates. The members then unanimously approved Tan and Wallace as the slate for head of the division. Although receiving two fewer votes, Tan was selected by the administration as division head.

The manner of faculty participation in the selection of Professor Bowman as departmental chairman of humanities, on the 1979 restructuring has been reviewed *supra*. During the 1980-1981 academic year, President Lacy asked Bowman to step down as chairman and Bowman readily acceded to the request, resigning his position as head of the department effective with the end of the year. Bowman's successor was chosen under the following circumstances. As explained by Professor Gatza, the full-time members of the department constituted a search committee, there was a chairman of that committee, and applications for the position were solicited by advertisement. The committee reviewed the applications and, based on professional judgments as to their qualifications, interviewed some of the applicants. Subsequently, at a meeting held with President Lacy, the committee members rejected all applicants. Finally, during the summer of 1981, the search committee agreed to the professional qualifications of a Professor Michael Sundell, not then a member of the faculty. Each member of the committee wrote President Lacy, with a consensus in favor of Sundell, and Sundell was appointed.

b. The administrative committees

The charge of this committee has been described *supra* and did not change in substance in 1978. Prior to 1978, the committee in each school (or division) consisted of the dean, as chairperson, and the heads of department. Following the issuance of the 1978 governance, the School of Engineering committee now comprised the dean, as chairperson, and, as revised unilaterally by the Dean on an interim basis, one elected member from each Engineering discipline. The School of Art and Architecture committees were changed to include, in addition to the dean chairperson, two full-time faculty, one part-time faculty, one student, and one graduate, with only the representative for the Alumni Association not having a vote.

At the April 12, 1977 meeting of the Architecture School committee, it received nominations for adjunct faculty representatives to the curriculum and academic standards committees to be voted on at the April faculty meeting. Dean Hejduk also presented the March minutes of the curriculum committee in which various curriculum changes were approved by the sole vote of the full-time faculty members in attendance, the chairman only voting in case of a tie. The Dean then moved that the actions of the curriculum committee be endorsed and

presented to the School of Architecture faculty. The motion passed. Also discussed were requests that the committee support the school's funding of materials for student construction of drafting area enclosures and that a committee be established to determine future Cooper Union exhibitions and publications.

Thereafter, no meeting was held of the Architecture School administrative committee until April 9, 1981, 4 years having elapsed without a meeting. As explained by Professor Wurmfeld, the chairman of the Architecture School curriculum committee during the same 4-year period and a member of the administrative committee from 1978 to 1981, it was the dean's prerogative to call the meeting. It was also the dean who prepared and controlled the agenda of items to be considered at the meeting. The dean failed to call any meeting. On one occasion, in 1979, Wurmfeld, as chairman of the curriculum committee, had forwarded to the dean and administrative committee members minutes of a curriculum meeting at which curriculum changes had been approved. No administrative committee meeting was held; instead, the dean took these changes directly to the faculty with his recommendation for approval; they were approved by the faculty and then implemented by the administration. Among the changes approved were ones dropping social science and philosophy from the first year and adding them to the third year; expanding the credits for the introductory first year architecture courses from 4 to 5 each semester; reducing general studies electives from 6 to 3 credits each semester in the third year; reducing the fifth year thesis course credits from 10 to 9 each semester and adding for the fifth year a requirement for a 2 credit advanced course each semester dealing with the relationship between architectural space and some other discipline in the humanities; and a restructuring of the elective history of architecture program by announcing an attempt to coordinate these courses into a sequence of offerings on a biannual cyclical basis.

Finally, an April 9, 1981 meeting was called not by the dean but by Professor Richard Henderson, a faculty member who assumed administrative duties while Dean Hejduk was on sabbatical leave at the dean's request. The agenda for that meeting was to create a slate of nominees to fill vacancies for the following semester on the various standing committees for positions which had opened because of the expiration of the 3-year terms of the incumbents.

Minutes of School of Art and Architecture administrative committee meetings in 1974 and 1975, before the 4-year hiatus in meeting of the Architecture School committee, show that they dealt with such matters as receipt of nominations from the Alumni Association for alumni membership on the standing committees, conditions and terms for exhibition of student work in the institution's gallery, discussion of and agreement to seek to expand library hours in discussions with the provost, and the approval of renewed 3-year teaching contracts for part-time faculty.

There was some question whether the administrative committee of the School of Art and Architecture prior to its separation into separate schools in the 1975 reorganization dealt with budgetary matters. Professor Wurm-

feld testified credibly that when he became a member of the administrative committee in 1978, Professor Robert Slutzky of the committee informed him that he had never seen a budget document setting forth categories of projected income and expenditures in his years on the committee. In his role as a member of the committee, Wurmfeld never reviewed or was consulted on any budget for the School of Art and Architecture breaking down operating expenses by salaries and other costs and expenses subdivided for each of the two operating entities or showing separately any overall shared costs for the two schools. Thus, he could not explain a statement in the minutes of the administrative committee for February 28, 1974, under the heading "Budget Report" in which the chairman, Dean George Sadek, reported "he has had budget hearings." There is no record evidence showing any budget hearings involving faculty. The hearing to which the dean referred probably was one involving administrators only at which the deans presented and discussed proposed budgets with the provost and president.

Representative minutes of administrative committee meetings for the School of Art following its establishment as a separate school for academic year 1975-1976 show that it reviewed the budgetary request of the School of Art and recommended funds be requested for equipment purchase, maintenance, and repair; reviewed upcoming adjunct faculty contracts and recommended reappointments to a 3-year adjunct contract, at the same time cautioning the dean to consider contract renewals separately from promotion in rank recommendations; recommended nonrenewal of certain adjunct teacher contracts; based on teacher evaluations, discontinued courses, low enrollment among other reasons; obtained the dean's agreement to a procedure for followup evaluation of first year students, including teacher access to entrance portfolios and mandatory teacher meetings to compare notes and discuss individual students before grading; approved and forwarded to the faculty curriculum committee curriculum changes, including a final version of the foundation program of study as well as a list of prerequisite courses in painting and graphic design; unanimously approved a new first year curriculum, as well as an additional requirement and suggestions for presentation to the faculty for its approval, including a direction that the chairman of the curriculum committee initiate hearings within the specific major areas of study in order to present a system of prerequisite courses to the administrative committee and, in turn, to the faculty, approved adjunct teacher promotions; agreed on a plan to improve job counseling for senior students; discussed moving video program facilities to the School of Engineering because of available space and technical staff assistance; discussed increasing the length of certain visiting professorships; discussed possible solutions to varying class sizes and excessive waiting lists of applicants at registration; and persuaded the dean not to combine separate techniques and workshop courses in the video program for at least 1 year.

The minutes of the administrative committee of the School of Engineering for the period 1974 to 1980 like-

wise show a broad range of concerns, as it debated and recommended under the dean's chairmanship solutions to a wide range of educational problems and sifted, evaluated, and passed on to the faculty for its determination the recommendations of the various standing committees. It took up policies on evaluating transcripts of transfer student applicants; discussed methods of determining teaching hour credits and what constitutes a normal workload; approved a policy prohibiting receipt by employees of remuneration, other than in the form of an honorarium by a recognized nonprofit professional or scholarly society, for use of Cooper Union facilities for work performed for another agency or institution; recommended to the administration limiting use of the school's facilities to current faculty, staff, and students; sought solutions to problems involving shop technicians to increase efficiency and make technical support more responsive to teacher needs; recommended that students satisfying both physics and math curricular requirements receive credit for two majors; endorsed notification of a student's faculty counselor on placement or continued retention on probation; arrived at a consensus on continuing a freshman counselor program after retirement of the incumbent; received reports of budget preparations by the dean and division heads; clarified the rule permitting students dropping required courses prior to midsemester; made nominations for membership on standing committees; made provision for student membership, by student election of a representative, not provided in the 1978 governance, to be excluded when the committee went into executive session (to deal with personnel matters involving individual faculty members) and agreed to hold special meetings for student matters; prior to the 1979 Liberal Arts and Science reorganization, in 1978, agreed to liberal arts and science representation on the engineering curriculum committee, one from liberal arts and one from science, but without a vote; discussed formation and staffing of ad hoc committees; persuaded the dean that faculty all meet a 12-member, predominantly alumni, advisory council formed by the administration to advise the school on matters pertaining to its educational programs, after its first meeting with the trustees and registrar; in 1979, strongly advised the dean to seek an associate dean, received and reviewed the dean's listing of an associate dean's responsibilities, and unanimously recommended the dean pursue the appointment to the post of adjunct electrical engineering faculty member Larry Hollander (who was ultimately appointed to the newly created position); in 1979 unanimously agreed that deciding on appointment of new faculty shall be the responsibility of the committee and then recommended and obtained the dean's approval to recruit two new full-time faculty members, at the assistant professor level, one in the area of electronics and computer engineering and the other in structural engineering; in 1979 recommended a new composition of the Senate for consideration by the joint faculty, and discussed at length over a number of meetings a new makeup of the committee in light of the reassignment to the Engineering School of a majority of the liberal arts and science faculty, and the Dean's proposal adding to the committee's governance responsibilities advising and assisting the dean on administrative

matters dealing with the everyday and longer term needs of students and faculty related to academic programs.

c. Establishment of the graphics design center

According to the un rebutted testimony of Professor of Art Hans Haacke, some time in the late 1970s George Sadek, then dean of the School of Art, and Rudolph de Harak, professor of graphic design, drew up a petition among the graphics area part-time teaching staff to establish a design center within the Art School. Professor de Harak was then the only full-time member in the graphics area. The petitioners bypassed both the faculty and Senate and presented it directly to the president. The faculty did not vote on the establishment of the center. The center was approved by the administration and continues in existence to date. It is known formally as the Center for Design and Typography under the direction of Professor Sadek following his resignation as dean, and performs the services described in section I,1,a, paragraph 4, *supra*.

With respect to the in-house publications, including catalogues, produced by the design center, none of the faculty either in the Art School or otherwise have any say about the allocation of institutional funds for this purpose.

d. Discontinuance of degree-granting programs

The manner in which the mathematics, physics, and distributed science degree-granting programs were eliminated by the administration in 1975 without apparent faculty participation in the decision making process and, indeed, over widespread faculty opposition once the changes were announced has been described above.

e. Institution of the SHAPE program

In 1975, Professor LeMee of the Engineering faculty applied to the Mellon Foundation for a grant to study and apply an integrative approach to professional education in engineering. The minutes of the meeting of the Engineering faculty of September 25, 1975, note this proposal submitted by a member of the faculty. At the next meeting, held October 14, 1975, the chairman, Dean Tan, reported that the Mellon Foundation had awarded a grant of \$100,000 to the school for the study and that a study group would be formed shortly. Professor Ralph Knapp of the engineering faculty testified that he had not been invited to join any such committee or recommend its composition, and that the faculty did not participate in its selection. Membership on the committee was by appointment.

At the March 2, 1976 continuation of the regular meeting of the faculty, Professor LeMee gave a report on the Mellon study group. The project had been named SHAPE, an acronym for the "Synthesis of a Holistic Approach to Professional Education." Its main objective was to design a curriculum in Engineering for a small group of students based on an integrative approach to professional education. The theoretical base of the integrative approach was contained in several papers published by LeMee, copies of which were available from him. LeMee said the project team was meeting Monday

afternoons, minutes of its meetings were available to peruse at the dean's office, and faculty members and students were invited to the project planning center to view the displays or to attend the Monday meetings as observers. The minutes of the meeting also note that a recently appointed visiting professor, Dr. Lee Harrisberger, whose appointment was funded by the Carnegie Corporation, after his introduction, spoke about his involvement with project SHAPE and urged the entire faculty to help the project team make it a success. Faculty did not vote to recommend candidates for visiting professorships.

At the faculty meeting of October 4, 1977, Dean Tan announced the appointment of Professor Huckaba as director of engineering program development. He would be seeking funds to implement programs developed by SHAPE. The prior year, Huckaba, like Harrisberger, had been an Andrew Carnegie visiting professor. By the 1977-1978 academic year, Huckaba had become a member of the regular full-time faculty.

According to Professor Knapp, for a considerable period of time after the formation of the SHAPE committee it was shrouded in mystery. By this he meant faculty generally were not encouraged to learn what it was doing. For a period of time the committee did not make a detailed report of its studies and faculty not involved with project were not kept informed through the governance mechanisms of how it was fulfilling its objective. It was Professor Knapp's judgment that when they did learn more about it a considerable number of the Engineering faculty, at least more than half, were opposed to the project as a program that would dilute the intellectual content of the curricula being offered by the school and would make the education of its students weaker than it was with the regular program at Cooper Union. In Professor Knapp's views, SHAPE dealt with teaching techniques as opposed to intellectual content—something a competent professor should fit into any course content without the necessity of having a special program to enforce it. Knapp testified that he did not become involved with the SHAPE program because he was never specifically asked to do so. He was waiting for that invitation because his own technique of teaching was very much related to what SHAPE was supposed to do. He had been teaching competencies for the 22 years he had been in the school and was not approached to be on the SHAPE committee, nor was he ever approached to teach in the SHAPE fashion.

At some point after its introduction as an experimental teaching program, the SHAPE program received a National Science Foundation grant and it continues to date under such renewed funding, now known as the D.I.S.E. Program.

The objections of certain engineering faculty to the continued operation of the program without broader faculty input took concrete form. Physics Professor Samuel Gelfman was called down by the dean in the summer of 1979 and told that the school had received a grant for experimental teaching programs. The dean said new methods of teaching were going to be employed which stressed the competencies of communication, problem solving, and value judgment. This was the first time that

Gelfman became aware of the program. The dean said a set of courses had been selected for a 2-year experimental program under an NSF grant which originally included a chemistry course but after receipt of the grant he had been informed it was not practical to include chemistry so it was decided to replace that course with a physics course. The dean asked Gelfman if he was interested in teaching one section of the freshman physics course 12 in the SHAPE mode, Gelfman said he wanted to learn more about it, and the dean told him to see Professor LeMee. After talking with LeMee, Gelfman became convinced the experimental course was not a good medium for teaching physics 12, especially a freshman course, and told this to the dean. The dean responded that he would find someone else to teach it, he would not give up the grant. When the dean approached Physics Professor Yalow to teach the course, he also rejected it as inappropriate. All physics faculty turned it down. As a consequence, the dean selected Physics Professor Emeritus Milton Stecher to teach the course. Stecher was then an adjunct member of the faculty after his mandatory retirement from full-time tenured faculty status at the end of the 1977-1978 academic year.

While still a full-time member of the faculty, in the period 1975 to 1977, Stecher had participated in the experimental program. He testified that participants received as a special benefit for their participation release from teaching a regular course. The only benefit he received as an adjunct was payment of the adjunct's salary.

Subsequently, during the 1980 spring term, Gelfman now approached Dean Tan about participating in the experimental program, this time as the second man teaching physics 91, a required laboratory engineering course in the SHAPE mode. Gelfman had taught this course regularly every spring semester.

At the time Dean Tan was enthusiastic about Gelfman's participation; however, Stecher, in passing, later told the dean that Gelfman would be unacceptable to him for the course and the dean then told Gelfman that it looked like he would not be teaching it because of Stecher's objection. Dean Tan said Stecher believed Gelfman might sabotage the course. Gelfman was nonplussed and denied the insinuation. Yalow also asked to teach the experimental section and was similarly turned down. The dean then called a meeting for July 1 to clear the air. Present were Dean Tan, Professors LeMee, Gelfman, Yalow, and Rakow, and Adjunct Professor Stecher.

At the meeting, Gelfman and Yalow objected to the procedure for selecting a teacher for the course, this being the first time someone other than the dean was making the decision. They also sought information about the course content. When they learned that the list of experiments was less than the usual number they also objected about this. The dean maintained that if Stecher was uncomfortable with the full-time staff, he was free to select whom he would teach with. The course content was also not modified to meet their objection.

As a result of this dispute, the regular physics faculty took the following action, with the results indicated. By letter dated August 18, 1980, Gelfman and Yalow wrote

the dean recording their disagreement with a number of actions taken in connection with the physics courses included in the NSF-sponsored program at Cooper Union. They protested that no member of the physics faculty had any role either in the determination that physics would be in the NSF curriculum or which specific physics courses might be appropriate. They next deplored the dean's decision that no member of the physics faculty would be permitted to teach the NSF section of physics 91 laboratory in association with Stecher, notwithstanding their volunteering to do so and their own assurances to follow the *modus operandi* in teaching it. They noted they did seek and find an adjunct faculty, whom they named, for the section. Finally, they protested that the technical content of the course was inadequate and explained why. In a later, December 15, 1980 letter to the curriculum committee, Yalow, Walton Ellison, and Gelfman, the full physics faculty, provided it with information about the manner in which the NSF-funded physics 91 and 12 courses were included in the curriculum without their knowledge or participation and over their objections (as to physics 12). It ended with a statement that in order to provide a professional evaluation of physics 12 they would require written evidence which describes how the course is appropriate for this program.

On the same date, December 15, 1980, the Engineering School curriculum committee held a lengthy discussion about the ongoing NSF program and, in particular, the failure to have submitted physics 91 and 12 to the committee to determine whether its action was required. A resolution was then adopted by a vote of seven to none requiring that descriptions of modifications to existing courses be submitted in writing to the committee chairman, who will determine whether they warrant committee consideration.

f. Joint degree program with New York University

In May 1977, the faculty of the School of Engineering approved the curricula of a NYU-Cooper Union joint degree program effective for introduction in the 1978-1979 academic year. As explained by Professor Knapp, Dean Tan had appointed full-time faculty to a joint committee also including NYU faculty to study the possibility of establishing such a program. As contemplated, the program would permit NYU science students, by adding a year of undergraduate study at Cooper Union, to receive joint degrees in science from NYU and engineering from Cooper Union.

At a May 3, 1977 special engineering faculty meeting the curricula agreed upon by the joint committee was proposed for approval. Certain amendments to the motion for approval were offered, debated, and either withdrawn, defeated, or passed. One amendment adopted required the total number of NYU students enrolled in the program not to exceed 20 percent of the total enrollment of the School of Engineering. Another provided that the program would have to be approved by an affirmative vote of both the Cooper Union and NYU faculties to continue beyond the 1982-1983 academic year. Other faculty voiced certain fears and objections they had received from members of the then faculty of Liberal Arts and Science about the program and distributed

and commented on a resolution passed by that faculty requesting the science faculty to table or refuse to vote on the approval motion. After a motion, passed by a vote of seven to none, approving a series of meetings with the LA&S faculty concerning the program to be held through December 1977 before reconsidering the program.

At the next regular Engineering faculty meeting held on May 23, 1977, a motion passed taking from the table the resolution relating to the joint degree program. When Professor Knapp then raised the question whether the adoption of the program that day would supersede his motion to hold joint discussions between the Engineering and LA&S faculties, the chairman, Dean Tan, replied that there was a degree of urgency in the matter because NYU had already approved the program and had requested Cooper Union to act soon so it could start in September 1977. The trustees also planned to consider the matter on June 8. Extended debate followed on the implications of the program, in particular, with respect to the faculty of Art and Science. During the period from 1975 to 1979 that faculty had been excluded from the governance and participation in deliberative processes—in this instance, consideration of the joint NYU-Cooper Union degree program—as noted above.

Professor Knapp offered a new amendment to the pending motion on adoption of the program that the regular full-time students originally admitted as Cooper Union students *not* be permitted to take at NYU any course requirements where the courses are currently offered at Cooper Union by the faculty of LA&S. The motion was passed unanimously. Another amendment was also adopted, by a vote of four for, three against, two abstentions, which called for the joint degree program to be governed by the 1964 governance of the faculty of the School of Engineering and all published amendments thereto. Then the original motion as amended was adopted approving the program by a vote of 10 for, 1 against, with 1 abstention. Four other faculty listed as present did not vote but were included among the abstentions. A final motion was proposed and adopted by a vote of nine to none registering the sense of the faculty that the administration keep all faculties of the institution fully and candidly informed about any developments and information concerning implementation of the program.

The trustees approved the program at its June meeting, and the program was implemented at least through the 1982-1983 year.

g. The integrated master's program in engineering

An integrated master's program in engineering was voted on and approved in principal by the faculty of the School of Engineering and the board of trustees during the mid-1970s. According to Professor Knapp, some time in 1974, then Engineering Division Head Tan, before his elevation to dean on the 1975 reorganization creating the School of Engineering, had proposed a master's program for Cooper Union students permitting them to achieve both a bachelor's and master's degree in engineering by earning a specified number of minimum credits in particular subject areas over an additional year of study.

One of the ideas embodied in the concept for the program was that its introduction would not cost the school more money than was presently being spent in Engineering School programs. Knapp publicly voiced reservations about this underlying assumption in view of his understanding of the startup costs involved. Division Head Tan called Knapp in and had Knapp explain his objections in a private meeting. Tan sought Knapp's support for the program and voiced disagreement with his objections. The program was ultimately adopted by a large majority vote of the faculty, with two abstentions, one being Knapp's.

The agenda for the regular Engineering School faculty meeting held February 22, 1977, includes a motion to be submitted by the curriculum committee for approval of a proposed curriculum for the program to be implemented as capabilities and resources are developed. The proposal takes up 13 closely typed pages listing credit requirements overall and minimum credits in various engineering disciplines. The document is consistent with Professor Knapp's testimony that the master's program required all students to design their own program in an engineering discipline—chemical, civil, electrical, or mechanical engineering—consisting of a minimum of 45 credits in analysis, systems, design, and engineering laboratory so as to provide an integrated educational experience in the designated discipline of study, with at least 18 of these credits to be at the graduate level and at least 12 credits forming a coherent concentration in the major area of study. A thesis or project in the major or minor area of study, equivalent to a maximum of six credits, was also required.

The integrated master's program in engineering was approved by the Engineering School faculty and then by the board of trustees in the 1978-1979 academic year.

Since most of the courses offered in the master's program are electives rather than required, the courses are approved on an annual basis through the curriculum committee to the office of the dean. As explained by Professor Knapp, the courses approved for a particular year are then posted, the students in the program register for them, and the dean then decides based on the levels of enrollments, which courses will actually be given. Knapp recalled a statement made by the dean, apparently at an Engineering faculty meeting in 1979 in response to a question as to which courses would be offered, that since the faculty had voted for and approved the curriculum, all of the courses for offering in the program were legitimate courses and he would decide which ones were to be offered among them on any occasion in connection with staffing requirements and other administrative matters.

At a February 6, 1979 engineering faculty meeting, Dean Tan announced the trustees' approval of the program and commitment to a fund-raising campaign for it, and that four new faculty would be added to the present 18 full-time faculty to support the master's program—they would be added over the next 3 years. At a December 5, 1978 administrative committee meeting, in response to a question, the dean commented that he was "pretty confident" that if 25-30 students applied, the program would go as it was essential to the survival of

Cooper Union's reputation. The program was ultimately and is still in force.

h. Accreditation visit and report—1978

Cooper Union, as a member of the Middle States Association of Colleges and Schools, has periodically prepared a self-study and has been evaluated by that body which certifies schools and colleges as meeting formal or minimum requirements relating to their academic programs, academic standards, facilities, financial soundness, and faculty. The last such study had been conducted by the Association some 10 years prior to the current study.

In the spring of 1976 an institutional self-study was initiated in anticipation of the visit of an accreditation team from the Association to evaluate Cooper Union during the 1977-1978 academic year. As the preface and table of contents to the self-study make clear, the document is broken up into sections, each prepared by the administrative head of the area covered. Cooper Union as an institution was drafted by President White, with an addendum by Provost Kaplan, the finances section was written by Vice President for Business Affairs Cahill, and sections on each school were written by each Dean, with a section on the faculty of LA&S prepared by Provost and Acting Dean Kaplan. Additional sections on affiliated activities were prepared by the dean of admissions and records, Liebeskind, the dean of continuing education, Alter, the head librarian, Graves, and the dean of students, Gore. The drafts of the sectional reports, at least those by the academic deans before their final preparation, were made available for review and suggestions to the full-time faculty, as well as adjuncts and students who serve as representatives on the degree-granting faculties. The entire report was distributed to these elements of the Cooper Union community and copies placed in the library.

A visiting evaluation team, consisting of six professors and administrators in academic and business areas from middle Atlantic colleges and two presidents of art schools representing the National Association of Schools of Art, visited Cooper Union on 3 days in April 1978. Shortly thereafter the team issued a confidential report to the Cooper Union community representing its views as interpreted by the chairman, Clarence C. Mondale, professor of American civilization, George Washington University.

In the report, the team commended certain aspects of the institution and also reviewed its serious problems. It commended the competence and completeness with which the trustees, the president, and the administration have managed accounting and financing, the condition of the physical plant, the quality of teaching and of the students, and the quality of the academic programs. It also noted favorably the unusual loyalty to the institution among all segments of the Cooper Union community, the fact that the administration and Union had settled on a contract, and the quality of the library.

The serious problems the team discussed had to do with (1) faculty morale; (2) faculty governance, with special emphasis on the governance of the faculty of the Liberal Arts and Sciences, and student governance; (3)

long-range planning; and (4) the library consortium. Less serious was the need for review as to policy as it relates to adjunct faculty and the self-study document itself.

With respect to faculty morale, the team comments, all parties agree that the many changes in academic organization have been "rather drastic," and notes the administration argues its right to have taken actions "in the absence of advice from the faculty and senate, or contrary to such advice." The team then writes, "No doubt the right exists, but to the degree it is exercised, confidence in faculty governance is subverted, and faculty morale declines. The extreme case is morale among the Faculty of Liberal Arts and Sciences." The team further comments: (a) the many changes in faculty organization and affairs over the past few years have been attended by an overall decline in faculty numbers and influence; and (b) communications between the administration and faculty and within the faculty need to be revived and regularized.

As to faculty governance, the team writes, it is in extreme disrepair, with the status of the faculty of LA&S especially irregular and unstable. The team's impression is that the deans of the professional schools are unusually strong and the faculty unusually weak, a fact which it attributes to such causes as the struggle over unionization, the abolition of departments, a seeming drift toward increased autonomy in each of the schools, and some indifference among some of the faculty to the often boring details of management. The team faculty members they talked to argued that they had not been fully participant in their own affairs, and there seemed to be no present provision for faculty review of institutionwide academic policies and priorities. As to the faculty of LA&S, in particular, the team writes, "Reduced by approximately fifty percent in numbers over the past five years, this faculty is also disenfranchised and dislocated. . . . It does not participate in the determination of curriculum in the professional schools, nor does it oversee development of a common liberal arts curriculum." And the team notes its fear of the cooperative agreements with NYU, further decline in its numbers, and the deep split between the scientists and mathematicians on the one hand and humanists and social scientists on the other.

After reviewing its concerns for the lack of attention in the self-study to student governance, the lack of long-range planning (in which it asserts the faculty must be a major contributor), and its doubts about whether the library consortium will in fact provide improved library service to the institution, the team criticized the lack of a general policy statement on the appointment and status of adjunct faculty. (It had earlier noted that the faculty consisted of 48 full-time and 76 adjunct members, with adjuncts in the Schools of Art and Architecture teaching approximately 60 percent of the total credits offered in these curricula.)

Finally, the evaluation team expressed its disappointment in the process followed in the development of the self-study and in the document itself. As to the process, the team was disappointed that so little was done to assure active and full participation from all segments of the community—many faculty and students feeling that the document did not accurately represent their interests

and perceptions. The team was also disappointed by the "top down" procedure followed. The process of an administrator's giving his version of affairs under his charge and then asking, in effect, if there were any objections did not make for a candid exchange on the issues. As to the document itself, the team wrote they generally found themselves handicapped by the scantiness of the data in and incident to the self-study.

President White, in his May 22, 1978 written response to the Middle College Association on receipt of the report, took issue with what he characterized as an apparently simplistic comprehension of the institution's problems and an inadequate understanding of the demands placed on Cooper Union by the altered circumstances of the past decade.

2. Curriculum

The charge of the committee and procedures for adoption of curricula, as set forth in the 1964 governance and as continued basically unchanged in the 1978 published governance, appear *supra*.

With respect to the operations of the committee in the Schools of Art and Architecture, the circumstances under which Professor Wurmfeld assumed its chairmanship in 1973, are described *supra*. Wurmfeld continued as chairman until 1981, after 1975 as chairman of the separate committee for the School of Architecture. As explained by Wurmfeld, the actual working of the committee generally followed the procedures outlined in the governance. In Wurmfeld's own words: "I have created the list of required courses. The Curriculum Committee controls the list of required courses." Wurmfeld, e.g., acknowledged under cross-examination that he played a forceful role in making a sequence of history of architecture courses a part of the required professional curriculum for architecture students and in expanding the number of such courses offered. Another example of the committee's successful proposal of changes in required curricula in 1979 appears *supra*, an occasion when, however, the changes were submitted by the dean directly to the faculty without submission through the administrative committee. Yet another example occurred early in 1974 when the curriculum committee of the School of Art and Architecture wrestled with revising curricula for the "BFA and B. Arch." degrees under the impetus of President White's expression of concern for the place of general education in the professional curriculum and as its role was clarified by Dean Sadek. Ultimately, after the administrative committee, as well as President White, had made suggestions for certain increases in required humanities, social science, and art history courses above those proposed by the curriculum committee, the faculty of the combined school in the spring of 1974 approved a revised curricula, increasing by two credits, from 12 to 14, the minimum number of credits required in these areas, or other approved courses in disciplines other than the student's own academic fielding of concentration, including engineering and science, by a vote of 18 for, 7 against, with 1 abstention. The various minutes of the governance committees concerned, as well as the faculty of the combined schools, and the correspondence be-

tween the president and dean show a genuine debate among the faculty as to the proper proportion of general education and professional courses, with the president, in particular, providing guidance and support in a cooperative manner. In a letter to the dean dated April 23, 1974, President White gave his approval of the proposed modification recently voted by the faculty, noted that there still might be minor revisions within these curricula, and expressed his dependence on the good judgment of the dean and his faculty in determining final solutions. Guidance was also provided by Dean of Admissions and Registrar Liebeskind, who reported to the committee on state minimum requirements in the liberal arts and sciences for the BFA and BA degrees in architecture.

In connection with general education requirement deliberations, President White also was brought into a dispute which arose between the dean and Wurmfeld when the dean accused Wurmfeld of making comments accusing him of using Wurmfeld and the curriculum committee as a bludgeon to do a hatchet job on the humanities department. At a meeting in the president's office, which Wurmfeld attended reluctantly, believing it his academic privilege to refrain from participating, the president affirmed the faculty member's academic right not to have to respond to the dean's accusation and the matter was immediately dropped.

While its members attended the Art and Architecture faculty meetings which considered and determined the general education requirements in 1974, Professor Brown and other members of the humanities faculty expressed their feelings that the A&A faculty had voted in a curriculum which directly affected their subject areas without their input. This was during the lengthy period of their exclusion from full governance participation.

Wurmfeld differentiated between minor changes, such as name changes or recommended elective courses or even the change in subject matter of existing required courses, which are implemented without formal vote of the committee and submission through the administrative committee to the faculty, and major changes, such as formal credit changes which changed the distribution of courses for the degree requirement which are formally voted on and brought before the full faculty. The kinds of major curricula issues dealt with by the committee include: (1) the balance of credits between each area of subject matter appropriate to the training in the profession and between professional training and general studies; (2) the range of exposure within each professional subject area; and (3) the proper sequence of technical courses in the professional areas.

Apart from the occasions when the administration unilaterally eliminated curricula as a consequence of the elimination of degree-granting programs in certain subject areas and the committee was bypassed on the establishment of experimental sections of existing required courses in the Engineering School, a number of the Charging Party's witnesses testified to their more limited role in the decisions regarding the offering of certain elective courses.

In one instance, in 1975, Dean Sadek of the then School of Art and Architecture unilaterally terminated Professor William Creston, then teaching and advising

students full time in an advanced film and video program offered as an elective in the art curriculum. Creston had received a 1-year appointment and was not tenured. A petition signed by over 100 students was presented to the curriculum committee to save Creston's job and the program. The matter was debated at the committee's April 1, 1975 meeting and a resolution was unanimously adopted and referred to the administrative committee reaffirming the film and video programs as now constituted from a curriculum standpoint both as part of the core program in the visual arts and as a general resource in the school. Although the dean finally determined not to farm out portions of the program to another institution, as he had initially contemplated, Creston was terminated, adjuncts were thereafter employed to teach beginning and advanced film and video courses, which were continued in the catalogue as electives, and the special situation which the faculty sought to retain of having a full-time resource person for students in the advanced film and video area was discontinued.

In another instance, where the curriculum committee of the School of Architecture in 1980 had voted approval of an addition of a 2-hour freehand drawing course in the second year, the matter was never placed on the agenda for consideration by the faculty. In a discussion with Dean Hejduk, Wurmfeld was informed that the dean was not going to present the proposed course to the faculty, the dean and the faculty having an elective drawing course the previous year.

A third instance involved an administration decision denying six and limiting to three credits a new course which Art Professor Haacke and Social Science Professor Arato formulated and taught jointly for one semester in academic year 1976-1977 entitled "Art Theory and Art Practice." Neither the teachers nor the provost nor the dean, who ultimately limited the credit value for the course, submitted the proposal to the curriculum committee. As a consequence of this decision, Professor Arato's plan to have students write term papers could not be fulfilled and the professors did not offer the course again. Still another instance related to a written proposal for an elective course in electronic music from Professors Gatza and Knapp in October 1980 to the humanities department chairman, Bowman, to which the professors never received an administration response. Again, the proposal was not submitted to the curriculum committee of the School of Engineering, to which Gatza is assigned, and where both he and Knapp are faculty members.

It also appears to be the case that, from time to time, proposals for individual elective courses, to be taught by visiting professors appointed for the particular purpose of teaching the courses, were implemented directly by the administration without consideration by the appropriate curriculum committees.

As to the curriculum committee of the School of Art, after its establishment in 1975, it met periodically as a separate body and dealt with such significant matters as a successful revision of the first year required program in 1976, an evaluation of its new foundation year curriculum on its first year of implementation in the spring of

1977, and major revisions of the video and film programs and photography curriculum in the spring of 1978, which were implemented after review by the administrative committee and adoption by the faculty and the administration. The revised video and film program sought to solve such problems as the lack of availability of video equipment as a tool in the fulfillment of student projects in the three schools and the lack of educational focus as to film oriented to visual design students and diffusion of staff into the disciplines of video and photography inhibiting educational clarity and efficiency. These appear to have been problems in these subject areas which had continued unabated after the termination of a full-time faculty resource person in 1975. Thereafter, from the 1978-1979 academic year until 1981, no meetings of the committee were held, as neither the committee members nor the dean nor any faculty members brought any proposals for curricula changes before it.

A review of the minutes of the curriculum committee of the Engineering School show that between 1975 and 1979 it considered and approved both major and minor curriculum changes. The major changes included replacement of required courses taken in the first semester of the senior year, the dropping of certain required courses for students majoring in particular engineering disciplines, increasing the credit allotment for certain courses, and approving in principle the concept of new courses in a particular engineering discipline. Minor changes included approving the introduction of new elective courses.

3. Admissions

The revised 1978 governances changed the composition of the admissions committee in the Schools of Art and Architecture. Previously they included the director of Admissions and three members elected by the faculty. Now they consisted of the dean of the school, the dean of admissions and records, two full-time and one part-time faculty, one student, and one graduate. The chairperson was to be a full-time faculty member elected by the committee to a 1-year term. The dean, dean of admissions, and alumni were ex officio without a vote. Whenever pertinent, the committee was to invite representatives of any school or faculty or discipline within the school of which it formed a part to participate in the discussion of admission policies of that school, faculty, or discipline. The committee in engineering now included one student in addition to three members elected by the faculty. The charge and responsibilities of the committee in all three schools remained the same.

Admission requirements for each of the three degree-granting schools appear in the annual catalogue which is published by the institution. With respect to these requirements for art and architecture majors, according to Dean of Admissions and Registrar Liebeskind (who testified about admission policy and its implementation at great length without any contrary testimony being offered by the longstanding faculty chairman of the three committees) they were established a number of years ago by the faculty through the admissions committee. Since Liebeskind assumed the title of dean of admissions and records in 1974 (from 1970 to 1974) he served as director

of the same areas), the requirements in architecture were changed at least once by the faculty. That change, which originated in the admissions committee in the mid-1970s, resulted in the dropping of the requirement of a 1-year course in high school physics for applicants for the architecture program upon approval by the president and trustees. Since 1970, the high school requirements for admission to the Engineering School have not changed. However, some time in 1979-1980, the Engineering School admission committee did successfully request that the first part of the application form for undergraduate admission used by the three schools, after a large number of the forms had been printed, delete that portion relating to the selection of a major by the applicant. As a consequence, the form in use for engineering applicants has the majors blocked out in ink.

Taking the procedures on admission in each school in turn, as fully described by Liebeskind, the longstanding policy in the Art School has been to admit those candidates whom the faculty have felt are most talented among those who apply. Liebeskind has implemented this policy.

In 1973 or 1974, the A&A (Art & Architecture) committee prepared the second part of the application forms (described as a questionnaire) which, with certain changes in problems made thereafter by the committee, is still in use in 1982. Until 1973, the completed questionnaire was followed by an art test given in the Great Hall in the original Cooper Union structure, the Foundation Building. In that year, the committee decided to abandon that test and require a home test instead. The test and a covering letter forwarding the materials to the applicant were and are prepared by the committee. That form letter, basically unchanged to date, begins, "The Admissions Committee of the Cooper Union School of Art attempts to find the best qualified students who will benefit from the programs of the school." In the third paragraph the letter notes that "the potential in Humanities and Social Sciences and Mathematics will be judged on the basis of high school records and SAT scores. We want to emphasize, however, that the high school record and SAT scores, combined, count for only 25 percent of the total admission scores." Actually, since 1970, the committee has instructed the director, later dean of admissions, that artwork counts 85 percent, academics 15 percent.

When the completed tests are returned by a deadline date stamped on the test, files including the application, test solution of art problems posed, high school transcript, and SAT score, if then available, are made up and provided for the committee for its review. At a room set aside for its use in the Hewett Building, teams of three faculty members, including at least one full-time member (only since 1981 have some adjuncts been involved), a procedure established at the suggestion of the committee chairman in 1978, review batches of the files, each member of the team placing his numerical rating or evaluation on a scale of 1 to 10 on a card placed in a separate sealed envelope since 1980 to minimize influencing the ratings of other team members, and all ratings being placed in the applicant's file folder. On the completion of

this preliminary review, Liebeskind is informed by the chairman and he then personally arranges the files in alphabetical order, records the total scores, and averages scores. Liebeskind also uses a correction factor to avoid the possibility of errors in the team gradings which he devised after having been requested to do so by the chairman in 1978. Also, at the request of the chairman, in stacking the files by final grades, Liebeskind separately groups files with low grades but, where one evaluator has given a grade of 6 or more, for further review. Other stacks include those applicants rejected with no scores above 5 and those of minority applicants which are looked at again by the faculty in a final review.

Since 1978, the chairman then calls the committee to make this final review in which many faculty beyond committee membership participate and in which general discussion of the home projects takes place. Then the chairman gives Liebeskind a list of students to be admitted and, since 1974, those applicants to be placed on a waiting list. Liebeskind's office then checks for compliance with the generally applicable admission requirements, the high school requirements, SAT test scores, and the like. When particularly low high school grades or SAT test scores are discovered, Liebeskind raises the issue of admission of the applicant with the chairman, who either agrees or not, or asks for further opportunity to discuss the case with other members of the committee. Liebeskind has never overruled the final decisions submitted to him by the faculty chairman of the committee.

As an example of the nature of faculty participation in the admission process, the minutes of the regular meeting of the art faculty held on April 24, 1979, contain a report of the admissions committee chairman, Arthur Corwin, which reads, in part, "After unanimous participation of the Faculty in review of applicants for the Freshman class, 63 were admitted (25 Female, 38 Male)."

While the record shows that the faculty reviewers have the high school transcripts and some, if not most, scores available to them, and, in fact, some of the reviewers take these documents into account in making their evaluation, by and large, the Art applicants' evaluations are based primarily, if not exclusively, on the artwork submitted and results of the home test.

As to transfer applicants to the School of Art, the application process is similar to that for freshman applicants but in an abbreviated and modified form. In a covering letter prepared by the chairman, the applicant is informed that the admissions committee has initiated a number of stringent procedural requirements in order to raise the level and reduce the overall number of the applications. It goes on to advise that the committee is looking for exceptional students who have already demonstrated their commitment by hard work. The committee will also consider the total record of performance with special attention to the institution's portfolio requirements, the studio courses in the applicant's transcript, and teachers' recommendations. A home test (or project) with problems periodically updated is enclosed. A separate questionnaire specially prepared for transfer applicants by the committee and in use since approximately 1977 is also utilized. It is accompanied by a checklist of required credits prepared a number of years

ago by the office of the dean so that the applicant can determine what course prerequisites he or she may be lacking. Also enclosed are three copies of a faculty evaluation form which was worked over by the committee.

After the application is received, the transfer applicant is requested to forward a portfolio of his or her work. The request is accompanied by a form in which the application certifies that the artwork submitted is the student's own. The committee added this certification around 1978 after some members expressed some concern about whether work being submitted was really that of the applicant. After the portfolios are received, the office of the dean of the admissions notifies the chairman that the folders have been sent to the evaluation room and the chairman arranges for the faculty review. The faculty then conducts its review, without the scoring and prescribed evaluation procedures used in the case of freshman applicants, and the chairman forwards the committee's recommendations to Liebeskind, who accepts them.

As explained by Liebeskind, since 1977 or 1978, the dean of Art has not taken an active role in the admission process. Prior to that time, he was more active in freshman application final evaluations.

As to acceptance of transfer credits in all three schools, it was Liebeskind's uncontroverted testimony that this was a matter for faculty evaluation and determination. Furthermore, the admissions committees establish policy with respect to whether a particular student applicant for admission should be deemed a freshman or transfer applicant with all the different requirements for admission and evaluation standards such as categorizing involves. By letter dated January 21, 1981, to Liebeskind, the architecture admissions committee chairman, Scofidio, issued a clarification of committee policy in this regard. In the letter Scofidio set forth guidelines; the freshman application and home test to be reserved for students in the 17- to 19-year-old bracket, i.e., those fresh out of high school; and the transfer application, including problem set and portfolio requirements to be made available to (a) those currently enrolled in an architecture program in another institution and who would be admitted into an advanced design year at Cooper, (b) those currently enrolled in a creative art or design program in another institution and who feel they would be able to put together a substantial portfolio, and (c) applicants with advanced degrees in other fields who feel they could submit the required creative portfolio. In the letter two instances, the applicants would likely be placed in first year design. One of the stated underlying considerations for the policy is to protect the interests of recent high school graduates from competing for places in the freshman class with older, more experienced applicants.

The admission process in the School of Architecture is very similar to that in the School of Art. The initial application form is the same as that used in the Art School. After its receipt, the committee's specially prepared home test and questionnaire are sent out to the applicant from the committee along with a covering letter which has the identical first paragraph as in the covering letter sent to Art School applicants. In the second paragraph,

after noting that the ratio between applications and admissions the prior year was 10 to 1, the letter continues, "[T]he admissions committee tries its very best to choose fairly. It is quite obvious that a ten to one ratio forces us to reject many well qualified applicants." Although the letter also continues to note that the high school record and SAT scores count for only 40 percent in architecture of the total admission scores, Liebeskind related that this 60 percent artwork, 40 percent academics formula which it had established was abandoned by the committee before the mid-1970s. Nevertheless, the faculty place a number, up to a maximum of 40, on the home test when it is evaluated. This contrasts with the maximum grade of 30 which the Art test may receive on its evaluation by the three-member team

After the material is received by Liebeskind's office, the Architecture committee receives the folders containing the home test, two-part application, transcript, SAT scores, and any letters of reference, and they are then reviewed by the members of the faculty along with a number of adjuncts. At least one full-time faculty member is among a particular small group of faculty selected by the chairman who review a segment of the applications, giving the closest attention to the artwork, solutions to the problems posed in the home test, and the completed questionnaire. On its completion of this review, the longtime chairman of the committee, Professor Richard Scofidio, who had served at least 7 years at the time of the hearing, on behalf of the committee, submits to Liebeskind a list of those students they would like to see admitted and those students to be placed on a waiting list, with the remainder to be denied admission.

Normally, lists submitted from past years were discarded after Liebeskind's office would type the current list in alphabetical order. Liebeskind did retain, Respondent offered, and I received in evidence, over the General Counsel's objection, two separate lists of names in Scofidio's handwriting he submitted to Liebeskind. One list containing the names of students, not in order, accepted for admission to the 1980-1981 academic year and those to be placed on a waiting list, in order, and a second list of transfer applicants to be admitted to the first, second, and third years of the 5-year program and those invited for interview. On its receipt by Liebeskind, his office checked and entered SAT scores on the list; Liebeskind himself noted "conditional acceptance" of two applicants who lacked certain high school math requirements, by prior understanding with Scofidio and a third applicant with respect to whom Scofidio, had written "want interview first, with him," later crossing out the name when Scofidio later informed Liebeskind, "Don't accept him."

Two other names of students to be accepted were later crossed through with the notation "reject" followed by Liebeskind's initials. When Liebeskind learned that neither had taken the SAT examination, he informed the chairman and Scofidio agreed to their removal. The list also shows, by circling of names of the first two appearing on the waiting list and an arrow, and the addition of two names to the waiting list, that the first two on the waiting list were added to the group of students accepted for admission and two applicants were added to that list to replace the two elevated. The numbers 19 and 23

in Scofidio's handwriting also appear, reflecting the chairman's way of keeping track of the total offers of admission and total number of names being forwarded to Liebeskind's office.

The second list represented the committee's final judgment as to transfer student placement after review of the home test with respect to the particular architecture design course in the 5-year sequence of design courses for which they would be required to enroll. Thus, a certain number of the applicants were listed as being required to take first year design, a course described as "Arch. 111" (Architectonics), even though they were being offered admission as transfer students from another institution. One notation, in particular, the word "accept," was written by the assistant registrar after Scofidio informed her of the committee's decision following an interview of one of the transfer applicants invited for interview.

These two lists, received by Liebeskind in May 1980, were typical of the procedures both the committee and Liebeskind followed in the admissions process during Scofidio's long tenure as committee chairman.

In the Engineering School, the current freshman application form and questionnaire were designed by the admissions committee some years ago. The first part of the application, it will be recalled, is common to all three schools, and was modified to remove the listing of a major choice for engineering applicants. The second part of the freshman application (or questionnaire) was redesigned some 5 years before the hearing when the committee invited Visiting Professor Harrisberger to attend discussions of what factors, other than academic scores, might be useful in making an admission decision or might be substituted for an oral interview. As a result of those discussions, the application was redesigned.

Just as in the case of candidates for art and architecture, Engineering applicants were required, up to 1972 or 1973, to take a battery of tests in the Great Hall consisting of achievement tests in physics, chemistry, mathematics, and spatial relations. In those years a qualifying score was computed, based on high school average and SAT scores, and applied as a cutoff to determine whether or not to invite students to take the test. Liebeskind decided in 1971 not to limit admittance to the achievement tests. Around 1973, Liebeskind proposed to the committee that the spatial relations test be dropped because the college board was no longer producing it; that, since many applicants had not taken both high school physics and chemistry by the time of the test, they be given the choice of either; and, further, that the Cooper Union administration of the test be discontinued but students take the test under college board auspices at their local high school. These changes were approved and the committee then designed the questionnaire (part II of the application) which has since continued in use, as later modified.

At the time the questionnaire was redesigned, the committee also determined to have borderline candidates interviewed, using Dean Liebeskind, an alumni representative on the committee, faculty committee members, Dean Tan, and Dean of Students Gore for this purpose.

The committee has applied a mathematical formula throughout Dean Liebeskind's tenure to make admission decisions. It has changed a number of times over the years as a result of periodic validity studies the committee requested Liebeskind's office to undertake to determine the correlation between students' performance (grade point average) at the end of the freshman year and each of the different factors, which were considered in the formula, such as high school average, the SAT math and verbal scores, and the achievement test scores in math, chemistry, or physics. As a result of these studies and the committee's approval of the results, different weights were assigned to the various factors which went into the mathematical formula and the new formula was then applied to a new class of applicants for first year admission.

The most recent formula in use at the time of the hearing appears in a memorandum dated January 28, 1982, from the committee chairman to the Engineering School faculty. Professor V. A. Guido, the chairman, sets forth the formula used for admission of students to the fall 1981 freshman class. It is a composite score, assigning varying weights to, and totaling, the various components previously described, and divided by 10. The memo then advises that on December 4, 1981, the committee approved a motion permitting each curriculum group to independently recommend an admission's formula to it, which the committee could then either approve or disapprove. The memo concluded with a request that any faculty recommendations for an admission formula, accompanied by justification, had to be submitted no later than February 5, 1982. Liebeskind testified that the motion had been adopted on December 4, 1981, over his objection and contrary vote. (Unlike the voting composition of the Art and Architecture admissions committees, the dean of admissions retains a vote on the engineering committee.)

As to transfer students into engineering, the applications and grade transcripts are received up to June 1, after which time they are forwarded to the office of the dean where a meeting is held at which there are faculty representatives from each of the engineering disciplines. The faculty present in the applicant's discipline review the files and make the admissions decision as well as noting in the applicant's folder the number and nature of transfer credits to be allowed. No waiting list of transfer applicants is maintained. If the reviewers find the applicant lacking the equivalent of the institution's first year engineering curriculum, the student will not be admitted. Liebeskind described the dean's participation as that of a mechanical engineering faculty reviewer in the absence of such representative, but never as an administrator.

With respect to the size of entering classes in each school, Dean Liebeskind credibly testified that the deans advised and set rough guidelines, or goals, for optimum numbers of students, but that the admissions committee pretty well admitted as many students as they felt should be admitted in any particular year. For example, in the Art School, which scheduled 4 sections of freshmen, the dean sought 16 as an optimum number for each section. Yet, in the past 10 years, while the figure of 66 has not been exceeded, the total has in particular, years gone as

low as 50 or 54. In engineering, before the mid-1970s, the entering class had 5 sections of 25 each. When 1 of the majors was eliminated in 1975, the dean advised Liebeskind to raise the optimum figure to 30 for each of 4 sections. Thus, today, 120 is the target for the size of the freshman class.

Each admissions committee also works with Dean Liebeskind in drawing up an admissions calendar. The dean's office annually supplies various chronological dates to the faculty after Liebeskind discusses his proposal with the committees, setting deadlines on mailing tests to applicants, faculty reviews, and Liebeskind's own review, all based on and working back from a generally recognized May 1 deadline for notifying applicants of their admission or rejection by the school.

4. Academic standards

Although the printed 1978 governances of the Schools of Art and Architecture incorporating all amendments made prior thereto list the deans of admissions and students as exofficio and nonvoting members (along with the academic deans) and the dean's unilaterally revised governance in the School of Engineering merely includes these deans as exofficio members without specifically denying them the vote, both deans testified without contradiction that, in addition to fully participating in their deliberations, they also vote on these committees. However, in the Art and Architecture committees, which also include two full-time and one part-time faculty, one student, and one full-time LA&S faculty member, the full-time faculty alone outweigh them. In the Engineering School committee, which under Dean Tan's revision included one representative from each teaching discipline without student or any part-time faculty representation, full-time faculty outweigh the two voting deans by eight to two.

The charge of the committees is identical in each school and is, in substance, unchanged from that contained in the 1964 governances. Academic standards and regulations for each school appear in the annual catalogues. From time to time, committee deliberations result in changes in these standards. For example, the minutes of the Art School committee for June 7, 1976, show that it discussed both poor attendance and work in studio courses falling below the 2.0 minimum and unanimously voted for inclusion in the academic requirements of the School of Art, effective in the 1976-1977 year, the following statement:

Students whose attendance record and/or performance in studio courses is unsatisfactory may, at the discretion of the Academic Standards Committee, be dropped from the rolls of the Cooper Union

At that time, Deans Gore and Liebeskind, although present, did not vote, but the academic dean joined the three faculty members present in the committee's unanimous approval of the standard. The minutes further report that, at its direction, faculty members were to be polled by phone on their position regarding the statement, three members who had been reached by June 9 having given their approval.

As further evidence of the committee's adoption of the standards governing retention of student status and satisfactory completion of degree requirements, the Engineering School committee minutes of February 27, 1979, report, *inter alia*, that, "The Academic Standards previously adopted, and which will appear in the 1979-1981 school catalog, were reviewed. Several items were modified for clarification, and are listed in the memo, sent to Dean Liebeskind and distributed to the members on 3/1/79." The minutes of September 4, 1979, report that a motion was passed in which the committee recommended to the faculty that a 3.0 GPA [grade point average] in graduate courses taken at Cooper Union be required for graduation from the integrated master's degree program. This motion, as amended by Professor Yalow in certain particulars, clarifying that the minimum average applies only to 400 level courses and all courses taken beyond the requirements of the bachelor's degree, was passed by the faculty at the continuation of its regular October 23, 1979 meeting held on November 6, 1979. (Parenthetically, the admissions committee in March, 1979, had adopted a standard for undergraduate admission into the program, at the request of Dean Tan, which required a minimum 3.0 average, but which also permitted a waiver on recommendation of the faculty in the area of the student's major interest.)

The three governance provide uniform procedures for the committees' exercise of their responsibilities in defining the grading system, recommending standards and regulations for academic performance, reviewing petitions from students, and recommending candidates for degrees. Major changes proposed by any member of the faculty in the grading system or academic standards and regulations after consideration by the committee go to the faculty and then the president. Minor changes, such as in wording for clarification, may be acted on by the committee and reported to the faculty. On student petitions for reinstatement, the guidelines for consideration of which appear in section IV,D, *supra*, the governance provide that the committee's actions in this area shall be final.

According to Dean of Students Marilyn Gore, in dealing with student petitions, the faculty, particularly that in the smallest school, Architecture, pride themselves on their flexibility in resolving the problems presented. In one instance, in which it was clear by his academic record, primarily in the design area, that a particular student should be dropped, Professor Wurmfeld appeared before the committee and stated he would like to take on the student and see if he could work with him. The committee approved the student's retention, and the student ended up doing very well and was able to graduate. Dean Gore, who initially opposed such flexibility in some cases, over a period of time became appreciative of the kind of thoughtful consideration that the committee gave to the individual situations of the students. In further support of the independent, as well as compassionate, exercise of its discretion in these areas, the minutes of the committee meetings of the schools are replete with instances of the varied determinations which they made on the cases of students dropped, or placed on probation, or in considering petitions for change of grades

(invariably left completely to the discretion of the faculty teacher, but on occasion modified to permit a timely withdrawal or incomplete grade only on approval of the dean and which must be completed expeditiously or result in a failing grade). The range of possible actions regarding students in serious academic difficulty appears by code in the engineering committee minutes of June 12, 1980. They include probation, readmitted and on probation, decision pending before September meeting, removed from probation, absolved of any unsavory status, special considerations (which are then annotated), continue on probation, and denied readmittance. As explained by Liebeskind, no student is dropped without the opportunity of appearing first before the committee. Students placed on probation are also under the continued guidance and counseling of their faculty advisor who periodically reports to the committee on the student's academic progress.

In an effort to show the limited control the faculty exercised in the area of academic standards, the General Counsel adduced evidence with respect to two students who received failing grades in the fourth year architectural design course yet, with the apparent aid of the dean, were able to complete the required course work, including the simultaneous completion of both the fourth and sequential fifth year design courses in the following year, and graduate with their class at the completion of the fifth year. This incident became a matter of some dispute and received considerable attention from both the General Counsel and Respondent at the hearing.

Professor Wurmfeld testified that the grades for each student in his classes are turned in to the dean, who countersigns the sheet containing them, and the grades are then issued. In this instance, in academic year 1976-1977, he gave a final grade of F for the spring semester to two students, R.S. and S.S. in "Arch 141, Design IV," listed for six credits. The next year, 1977-1978, these students did not repeat the course, but instead were in the fifth year course, "Arch. 151, Thesis," listed for 10 credits. The inference Wurmfeld drew is that the students had been promoted over his issuance of the failing grades and were permitted to take the last in the sequence of design courses without having satisfactorily completed a required prerequisite. Wurmfeld is the full-time faculty member who is aided by four adjuncts in Arch. 141, while Dean Hejduk is team leader and one of two full-time faculty members who teach Arch. 151, assisted by three adjuncts. Arch. 151 is described as a synthesis of 4 years' educational experience with the choice of area of study left to the student. Problems are analyzed and studied with the aid of faculty from each discipline and by visiting critics. Arch. 141 involves the investigation of urban programs and sites requiring the integration of form, structure, space, and environmental technology through the solving of individual problems. Each course thus has an extensive studio component.

On June 9, 1977, Ysrael Seinuk, the faculty chairman of the academic standards committee in architecture, wrote Dean John Hejduk reporting that at the committee meeting of June 8 the two students had registered a complaint about their failing grades, claiming an appar-

ent personality problem with the head instructor who had announced they would fail regardless of work which quality warranted a passing grade. The dean forwarded the letter to Wurmfeld for his comments. Wurmfeld wrote Seinuk responding point by point to the students' complaints, in particular noting the ample notice they had received of the risk they were facing from their failure to attend studio and the poor quality of the uncriticized work, and listing the uniformly failing grades given to the students by each of the other adjunct instructors. There were no further communications.

Both students not only had academic difficulties, but S.S., in particular, had emotional problems as well which were disruptive in the academic environment. Professor Robert Slutsky, at the time a full-time member of the architecture faculty, discussed S.S.'s academic and behavioral problems with Dean Hejduk on a number of occasions, once recommending his suspension for a year. To the dean, who did not testify, Slutsky attributed the response that he wanted to get S.S. through the school as quickly as possible without having S.S. cause additional trouble, to the extent of permitting him to retake the second semester of Arch. 141, which he had failed, simultaneously with Arch. 151.

In the fall of 1977, both the dean and Slutsky taught, with others, Arch. 151, and the dean was the head instructor as well in Arch. 141, Wurmfeld being on leave at the time. Slutsky acknowledged that S.S. attended his Arch. 151 classes but that by spending every day in the studio could have done repeat work in Arch. 141, with some overlap of time. Both R.S. and S.S. had been placed on probation and, by academic rules would have been limited to 18 credits a semester, and in no case more than 20. Yet, the transcripts of R.S. show he received 23 credits in the fall 1977 semester and 21 in the spring semester. R.S. received a grade of A and S.S. a grade of D in Arch. 141 in the fall of 1977 under the head instruction of Dean Hejduk. Dean Liebeskind acknowledged that it was unusual for a student on probation who failed a design course to be permitted to take the next course in the sequence simultaneously with repeating the design course he failed, for a total of 16 credits only in design courses.

Dean of Students Gore recalled S.S. and problems with his conduct. She saw him at Dean Hejduk's request because of the disruptive nature of his behavior. She also participated in an academic standards committee meeting which considered the status of S.S., when he was in his fourth year, and at which a decision was reached to permit him to complete his studies. Student R.S., who she recalled having unsuccessfully attempted to convey unfair treatment by the faculty in design courses, was also permitted by the committee to continue his studies and to graduate.

With respect to student status, generally, Dean Liebeskind testified that, after the committee meets and votes, his office acts to implement the committee's decision after receiving a copy of its minutes. He explained that the committee operates substantially in the same fashion in each of the schools. With respect to granting of degrees, Dean Liebeskind's office maintains a credit audit for each student. At the conclusion of the final semester,

his office will check to see that all graduation requirements have been met both with respect to total credits as well as distribution of credits in the different required areas. A list of all the students who meet graduation requirements is then prepared and in May is presented to the committees and then to the full faculty for their respective approvals.

Counsel entered a stipulation on the record that the academic standards committee in each of the three schools, and in the predecessor combined Art and Architecture School, has had the same responsibilities and authority in the period 1969-1970 to 1973-1974 that it has exercised since that time.

5. Student activities

It will be recalled this committee is a joint committee. Under the 1978 governance it now consists of one faculty member elected by Engineering, one member elected by Art or Architecture (alternating each year), the dean of students, and one student from Art, one from Architecture, and two from Engineering, who shall serve for 1 year. The students shall be elected in elections in which student participation shall be at least 50 percent in the school each represents. The committee's charge has remained the same. See section IV,D, *supra*.

Dean of Students Marilyn Gore testified that she is the chairperson. She believed the governance established this, but it is silent on who is chairperson and how that person is selected. According to Gore, the committee also includes a faculty representative from each school, and is not limited to two as provided in the governance. Furthermore, the committee in operation now includes three students from Engineering, two from Art, and one from Architecture, each elected by the respective student bodies.

A current concern of the committee is discussing and preparing a student judicial code. The purpose of such a code is to provide standards for the behavior of students, procedures and penalties for student breaches, and also to ensure that students get due process when accused. Gore prepared a first draft, which was then modified with committee input. In academic year 1981-1982, the committee had already met four times and a fifth meeting was planned for a few days after Gore's testimony. The first draft was begun in January 1977. After committee revision and approval, it was submitted to the faculty-student Senate which referred it back to the committee for further revision. Gore first attempted to meet senate objections; the committee then discussed it again, made its own revisions, and it was resubmitted to the Senate in November 1981. At the time of the hearing, Gore had not received any formal word on senate actions. Since all members appear to participate equally, this is one governance committee, probably the only one, on which the full-time faculty either does not have a member officiate as chairperson or constitute a voting majority among the membership as actually constituted.

Apart from the work of the Student Activities Committee, individual faculty members act as advisors to various student extracurricular activities clubs. For example, Professor of Humanities Thaddeus Gatzka advises the

Cooper Pro Musica, a student musical organization. Besides performing with the group, Gatzka advises the student president concerning its funding, and arranges rehearsals and musical programs, spending an average of 3 hours a week in this role. Gatzka stressed, however, that the students manage their own activities and that annual funding is provided by a joint activities committee of students to which student leaders of the various extracurricular clubs apply. Gatzka has nothing to do with either the obtaining or disbursing of these funds.

Professor Knapp advises another group of students who formed a production center which provides audio services for student organizations and runs the audio and lighting systems for productions in the Great Hall. This group is partially funded by the joint activities committee budget and partially by income received through sale of their services to individuals and organizations. According to Knapp, who testified without contradiction, the faculty has no input into the size of the budget or how its funds are allocated. While no tuition is charged Cooper Union students, there is a student fee, totaling \$300 in academic year 1981-1982, which is the source of the funds for these activities. The faculty has not voted on the amount of the fee which was raised to its present level some time during the 1970s. Neither does the faculty have any say on the registration or approval of student clubs so that they may apply for and receive funding.

6 Calendar and schedules

Prior to the 1978-1980 collective-bargaining agreement, the annual calendar and schedules of instruction were prepared under the auspices of the governance committee on calendar and schedules as set forth in section IV,D, *supra*.

Up to 1975, the committees from each of the then two schools, Engineering and Art and Architecture, acted jointly in working out details of the calendar and in coordinating schedules of the two schools. Thereafter, committees from the three schools acted jointly in doing so. Dean Liebeskind, prior to his elevation to director of admissions in 1970, for most of the years since 1948, had been faculty chairman of the Engineering School committee which produced a calendar and class schedule each semester.

In 1970, the committee asked new Director of Admissions and Registrar Liebeskind to produce the schedule. Liebeskind forwarded forms for each engineering discipline to the office of the dean, who consulted the faculty members as to their availability and how a particular class was to be scheduled, e.g., whether on 3 consecutive hours or 1 hour on each of 3 separate days. Liebeskind would then prepare a schedule from the completed forms, and it was posted so that faculty members could review it and make suggested changes for implementation by Liebeskind.

In February 1970, the full engineering faculty adopted a statement of policies and guides relating to class and examination schedules in the School of Engineering and Science which it had received from the calendar and schedules committee. At least two changes were made in the statement after its receipt by the faculty. The stand-

ards and guide the statement embodies have recently been brought to the attention of the faculty by Dean Tan following termination of the bargaining agreement and the withdrawal of recognition. They relate to such matters as when in the day certain classes should be scheduled, reasonably balancing the workload for students and avoiding excessive staff member load on any one day, limiting classes between certain hours, and the procedure, process, and location of review of the registrar's proposed schedule by faculty members. Dean Liebeskind followed these guidelines when he prepared the schedules.

The 1970 statement also contains a foundation for an effective examination schedule. Final exams are not given in the Art School and are rarely given in Architecture. They are given in Engineering, and the principles contained in the statement guide Liebeskind in preparing the proposed examination schedule which he submits to the dean's office for the faculty's review. Some faculty contact him directly to make changes and he complies with those requests.

For the 3 or 4 years up to the time of Liebeskind's testimony in February 1982, or roughly since the collective-bargaining agreement became effective and after withdrawal of recognition, the responsibility for completing a master class schedule, at least in the Engineering School, has been given to Associate Dean Hollander. The faculty have been invited to come into the room where the schedule is being worked on and to more or less schedule their courses in different time slots as they wish. Dean Liebeskind has observed Dean Hollander working on the schedule and faculty in the room, placing and moving class descriptions on a large, 3- by 5-foot mockup of the master schedule. Students have also made suggestions on time slotting of courses. Conflicts in time between courses are resolved between the faculty affected and Associate Dean Hollander. According to Liebeskind, under the current system there is greater faculty participation in the preparation than when he drew it up.

The academic calendar lists the dates of beginning and ending of classes each semester, recess dates, final examination dates, and graduation.

In previous years, after preparation of an academic calendar by each committee, if there were discrepancies between them the faculty-student Senate resolved them so that a common calendar for all divisions of the institution could be produced. Then, in negotiations for the collective-bargaining agreement, an understanding was reached that as dean of admissions and records, Liebeskind would prepare the calendar. By virtue of article XXIII of the agreement, see section IV,F, the committee on calendar and schedules was not continued in the 1978 governance. Instead, article IV of the agreement provided that the dean of admissions shall prepare the calendar and it shall remain substantially the same as at present. There shall be no change in the number of holidays and number of weeks in the academic year. And the faculty shall not be required to be in residence between June 15 and Labor Day of any academic year.

After the contract expired, the institution went back to the committee structure only now with three formal fac-

ulty committees reflecting the three schools. Liebeskind submits to them a list of significant dates during the academic year, including holidays and dates of religious observance, and a typical calendar. The committees meet and agree on a calendar for each school, resolving any discrepancies between them; the faculties then approve the calendars and, if any discrepancies still survive, they are resolved in the Senate.

7. Academic freedom and tenure

The charge of the committee and the principles and procedures concerning academic freedom and tenure appear in section IV,D, *supra*, and in appendix III to the 1964 faculty policy manual. The committee was a joint committee made up of four senior faculty members from each of the two schools, Engineering and Art and Architecture, elected by the joint faculties. In formulating a code to be followed in proceedings concerning the fitness of a member of the faculty, embodied in the procedures described in section IV,D, *supra*, the committee was guided by and followed closely the principles adopted jointly by the Association of American Colleges and the American Association of University Professors. After adoption by the faculty the procedures were approved by the trustees.

Professor Ralph Knapp, who served on the joint committee for a 3-year term in the early 1970s, alluded to what he and other members conceived to be a serious defect in its operation. This was a merger of the investigative and adjudicatory functions in the same body in that the committee both investigated and heard matters which in its view warranted formal proceedings. As Knapp explained, "It was not possible for the committee to do both functions and remain uninvolved in the issue . . . you were already prejudging the issue." This problem, although discussed a number of times by the committee in its private deliberations, was not resolved.

Professor Knapp described the three areas of activity allowed to the committee under the 1964 governance and appendix III as (1) alleged violations of academic freedom, (2) alleged violations of due process, and (3) alleged violations of adequate consideration. He later expanded that list to include consideration of dismissal of a tenured faculty member for alleged inadequate cause. In appendix III adequate cause was defined to mean professional incompetence due to either physical or mental disability; professional incompetence manifested by gross negligence of duty or grave and continued disregard of scholarly standards or professional responsibilities; conviction of an act constituting a violation of law and involving moral turpitude; or a change in academic program, approved by the faculty, administration, and trustees, or a demonstrably bona fide financial condition that necessitates the abolition of the position. It will be recalled that in this last area in 1975 the institution successfully opposed the request for a hearing of five tenured professors whose appointments were terminated due to the discontinuance of their academic programs, the president's denial of a hearing having been affirmed by way of a court dismissal of the professors' suit to enjoin their terminations pending a hearing.

In 1969, Professor of Physics Milton Stecher and then Humanities Professor Leo Kaplan had become co-chairmen of the joint committee. During the period 1969 to 1975 it dealt with seven cases raising all of the issues described by Professor Knapp. In 1969, three cases came before the committee. In one of them, the committee's recommendation that a letter from the Engineering School dean to the faculty requiring them to disavow a memorandum circulated to his colleagues, by a member of the mathematics department, criticizing the dean's action in removing the departmental chairman for failing to support the dean's candidacy for president, or have the memo placed in their permanent files, be declared ineffective as a violation of academic freedom was approved by the board of trustees. In another, Stecher testified that the committee's recommendation to censure the acting administrator of the math department for his failure to consult math faculty on the appointment of a new member of the department in violation of article IV of the governance was also approved by the trustees. Stecher, however, could not locate any letter of censure in the case file and counsel stipulated there was none. Furthermore, a group of outside consultants appointed in mid-1969 to review "a problem . . . related to the Department of Mathematics" and to make recommendations for its solution made a recommendation, *inter alia*, approved by the president and trustees in October, that gratitude be expressed to the acting math department administrator for undertaking an otherwise thankless task and he continue to serve until a new administrator be located and employed. By letter dated January 9, 1970, President White relieved the acting administrator of his duties, assumed the duties himself for the second semester, with the assistance of another member of the faculty until the search for a permanent head was concluded, and ended by expressing gratitude to the acting head for his leadership and patience. In the third matter referred to it that year, the committee's jurisdiction regarding a complaint of disenfranchisement by the humanities department was disputed by interim President Heald and, as a result, the committee only acted informally prior to new President White's decision later in the year to give them the vote on governance committees.

In 1970-1971, the committee, after hearing, successfully recommended reappointment for the next academic year without prejudice of a chemical engineering professor whose academic freedom had been violated. The following year, the committee, affirmed by the trustees, denied a hearing and dismissed the claim of the same professor on his nonrenewal, having satisfied itself that he had received academic due process.

In 1973-1974, the board of trustees approved a committee recommendation that another chemical engineering professor had not been denied renewal and tenure because of insufficient consideration, the committee concluding that all relevant documents and information respecting the professor's status and tenure application had been given due consideration. In his testimony about this case, Professor Knapp noted that it was beyond the committee's jurisdiction to involve itself in the substantive matter of the administration's denial of tenure to the pro-

fessor in spite of his having received a favorable departmental recommendation on a second vote of the senior faculty members in his department after an apparently inconclusive first vote had been taken. On the first vote, the departmental chairman had been in favor and the only other tenured member against. By the time a second vote had been taken at the professor's request, a third member of the department had received tenure and was thus now eligible to vote. He voted in favor, and the other two votes continued to remain split.

The last case considered by the committee arose in 1974. Professor of Art Thomas J. Gormley complained in 1974 that a decision of the president to deny him tenure was due to his union activities and therefore a violation of his academic freedom.

Gormley had been teaching full time in the combined Art and Architecture School since 1970. In 1971 he was appointed acting head of the department of graphic design, a post from which he later resigned and then reassumed. By academic year 1972-1973, Gormley was an assistant professor. Under the faculty policy manual, if tenure was to be denied him, the administration was obligated to notify him 12 months prior to the completion of his fifth year of service, thus by the end of the spring term of his fourth year, in 1974. That spring, the Division of Art tenure committee unanimously voted to recommend Gormley and a colleague, the Art Division head, and initially that Art and Architecture School dean, Sadek, recommended in writing Gormley's tenure, along with that of the other candidate, Professor Kadish. Then, unexpectedly, Dean Sadek a month later withdrew his previous apparently unqualified support for Gormley. In a second letter to President White, in which he referred to informal individual discussions with the committee members and division head, held as a result of a recent conversation with the president, characterizing their support for Gormley as lukewarm at best, Sadek concluded he would not give other than "pro forma" support to Gormley's candidacy. President White, who had not approved Dean Sadek's initial letter of recommendation for Gormley, wrote Gormley on June 14, 1974, officially informing him that on June 12 the board of trustees decided not to grant him tenure and that his appointment for 1974-1975 was a terminal one.

Gormley's complaint to the committee was grounded on a belief that Dean Sadek's change in position was related to his anger at Gormley's support, by his vote and remarks at the senate meeting for the Union, and to Gormley's alleged failure to clarify his position in a conversation the day following the senate vote. Gormley testified that Sadek had been hysterical in a later telephone conversation in which he referred to Gormley's vote, to Gormley's tenure candidacy, and to his view that Gormley's stand on the matter was not going to sit very well with the administration. Gormley also felt the procedure invoked by the dean in reevaluating his tenure recommendation had been improper in that he had learned from various of the committee members approached by Dean Sadek that they had not held any real "discussions" about his qualifications as claimed by the dean in his second letter.

The committee, under Professor Stecher's chairmanship, proceeded to investigate the matter, including interviewing various faculty and administration figures. Gormley submitted a lengthy recital urging a hearing on his complaints, as well as affidavits from two members of the committee. Gormley also sought and received a statement of reasons for denial of tenure from President White in which White relied on a policy adopted by the board of trustees in 1973 recognizing the unusually high proportion of faculty on tenure, the long-range educational and financial implications arising from this situation, and the urgent necessity to act firmly to correct it by limiting tenure to only those with the most outstanding credentials. (White referred to 10 other faculty members besides Gormley who were denied tenure in the past 2 years, most of whom also had the support of their colleagues.)

At the urging of Professor Robert Slutzky, a member of the committee and a strong supporter of Gormley's position, additional meetings on the case were held with the provost, dean, and others. At these meetings, two of the committee members who continued to participate in its deliberations were unavailable (of the original seven members, two withdrew from consideration because of then direct involvement on the Division of Art tenure committee in recommending Gormley's tenure and one could not participate because of a personal tragedy).

Ultimately, a committee majority, consisting of Stecher and two others, who attended interviews and participated in early deliberations and whose views were later polled, determined to take no further action in the complaint, and Slutzky dissented. The committee's decision was announced in a lengthy document issued in February 1975 and signed by the chairman, and Slutzky issued a one-page dissent. The majority concluded that while it considered Dean Sadek's second letter to the president as a tortuous, ambivalent document, it learned he wrote it after failing to secure from Gormley's colleagues the necessary overriding reasons to convince the president, and it had no effect on the president's disapproval of tenure. Nevertheless, the majority went on to deplore the absence of a statement concerning standards of performance, as well as criteria and procedures for evaluation of tenure candidates, which led to an evaluation in Gormley's case pervaded by ambivalence and ambiguity.

Slutzky's minority report stressed that only Stecher and he had heard the entire evidence, including meetings at which crucial evidence was presented. He also questioned whether a prehearing was necessary at all since the faculty policy manual does not clearly outline the procedures regarding termination of probationary appointments, suggesting that a formal proceeding may have been Gormley's procedural right.

Later, Stecher released an open letter to Slutzky in which he dealt in detail, point by point, with Slutzky's arguments. The Stecher-Slutzky debate mirrored a deep divisiveness within the overall faculty about the outcome of the Gormley complaint, an apparent majority of the full-time staff favoring a formal hearing so that the charges could be aired and put to rest once and for all in

the full light of an open on-the-record confrontation between Gormley and the tenure committee on the one hand and the administration representatives on the other. In part, further faculty involvement with the issue also probably reflected, to a certain extent faculty views favoring and rejecting collective bargaining as a means of dealing with issues which seemed to place administration and faculty in an adversary position. Stecher himself admitted strong antipathy to unionization, while Slutzky was a member of the Union's executive committee. Indeed, a conflict in testimony arose with respect to whether or not Slutzky told the provost in Stecher's presence that if things go easy with Gormley, things would go easy over the bargaining table, Stecher's asserting and Slutzky's denying the statement was made. I deem it unnecessary to resolve this conflict since the question of fact presented is not germane to the legal issue presented by the Gormley complaint as to whether the faculty exercised managerial authority over matters involving claimed breaches of academic freedom and due process on tenure considerations.

Gormley remained unsatisfied with the result and continued to seek a formal hearing in unsuccessful direct correspondence with President White and by taking the matter to the Senate for its input as an advisory body to the president. The Senate voted to bring the matter before a joint meeting of the faculty on May 13, 1975. At this meeting, tensions ran high. What transpired next is pieced together from Gormley's and other witnesses' testimony and a review of the minutes in evidence and is not entirely clear. Yet, the major points are sufficiently comprehensible to describe them here.

At the meeting, both Stecher and Slutzky spoke to their respective reports. At some point a motion was introduced and carried calling for the resignation of the committee and the election of a new ad hoc committee, and a separate motion was also adopted by a vote of 43 to 16 that it immediately convene a hearing on Gormley's complaints. Gormley recalled that President White left the chair and the meeting before the votes. Apparently, the members of the committee present, including Stecher, resigned. Ultimately, six of the seven members stepped down. At the opening of a reconvened meeting on May 22, President White read a written statement informing the assemblage that "the administration will regard the election of the proposed committee as an illegal act under the governance." He went on to state the administration would not recognize it, provide it any financial support, participate in its activities, nor receive any communications from it. He then relinquished the chair. The meeting continued with the secretary, Professor Bowman, serving as chairman pro tem. It was ruled that a quorum was present. After a speaker was applauded for criticizing the administration for now emasculating the AF&T committee after continually whittling down the structure and strength of the governance, another professor moved to censure the president. The motion called for a vote of no confidence in the president in view of his continuing efforts to thwart the duly expressed wishes of the joint faculties and his continuing refusal to abide by the governance. The motion was seconded, almost immediately the question was called, and

the debate concluded. At this point the deans and division heads stood up, announced they would vote against the motion, and walked out. This action prompted some faculty to leave, thereby destroying a quorum among faculty members, and no vote was taken. The meeting then adjourned to May 27. On May 27, a quorum could not be obtained and no meeting was held. No further meeting was scheduled that academic year and the effort to elect a new ad hoc AF&T committee to hear Gormley's complaints went no further.

Gormley had an unfair labor practice charge filed on his behalf with Region 2 toward the end of 1974 in Case 2-CA-13549 alleging his nonrenewal as violative of Section 8(a)(1) and (5) of the Act. The charge was dismissed, there were no further proceedings, and Gormley left the faculty at the end of the 1974-1975 academic year.

Following the Gormley cause celebre, the committee ceased to hear any further matters. According to Professor Stecher, he continued to remain a member after the abortive resignations failed to result in a successor committee, but the committee was no longer called on to do anything and it just petered out. According to Professor Knapp, the committee ceased to exist after the time of the Gormley episode. It will be recalled that in 1975 the administration successfully opposed the request for a hearing before the AF&T committee made by five tenured professors whose appointments were terminated due to the discontinuance of their academic programs, the president's position later having been affirmed by way of court dismissal of the professors' suit to enjoin their terminations pending a hearing. During the period 1975 to 1978 union contract demands included replacing the committee with grievance and arbitration provisions. All of these factors, including faculty disenchantment with the committee structure and concentration on another mechanism, probably contributed to its demise.

It will be recalled that the Senate, by voluntary decision of its membership, also ceased to function from shortly after its referral of the Gormley matter to the joint faculty until after execution of the collective-bargaining agreement. President White's rejection of the joint faculty's effort to reconstitute the AF&T committee reflected also on the Senate's referral of the matter to that body. In fact, it was at the same meeting at which the referral was approved that President White in addressing the Senate pointed out its purely advisory and limited role. The president's statement was made in the context of a discussion of the Union's role in certain decision-making matters and probably reflected some tension between administration and faculty arising from conflicts arising during the bargaining period. President White also never called another meeting of the joint faculty. Six years elapsed until its new meeting in the spring of 1981.

During the contract period, the AF&T committee was formally abolished and was replaced by various contract provisions pursuant to article XXIII of the agreement. Article II, "Academic Freedom and Responsibility," recited principles of academic freedom for the faculty, expanding on those contained in appendix III to the 1964

faculty policy manual. Articles VI, "Reappointment, Promotion, and Tenure," and VII, "Tenure," established final approval on these decisions by the president but required the dean to make every reasonable effort to secure written recommendations from faculty members who may be affected by such decisions, including, but not limited to, faculty members with higher rank or tenure, and which group could be expanded to include other faculty members at the request of the affected member. Procedural time limits for faculty notice and submission of additional names were set forth, the manner of initiation of candidacy by the administration, individual applicant, or other faculty was described, and provision for grieving a procedural defect was included. Tenure was to be determined for all faculty uniformly by the end of the member's third full year, with denial followed by a fourth year terminal appointment. Article XXII, "Grievance and Arbitration Procedures," provided for an informal attempt at resolving complaints followed by a three-step formal process for resolution of grievances and culminating in final and binding arbitration in accordance with the rules of the American Arbitration Association. A grievance was defined broadly as any dispute concerning the application, the interpretations, or the reasonableness thereof or other claimed violations of any term or condition of the agreement. In a separate clause, article XIX, dismissal of tenured faculty was limited to adequate cause and tracked the grounds establishing such cause in article III to the faculty policy manual, and in article XXI the administration committed itself to no layoffs of tenured faculty for the life of the agreement.

Professor Knapp testified to the amicable resolution of grievances during the contract's first year, 1978-1979, during which he was the Union's grievance officer. In one matter, the parties worked out a resolution of a probationary faculty member's claim of termination breaching an agreement to retain him, which included a financial settlement. In another, Professor Tulchin's grievance disputing a reprimand was resolved at the level of the dean by removal of the offending letter from Tulchin's personnel file. A third grievance, filed in 1980, claiming administration involvement in a plan of student evaluation of faculty violated the agreement, was resolved by a signed agreement in which the administration agreed to refrain from involvement with the student evaluation form, but in which the right of students to engage in such activity through their organization was affirmed.

Gatza testified that during the contract's second year, at which time he was the new grievance chairman, another grievance claiming a teaching overload was resolved at the level of the provost by payments made to the affected teachers above their regular salary.

After withdrawal of union recognition in mid-1980, at a joint meeting of the faculty in late 1980 or early 1981 called by President Lacy, the president asked the faculty to form a new AF&T committee. This new committee has a different composition from the old, including two elected representatives each from Engineering, Art, Architecture, and the humanities department, one librarian, and, when matters before it concern adjuncts, two adjunct faculty members. Deans and other administrators

participated fully in nominating and voting for committee members. In March 1981, in a signed memorandum addressed to the president on the Union's letterhead, five bargaining unit members, and in a separate letter a sixth, all elected at a meeting of the joint faculty to serve on what they described as the unilaterally imposed AF&T committee, accepting their positions under protest and only to provide a voice, however weak, for the faculty, without waiving their contractual rights or rights to pursue the instant proceeding. A responsive letter to the individual letter writer from President Lacy placed the new committee under the governance and the 1964 principles and procedures concerning academic freedom and tenure.

J Faculty Participation in Nonacademic Concerns

1 Building and property matters

The record makes clear that on matters relating to the use and renovation of institutional buildings and the purchase, sale, and lease of real estate, the faculty had either no input or no effective advisory role on the ultimate decisions reached. When the Foundation Building was renovated during the period 1973 to 1975 and other quarters were acquired for class and administrative use, the faculty was not consulted. In 1981, when Cooper Union sold the cooperative apartment it retained for its president and purchased a brownstone residence for his use at a cost exceeding \$600,000 plus additional funds necessary for its restoration, the faculty learned of the transactions and allocation of funds after the fact from an institutional publication and a letter from the chairman of the board of trustees. The trustees had authorized the purchase in December 1980. The assignment of space in its academic buildings also appears to be a matter as to which the administration has uniformly operated independent of any real faculty advisory role. For example, the allocation of classrooms for use by the Art School in the Hewitt Buildings was determined unilaterally by the administration. No faculty or Senate meeting dealt with these matters. Similarly, an Architecture faculty vote in 1974 to create a faculty lounge in the Peter Cooper Suite in the Foundation Building, used for board of director meetings and other social foundations, when the suite was not being used for other purposes, was not followed by the administration. In the summer of 1977, the operational hours of all Cooper Union buildings were shortened by limiting their use to 4 days. The decision, made to conserve on energy costs, was announced to all faculty and staff in a memorandum from the office of the president. On the other hand, there have been instances of consultation with faculty on those occasions when students have requested of the dean that the normal open hours for the Foundation Building be extended. A permanent move of the faculty of Liberal Arts and Sciences in the summer of 1979 from the Foundation Building to the School of Engineering Building and its replacement in the Foundation Building by the Design Center was effected without faculty consultation. The establishment and location of an audio-visual resources center in the Engineering Building, including video studies, videotap-

ing, and editing facilities and a video playback center were also announced unilaterally by the provost in a letter to faculty, students, and staff on September 21, 1977. With respect to property owned by the institution off the Cooper Union academic sites but located in New York City, leases with tenants on these properties have been entered and renewed without any faculty advice or consultation.

Two other real estate decisions of consequence to the Cooper Union community were reached largely independent of any faculty input, and one of them was made contrary to an apparent faculty consensus.

On the renovation of the Foundation Building, the planning and design of space was never raised or brought before any faculty committee or body by the administration. Professor Wurmfeld testified that although the architectural plans were posted at the school and he offered preliminary suggestions regarding the location of the architectural studio, he was not aware that the institution ever solicited proposals or that there was any bidding procedure for architectural or contractor services. Dean Hejduk formed a private architectural firm to do the renovation and informed Wurmfeld that he wanted no objections from his faculty which created additional problems in the design of the space. Wurmfeld never saw competitive design plans or proposals, and the faculty did not negotiate the architect's fees or contracts, nor did it hire the building contractor or negotiate the contractor's fees or review the terms of any building contract. When Wurmfeld raised complaints about specific design solutions regarding the elevators and ramps and access for the disabled, ventilation, and lighting, he was either discouraged by Hejduk or the problems were never satisfactorily resolved.

The disposition of the developed portion of Green Camp, the institution's 1000-acre rural special educational, recreational, and athletic facility located in Ringwood, New Jersey, in 1978, was an issue which was debated at length over the years among faculty and administration, but very strong opposition to its sale by faculty, students, alumni, and others ultimately failed. As early as 1971, the trustees announced they were preparing to close the camp because of financial considerations. A number of proposals were made thereafter by outside consultants, and faculty, among other groups, in various forums voiced opposition to the closing and sale. In spite of these sentiments, in 1973 the trustees directed that the operation of the facility be discontinued, and it was ultimately sold. Even after its sale, faculty sentiment for utilizing the proceeds for continued recreational activities was thwarted. A proposal made by the Student Activities Committee to the trustees and president in late 1978 that the moneys received from the recent sale be used to construct a permanent gymnasium on Cooper Union premises was rejected, although it received serious consideration at a subsequent trustees meeting. In a letter responding to the committee's request, President White explained that he believed the moneys were insufficient for the purpose sought.

2 Gallery art shows and exhibitions

The record reveals that the faculty had no input into the choice of art or artifacts exhibited in the gallery maintained in the renovated Foundation Building. Even when Professor Wurmfeld was invited to exhibit architectural and other drawings there, Dean Hejduk sought to rearrange the location of drawings Wurmfeld selected for exhibition. No faculty participates in arranging, mounting, paying for catalog and posters, and selecting exhibitions. At one point, the administrative committee in the School of Art and Architecture made a request of the dean to report on policies on exhibitions and to refrain from arranging any further exhibitions until the policy could be evaluated. There is no record evidence that the dean reported, and shows continued to be held in the gallery. There was, in fact, an unwritten policy prohibiting use of the gallery by full-time faculty, which Dean Hejduk suspended when he offered Professor Wurmfeld the gallery space for exhibition of his work.

3. Budgets

The evidence discloses that the faculty has had no role in determining annual operating or capital budgets for the various divisions of the institution. The parties stipulated that the Schools of Architecture, Art, and Engineering, the department of humanities, the library, and Cooper Union as a whole, each has an annual fiscal year budget running from July 1 to June 30. Many of the items included are components based on an annual academic year which begins on September 1 and ends on August 30 of the succeeding year. Faculty members from each of these institutional divisions testified uniformly that they had no input in the preparation of the budgets or the allocation of moneys to various categories within the budgets. Nor does the faculty have any input in the allocation of funds to other administrative subdivisions of the institution, such as student activities and the office of admissions and records. Neither has the faculty been consulted on how endowment funds are invested or managed.

As an example of faculty exclusion from the budgetary process, the minutes of the administrative committee meeting of the School of Art and Architecture for February 23, 1974, include a report by the chairman, Dean Sadek, on the results of budget hearings. There is no indication that the faculty participated in the hearings. The dean's report related to the tightness of funds for the next year. Materials and supplies were to be maintained at last year's figures. The contingency budget was being carried over, which meant the school would be operating on what had been saved from excess funds. However, it was possible to equalize Art and Architecture adjunct salaries and correct some inequities in full-time salaries. The dean related that the committee would receive a report in the fall as to the amount of money available for lectures, materials, supplies, etc. and allocations recommended for the various disciplines. Professor Knapp testified that, in the School of Engineering, prior to the elimination of department heads they participated in the process to the extent of formulating a proposed budget for their department and attending closed hearings along

with the dean, president, and provost which fixed the budgets. Since departmental heads were abolished, Knapp has no knowledge as to how the school budget is prepared or allocated.

On one occasion, in academic year 1973-1974, President White reported to the Senate that the board of trustees had made a policy decision to change a formula used to project the percentage rates of return on net asset value used to cover operating expenses on the one hand and to reinvest capital on the other. By virtue of this change, the institution incurred a projected budget deficit for the succeeding fiscal year of \$300,000. The faculty played no part in either considering or implementing this change in formula or in creating the budget deficit. In the same year, the trustees unilaterally moved to place in the operating budget as an expense item the \$364,000-a-year mortgage amortization payment on the Engineering Building.

For a period of time starting in the early 1970s, faculty observers were permitted to attend board of trustees meetings. The observers were elected periodically by the Senate and included two faculty members and one or two students. Professor Knapp, who served as one of the faculty observers for a time, testified that as a result of what he learned at these meetings he reported to the Senate periodically on overall figures he had heard discussed by trustees relating to projected expenditures for completion of the renovation of the Foundation Building and expenditures for a 2-month interval. According to Knapp, these figures appeared to be common knowledge among fellow faculty members at the time. In general, the documents containing some information of a financial nature which observers were permitted to review at the meetings presented broad categories of expenditures for the previous quarter or month. None of the observers was permitted to take any documents from the trustees' meetings and they were uniformly excluded from executive sessions where personnel and major policy decisions of a confidential nature were made. Neither were they allowed to participate in its deliberations during the public portions of its meetings, acting as observers only. According to Professor Tulchin, who was an observer for a period of time, he could not remove from the board room any documents or information, even to convey it to the Senate, and he could not conceivably take notes fast enough of what was transpiring in his presence as the subjects whizzed by. Knapp corroborated this testimony.

Shortly after the union election held in October 1974, the board of trustees decided to no longer permit faculty or student observers to attend its meetings. According to Provost Kaplan, the Union had been certified, collective bargaining was about to take place, and the trustees considered it would not be appropriate under the circumstances to have them present. The provost added that there had been some sentiment, at least informally expressed, on the part of faculty observers that it was a waste of their time.

Professor Wurmfeld testified to his limited knowledge of financial affairs of the institution, for example, the various sources of its funds, not from any financial information received from Cooper Union, but from its tax re-

turns made available to the Union by the Federal Government under the Freedom of Information Act by virtue of its status as a not-for-profit institution.

Faculty in the various schools have from time to time made requests for acquisition of equipment for use in the academic programs. Humanities Professor Gatzka testified that requests he has made for purchase of audio and visual materials or records for his music courses have been honored or not depending on what the chairman's administrative assistant tells him is available in the budget for such purchases. In the Engineering School Dean Tan informs the faculty whether funds are available for purchases of equipment and other supplies. The faculty members then tailor their requests in order to come within the cost range which the dean has indicated is acceptable. Even so, of the actual requests made, normally by memorandum, in the experience of Professor Knapp, only 60 to 75 percent, perhaps as much as 80 percent, have actually been approved. Professor Knapp recalled once being denied a supply of writing pads for up to a year although local stationers were well stocked with them. For the 18 months to 2 years preceding the hearing, the office supply cabinets maintained in the dean's office have been locked, necessitating a request by a professor to a secretary, or even a work study student, to gain access.

4 Terms and conditions of employment

Prior to the collective-bargaining agreement, faculty played no part in the setting of their salaries. They were told what it would be on a take it or leave it basis. This applied to the fixing of fringe benefits as well. Furthermore, the dean of the particular division also determined the length of the contract for probationary faculty members. No committee under the 1964 or 1978 governance dealt expressly with salaries or fringe benefits.

In the early 1970s there existed a "Committee Z," a committee of the American Association of University Professors, made up of faculty members, which undertook to improve faculty salaries and fringe benefits. In academic year 1972-1973, it reported to the faculty on three meetings it held with Provost Kaplan and one held with President White and a trustee to discuss faculty salaries for 1973-1974. The committee reported administration rejection of a proposal for annual cost-of-living increases plus additional amounts to be negotiated for merit and general productivity increases. The administration made clear the average increase would be about one-half of the COL for 1972, and this was not negotiable, although its distribution among faculty was negotiable. Neither would the administration negotiate fringes or sabbatical leaves. The committee recommended no further meetings be held in the future if the most important matters were nonnegotiable. It was at this point that Professor Tulchin first sought the aid of the New York State United Teachers in organizing a union among the faculty.

During the collective-bargaining period, salaries and other benefits were set by a process of negotiation in which Professor Wurmfeld, among other faculty, participated. In the agreement, article IX covers compensation;

article X deals with welfare and fringe benefits; article XI covers sabbatical leave; article XII, leaves of absence; article XIII, maternity leave; and article XVI, workload. The compensation article provides retroactive increases as well as minimum salaries for each faculty rank.

After the institution withdrew union recognition, on August 26, 1980, President Lacy announced to all full-time faculty and librarians changes in compensation for the academic year beginning September 1, 1980. Included were a percentage increase in salary, an additional promotional increment, and an increase in Cooper Union's annual contribution to each employee's retirement plan and the elimination of all compulsory employee contributions to these plans. Faculty had no input in determining the figures announced.

The governances have always provided for faculty advisory responsibility on appointments and promotions of the teaching staff. In practice this has involved the dean or division head consulting senior faculty members in the applicant's discipline on the applicant's academic qualifications and standing. However, before President White's term, this procedure was breached apparently at least as often as it was honored. For example, in one of the matters brought before the AF&T committee in 1969, the committee's recommendation to censure an administrator for failing to consult faculty on a new appointment was not followed in spite of Stecher's recollection to the contrary. At least four of the faculty witnesses who testified to the circumstances of their appointments were not interviewed or otherwise evaluated by faculty peers prior to their hiring by their respective dean. This held true for both their hirings as adjuncts and later when offered full-time tenure track positions. After President White assumed office in 1970, at least in the Engineering School, consultation uniformly took place, although often on a catch-as-catch-can basis with whoever faculty member or members were available in the applicant's discipline being asked to interview and report to the dean.

On their promotions over time to higher faculty rank, particularly to ranks above assistant professor, senior faculty at the rank or higher for which they were being considered were consulted. More often than not it was the dean who initiated the process by requesting letters from cohorts of the faculty member being considered. This is consistent with the language at page 10 of the faculty policy manual which reads, "Whenever the criteria for advancement are deemed by the administration to be satisfactorily met, a member of the teaching staff may be promoted to a higher rank, irrespective of his years of service in his present rank." Consideration for promotion (or tenure) may also be triggered by the applicant or by other faculty making the recommendation.

On reappointment of nontenured faculty, prior to the contract period, faculty input seems to have been minimal with respect to both contract renewal as well as the terms of the renewed contract. Professor Haacke could not recall any faculty participation sought by the dean of the Art School in recommending such reappointment, although half a dozen names of reappointed faculty were mentioned by him in his testimony. According to Professor Knapp, there were no nontenured faculty who came

up for contract renewal in the 1970s prior to the union contract.

With respect to the grant of tenure, the faculty policy manual describes at page 43 the circumstances under which tenure is acquired:

The Administration should grant tenure to the faculty member as soon as he has demonstrated his competence and a satisfactory development of his teaching and scholarship. The services of each faculty member in a probationary appointment should be evaluated periodically by the Administration in order to determine whether he should be continued on a probationary appointment or be granted tenure.

Over the decade of the 1970s and into the 1980s the administration weighed recommendations of tenured faculty in making this determination. Early in the decade, recommendations were sought from tenured faculty in the same discipline or, at least, the same division. Faculty recommendations were sought in writing but were also orally communicated. By the mid-1970s, the senior faculty in each discipline in a school or division were asked to meet formally to consider tenure applications and to submit written recommendations. See, e.g., the Gormley tenure procedure in section IV,I,7, *supra*.

During the contract period, 1978 to 1980, the procedures were formalized, broadened, and permitted greater input by those "affected by such decisions" and by the applicant for reappointment, promotion, and tenure and the probationary period was made a uniform 3 years. See section IV, I,7, *supra*. Even on initial appointment, appropriate senior faculty members and professional librarians, as appropriate, were to be invited to interview prospective candidates and were to be consulted prior to the making of the final decision. These procedures appear to have been continued unilaterally by the administration since 1980.

Whether faculty advice has been consistently effective in these personnel areas is another question indeed. The conclusion drawn from the evidence is that it has not. The administration unilaterally established and modified policy designed to restrict tenure and even promotion in light of other, conflicting considerations relating to such matters as economics, ratio of tenured to nontenured faculty, and age and anticipated dates of retirement of tenured faculty. See, e.g., President White's statement of reasons to Gormley on his denial of tenure in section IV,I,7, *supra*. Apart from the period of the early 1970s when tenure grants were severely restricted, many tenure and promotion applications have been denied adverse to majority faculty sentiment throughout the 1970s and into the 1980-1981 academic year. Provost Kaplan's initial testimony bears this out, as do the record documents showing the provost's detailed memoranda submitted to President White regarding promotion and tenure considerations in the spring of 1976 and records from 1974-1975 and 1976-1977 showing the box scores of distribution of votes from faculty through department chairman, division head, and dean to board of trustee decision on promotions and tenure for those years. Conversely,

tenure has rarely, if ever, been granted over significant senior faculty objection. In one instance, however, in 1978, when faculty peers split on a tenure application, with two of three responses in the file showing they were opposed, the professor was tenured on the strong support of the dean, provost, and president and five outside figures with professional reputation in the applicant's field. Even after the contract became effective, when a dean announced a full-time opening for a faculty position in the School of Art for September 1978, and a group of four members of the faculty interviewed a slate of candidates at his request and unanimously and enthusiastically selected one for appointment, no one was hired and no real explanation was provided for this change in decision regarding the opening. The administration's unilateral termination of probationary video and film instructor Creston, over strong faculty and student objection, has been previously described *supra*. Dean Sadek's appointment as a professor in the graphics area, as well as his appointment as director of the design center, was made without faculty input. I also credit Professor Wurmfeld's testimony that after the count of ballots in the representation election on October 16, 1974, Dean Hejduk informed Wurmfeld, "Now you have done it. You are through. You'll never get tenure." While Wurmfeld ultimately was tenured, and, in fact, ultimately declined an offer of acting dean in 1980, Dean Hejduk's comments illustrate the degree to which administrators believed they controlled the process of decision making on tenure, even to the extent of claiming to weigh irrelevant and discriminatory factors in the process. The same may be said for Dean Sadek's like comments to Professor Gormely during the same year.

The employment of visiting professors calls for separate comment. The faculty policy manual does not refer to this title. Nonetheless, as the earlier discussion of the SHAPE program illustrates, see, e.g., section IV, I, 1, e, *supra*, individuals were appointed to visiting professorships during the 1970s without faculty input. Aside from Dr. Lee Harrisberger, appointed in 1976 under a Carnegie grant, the record reveals that when Art Professor Hans Haacke was appointed visiting professor by the dean in 1970 after serving as a part-time instructor since 1967, there was no faculty interview or screening process to his knowledge. Professor Knapp confirmed that the faculty did not vote to recommend candidates for visiting professorships. At least four persons, including Harrisberger, received such appointments in the Engineering School during the 1970s. One of them, Professor Ivan Grabel, while on sabbatical leave from a separate university teaching post and desirous of being in the New York area, received his appointment after being recommended to the administration by one of Professor Knapp's colleagues on the faculty.

Visiting professors were specifically excluded from the certified bargaining unit. However, during the period of the collective-bargaining agreement in 1979-1980, Union President Tulchin raised objection to the announcement of the appointment of a then visiting professor to the full-time faculty without administration compliance with the consultation with appropriate senior faculty as required by the contract. After some argument on the

matter, Provost Kaplan acceded to Tulchin's request, and, after notifying the Art School dean, Tulchin was contacted to interview the professor in his capacity as the member of the Art faculty within the bargaining unit whose field was most closely aligned to that of the visiting professor. Under the agreement (art. XVIII), appointments of visiting professorships were limited to 1 year for each individual and the considerable number of adjuncts holding visiting professor titles in the Art School were to have their titles changed to adjunct if required.

Adjunct faculty are defined in the faculty policy manual as members of the staff not employed on a full-time basis whose position does not carry tenure nor membership in faculty. There is no governance procedure on their hire, their rehire, or their transfer to full-time status. The record establishes minimal faculty role in their hire. From time to time, full-time faculty members in the fields in which adjunct faculty were to be employed were asked to review qualifications of persons referred to them by the dean and report their conclusions. The faculty members normally did not recruit, nor did they fix adjunct salaries, rank, or hours, select adjunct replacement while on sabbatical leave, or participate in the employment process as a body or in any defined way and a number were hired over time without any faculty involvement whatsoever and, on occasion, over faculty objection. The deans select them and negotiate directly their salaries and other terms of employment.

According to at least one faculty witness, the collective-bargaining agreement required faculty consultation on their hire. Although a close review of the terms of the agreement does not bear this out, nevertheless, Provost Kaplan in notes made of a meeting of the deans and the president held on September 12, 1978, reported that he had an understanding with the Union that in the appointment of adjuncts the administration would consult relevant senior full-time faculty before making the appointment, whenever possible, and faculty consultation in the hiring process in the humanities area, at least, may have increased somewhat during the contract period. This agreed-upon role ceased at the termination of the bargaining relationship. To the extent that adjuncts were brought in to teach a new course the faculty has become intimately involved through their role in helping to determine curriculum under the governance committees. Furthermore, the administrative committee has had a continuing role in recommending on the renewal of teaching contracts to be offered adjunct personnel.

Although adjuncts were excluded from the certified bargaining unit, article XVIII of the agreement limited them to 9 contact hours of teaching or three classes, whichever was less. After the termination of the bargaining relationship, the faculty became concerned with the lack of any uniform personnel policy as to adjuncts, primarily at the urging of adjuncts. At the April 9, 1981 meeting of the School of Architecture administrative committee, the circumstances surrounding its convening after a lapse of some 4 years having been described, *supra*, upon expressions of concern by three adjuncts present, the agenda was unanimously revised to deal,

inter alia, with policy regarding adjunct hiring and renewal, promotions, hours, and fringe benefits. Motions were unanimously adopted (1) that the dean report to the committee his policy concerning hiring, renewal, and nonrenewal of adjuncts and make no additional acts before this policy is reviewed by the committee; (2) that the committee, after consultation with adjunct faculty, recommend a uniform and equitable procedure for evaluation of adjuncts to become the basis for hiring, renewal, nonrenewal, promotion, and the awarding of 1-year versus 3-year contracts; (3) that information be made available to faculty and students concerning contract hours of adjuncts with a view to correcting any disparities or misunderstandings that may exist between contract hours and scheduled hours; and (4) that the dean request the vice president for business affairs to study and propose ways, at the next committee meetings, in which it might be possible for adjuncts to participate in retirement benefits, health benefits, and life insurance. At the time of testimony on these matters in January 1982, the dean, who was on sabbatical leave in the spring of 1981, had not yet dealt with the concerns voiced in these resolutions although he said he would deal with them in the future.

With respect to termination of faculty, when tenured faculty are let go, if their separation is related to curricula or program elimination as was the case in the mid-1970s, the administration has been able to successfully withstand faculty attempts to participate in the process under the governance hearing provisions. As for individual tenured faculty, so long as there has been adequate consideration by the administration of one or more of the causes for dismissal previously described supra, the faculty has no real role in reviewing the matter on complaint of the dismissed member. As regards probationary faculty members denied tenure, they may seek procedural review by the AF&T committee, but only when a majority of the committee is convinced that academic freedom or due process has been violated or there has not been adequate consideration of relevant factors and/or cause for dismissal does the possibility exist of a formal hearing. It appears that probationary faculty prior to the third year have no recourse even to the preliminary procedures of the AF&T committee absent a claim of breach of academic freedom. If a probationary teacher is dismissed prior to the expiration of the probationary appointment, the AF&T committee may investigate the claim of breach of contract, but it has no jurisdiction to become involved in the merit of the nonrenewal. Aside from the procedural safeguards of due process and adequate consideration and absent a violation of academic freedom, the administration has a relatively free hand in determining whether to renew nontenured faculty, but is limited by the definition of adequate cause spelled out in the faculty policy manual with respect to tenured faculty.

Aside from the matter of calendar and course schedules previously discussed, the related matters of course assignments, class sizes, teaching load, and staffing were of concern to the faculty. The record evidence supports a mixed, generally more limited role for faculty participation in decisions in these areas. Even as to course

schedules, faculty witnesses disputed Dean of Admissions Liebeskind's conclusion of greater faculty participation in determining them.

According to Professor Knapp, there are two aspects to course schedules. One relates to the courses that one is assigned to teach. The other concerns the times the courses are held. As to the first aspect, he is generally called by the dean to discuss the courses he will teach and, if there is disagreement between them, the dean's will prevails. As to the second aspect, he has nothing to do with the time schedule. It is assigned to him and he is left in the position of attempting to make changes if it is not suitable to him. This latter testimony conflicts with Liebeskind's description of the most recent process of give and take between Engineering faculty and Associate Dean Hollander in drawing up the schedule described supra. In view of the more complete and detailed narrative relating to this matter offered by the administration, I am prepared to credit the administration over Knapp's more limited denial, at least with respect to the Engineering School. I also have weighed in making this finding the testimony of administration accommodation generally to faculty requests to limit their teaching assignments to particular days in order to avoid conflicts with private consulting work, other projects, and the like. I credit Architectural Professor Wurmfeld's description of being denied requests to change time slots of courses assigned to him without his input, which he claimed were inconvenient in both 1978-1979 and 1979-1980. He was informed that it was impossible for the registrar to change the times for students in the fourth year who were taking the set of required courses.

As to rescheduling of classes already scheduled for specific slotted times, no changes may be made by the Engineering faculty member without consulting the dean or associate dean.

As to course assignments and class size there is more reason to credit Knapp. In a memo to Dean Tan dated November 30, 1978, he notes, inter alia, that "it has generally been known since September that I would be teaching two courses each semester this year. It was not until November, however, that any consideration of which courses I would teach was made known to me." In another memo of December 1, 1978, addressed to Dean Tan, Knapp expresses disappointment over the dean's decision refusing to schedule an advanced electromagnetics course because the seven students who signed up for it were deemed inadequate. Professor Gatza testified that as to required courses, he is assigned to teach them by the department chairman. What elective courses he offers is based on his suggestions and requests, which, as previously noted, are not always honored. Knapp described the process of introducing a new elective course. The faculty member will devise a course offering and submit a catalogue description to the dean's office prior to student registration. Ordinarily the course is also brought to the attention of the curriculum committee and, presuming its approval, the course is posted for student sign-up. It is only taught when a sufficient number of students, in the discretion of the dean, elect to take it.

Professor Knapp has been successful at times in objecting to an excessively large number of students in his courses and some adjustment has been made. On the other hand, on at least one occasion in 1978 when Knapp and other faculty objected to four student laboratory squads in a required project course as producing chaos and degrading the educational experience, his recommendation to schedule and staff another section of the course was rejected by the dean on the ground that there was no possibility of hiring anyone to teach another section.

As to teaching loads, the faculty policy manual provided that full-time members were required to teach approximately 10 to 14 contract hours per week on the average, a portion of which may be in the evening session. Under the collective-bargaining agreement, article XVI, "Work Load," defined a full-time teaching load as consisting of not more than 21 teacher-credit hours per academic year (2 semesters) with lecture course hours receiving a factor of 1 and laboratory studio course hours receiving a factor of three-fourths per each class-contact hour per week per semester. The contract article also limited course preparations to three during a semester and permitted reductions in teaching load for those faculty assigned unusually heavy nonteaching duties. It is unclear whether the practice since 1980 has reverted to that in the faculty policy manual, but it is likely this has occurred.

When the physics degree program was discontinued effective 1976-1977, and some freshmen students transferred into electrical engineering, Dean Tan proposed reducing the teaching load of the four electrical engineering faculty to accommodate for the resulting larger classes. The faculty members instead recommended the hiring of two additional faculty under 1-year terminal appointments. A copy of their memorandum was sent to President White. Dean Tan rejected this recommendation on the ground of lack of funds, but also said he was disposed adversely to it because the memo had been sent to the president. At a March 2, 1976 Engineering faculty meeting, Dean Tan cast the deciding negative vote, breaking a two to two tie on a motion requesting the board of trustees to consider an increase of faculty personnel in proportion to increased enrollment based on greater enrollment, the new 5-year masters program, and the influx of science degree transfer students.

In January 1980, Professor Knapp's written recommendation to assign an experienced faculty member to assist a new professor in the first electronics project course was not followed, in spite of significant student dissatisfaction with the manner in which the course was being taught.

On leaves of absence, there are no standards to guide faculty, there is no review by the faculty, and no faculty committee has authority to recommend their approval. Each request is considered on its individual merits by the administration. In 1977, Professor Wurmfeld's formal written request to his dean for a leave for the fall semester 1977-1978 to collaborate on a book based on his history (of architecture) course was granted by the board of trustees after both the dean and the administration had recommended it. In the same letter Wurmfeld was also notified of his promotion to associate professor. Art Pro-

fessor Haacke was granted a leave one semester when he received a Guggenheim grant. He also was permitted short leaves up to a week in length for the installation of gallery shows of his art upon approval of the dean where in one instance he stated he would make up the classes missed and in the other he had procured a qualified substitute teacher at no cost to Cooper Union. The procedure is the same in the Engineering School. The president or provost recommends approval to the trustees on application made to the dean.

In one instance, a professor whose original sabbatical leave had been extended 1 year by a leave of absence, was denied a further 1-year extension of the leave of absence to teach at the Sorbonne. This last request came up in 1978 during the collective-bargaining agreement and was discussed by Union President Tulchin and Provost Kaplan. Professor Tulchin's testimony is credited that the provost refused to negotiate the further extension of the unpaid leave, stated that it was his managerial right to determine how long or how many leaves of absence the professor could take, and further stated that the professor had reached his limit and, if he did not wish to return to Cooper Union for the following semester, he would be deemed to have resigned. In fact, the professor was informed of the administration's decision in correspondence which spelled out the institution's concern for his return and the relevant educational factors which had entered into its decision, and, as a consequence of the professor's failure to return, he was removed from the faculty. The article negotiated by the parties (art XII) provided that a leave of absence without salary may be granted for good cause provided the employee expects to return afterward. The leave may be up to two semesters and may be extended by the president. If the leave is recognized as one for an academic purpose, the employee shall receive all salary increases granted in the employee's absence. A major difference with the provision contained in the 1964 faculty policy manual is that the manual adds as a condition that satisfactory arrangements be made to carry the applicant's teaching assignments. It is presumed the manual governs present and further grants of such leave.

As to sabbatical leaves, the faculty policy manual provides for faculty eligibility after each consecutive 7 years of service at Cooper Union, at least 4 of which shall have been performed with a rank of at least associate professor. The grant of such leave is at the discretion of the president and trustees. Such leave is compensated at full salary for one semester and at half salary for a full year. It is expected the member on such leave will not accept remuneration other than his faculty salary and such prizes or academic awards given him. The disposition of the courses or administrative work of the person on leave is decided by the department head concerned in consultation with the dean.

The contract clause (art XI) continued the definition of such leave and salary arrangement depending on length of the leave and the authority and discretion to grant such leave continued to reside with the president and trustees. A time limit for filing an application was set, and the administration agreed to grant at least one

full-year and one half-year sabbaticals subject to its review of all applications, taking into account the applicant's reason for the leave, the number of previous leaves, their allocation among the various schools and disciplines, the benefits to the institution's educational program, and Cooper Union's need for the services of the applicant during the time for which leave is requested. At no time has the faculty participated in the decision to grant or deny sabbatical leave, and since withdrawal of union recognition the administration's discretion is unfettered by the language which established a minimum number subject to the guidelines described.

During the contract period, more than the contract minimum number of sabbaticals were granted in some, if not all, semesters. Professors Wurmfeld in Architecture, Haacke in Art, and Knapp in Engineering were each granted sabbatical leaves during the contract period. In Wurmfeld's case, he expressed an intention to pursue educational goals related to his teaching responsibilities as well as his professional practice, and his request was enthusiastically supported by his dean, who noted, *inter alia*, Wurmfeld's "forceful role in the formation of the history program." In each of the two other instances, written requests made to their respective deans were also honored upon ultimate approval by the board of trustees.

Prior to the period of the contract, there were instances in which professors were denied sabbaticals although otherwise eligible.

Regarding welfare and fringe benefits, the contract (art. X) provided for the maintenance of such preexisting benefits as Blue Cross-Blue Shield, major medical, group life insurance, pension, and disability. Presumably these benefits have been unilaterally continued to date after contract termination.

As to faculty grievances, this subject matter has been exhaustively treated particularly as it relates to tenure, termination, or lesser discipline, and covering the contract period and subsequently, in an earlier section of this decision.

One last item relating to terms and conditions of employment is the fact that during the contract period only faculty evaluations were instituted on a once-a-year basis. In the Engineering School, the dean circulated a questionnaire for faculty to complete relating to their teaching and professional activities. An interview followed and a memorandum was then prepared by the dean and placed in the faculty member's file and a copy provided the member. In the Architecture School, the dean held individual discussions with the faculty and followed up with letters for the personnel files summing up the views he had expressed about the member's activities, contributions to the school, and their value. As noted, these evaluations ceased after the summer 1980. Faculty never prepared work evaluations of their colleagues although they did evaluate their colleagues to the extent they participated in tenure and promotion considerations

K. Alleged Faculty Supervisory Authority

Professor Wurmfeld testified credibly that no employees report directly to him in the School of Architecture. He has no role in directing or supervising the dean's administrative assistants, in evaluating or hiring them, or in

recommending their terms or conditions of employment. He shares office space with other faculty and any official or institutional typing is done either by a dean's assistant or a secretary employed in his private architectural firm. The very limited role of faculty in the hire of adjuncts and the nonexistent role in appointments of visiting professors has been described. As also described, faculty had no role in setting adjunct contract terms or length of hire or renewal of hire.

In regard to faculty relations to shop assistants and laboratory technicians, these employees are supervised by shop and laboratory supervisors and/or the deans, who determine their number and their hire, and terms and conditions of employment are determined in contracts prepared and offered to them by the respective deans. While they assist faculty members by maintaining equipment and the shop or lab, instructing and supervising students in their safe use, aiding in the practical execution of student projects, and helping to resolve technical problems, faculty do not evaluate their performance, and the assistants and technicians do not report to the faculty members they assist but rather report to their supervisor, who, in turn, reports to the dean who employs them. There is no requirement that technicians who assist in engineering lab courses respond to requests or even directives of faculty and, in fact, on the refusal of a technician to perform a task the faculty reports the matter to the dean for his followup and correction or possible discipline. Faculty also have no role in advising or determining which, if any, shop or lab assistants become adjunct teachers from time to time. Faculty do not train technicians; give them work orders or assignments; grant time off, sick leave, or vacation time; keep track of their worktime; evaluate their performance; or warn them or recommend disciplinary action. Their work contact is minimal. One Engineering faculty member's complaint in 1977 to the provost about the splitting of a physics technician's time between physics and chemistry was never corrected. In another instance, after receiving a written letter of warning from the dean, issued on the complaint of the supervisor, another technician in the Engineering School was dismissed by the dean a year later. Faculty members who were asked their recommendation before the dismissal refused to give one since they had not been consulted on the technician's earlier transfer into their discipline from another one. However, at the urging of one faculty member, the dean's determination to provide 2 month's salary severance pay was increased to 6 months. At the directive of the dean to look for a replacement, the faculty in the discipline in which he had been partially employed placed a newspaper ad, interviewed certain of the respondents, and recommended the dean's consideration of two, from which group the dean selected and appointed one. Although the faculty involved asked that the new hire be assigned fully to their discipline, his duties have encompassed work in another department. The dean also informed the faculty member who had placed the ad that he had exceeded his authority by having done so without prior permission.

Although certain faculty, such as the photography professor (Union President Tulchin), may have had

closer working relationships with the technician supervisor than with the technicians by virtue of the nature of the equipment and needs of the students, they appear to have no input into the supervisor's hire or other terms and conditions of his employment and in no sense direct their work or become directly involved in their supervision or discipline of the technicians under them.

The strictly professional relationship of full-time faculty and librarians has been described supra.

L. Other Aspects of Collective Bargaining Including the Management-Rights Clause Incorporated in the Agreement

In the series of meetings principally between Wurmfeld and White in the fall of 1977 which led to final agreement on terms of the labor contract, at one point Wurmfeld asked White to indicate those things he really felt he had to have and the areas he felt he had flexibility in, and Wurmfeld would do the same. One area in which White expressed having little flexibility was management rights. At a subsequent meeting White reiterated that he needed a strong clause. Wurmfeld then agreed to the initial Cooper Union demand in this area made back in 1975 and that clause was finally incorporated in the contract. Prior to President White's involvement in negotiations, during earlier negotiations the union team held with the provost, at one meeting at which the institution's management-rights clause was being discussed, Provost Kaplan made a comment that "you can't tell General Motors when to build a Vega." The Union's initial proposal was to the effect that anything not covered in the contract, without limitation, was reserved for management. The clause finally agreed to reads as follows:

ARTICLE XXXIII

MANAGEMENT RIGHTS

Except as otherwise provided in this Agreement, Cooper Union retains the exclusive right to hire, direct, and schedule the Faculty and Librarian work force; to plan, direct, and control operations and the use of facilities, to modify, discontinue, eliminate, institute, reorganize or combine any department, curriculum, academic program or operation; to lay off employees; to promulgate reasonable rules and regulations; to introduce new or improved techniques, methods, or facilities, regardless of whether the new and improved techniques, methods, or facilities cause a reduction in the Faculty or Librarian working force; and, in all aspects, to carry out the ordinary and customary functions of management, provided that the same are not inconsistent with the express provisions of this Agreement.

In another article entitled "Matters Not Covered" (art. XXXVII) the parties agreed that with respect to matters not expressly covered by the agreement, Cooper Union agrees that it will consult and negotiate with the Federation prior to making any changes in terms and conditions of employment which are mandatory subjects of collective bargaining as defined under the terms of the National Labor Relations Act.

Over the period of time from certification to execution of the agreement, the Union filed various unfair labor practice charges, most of which were withdrawn but three of which were found by Region 2 to have merit. In one, after dismissing portions of a charge filed in 1975, a complaint was authorized and was unilaterally informally settled by Respondent which agreed not to bypass the Union and deal directly with its employees concerning terms and conditions of employment. In 1977, a consolidated complaint was issued in which the General Counsel alleged Respondent had failed to bargain over loss of bargaining unit work caused by its employment of non-unit employees (adjuncts) in such work and over the subject matter of the school year calendar; unilaterally increased teaching hours of full-time faculty in the Division of Liberal Arts and Sciences; and allowed the School of Engineering faculty, including nonunit employees and administrators, to consider and recommend on such mandatory bargaining subjects as teaching loads. In 1978, there was a settlement agreement entered into by all parties and the charge was later withdrawn and the complaint dismissed by order of the Regional Director.

M. The Status of Governances After Termination of the Bargaining Relationship

The governances which were revised in 1978 to remove these matters relating to terms and conditions of employment by agreement of the parties for inclusion in the collective-bargaining agreement remained in effect until 1980 when the agreement terminated and union recognition was withdrawn. Thereafter, Provost Kaplan set about revising the governances to include the material and subject matter removed in 1978. By identical covering letters dated February 17, 1981, President Lacy had distributed to each faculty member respective revised governances for the Schools of Art, Architecture, and Engineering. The faculty played no role in preparing or issuing these revised documents. In the covering letter, Lacy noted some minor amendments were obviously necessary in order to bring the governances into conformity with the present structure of the school, taking into account the restructuring of the humanities department and the reassignment of its faculty members.

A review of these so-called Lacy governances show they conform to the earlier ones, incorporating all amendments made subsequent to the 1964 governances, as well as the subject matter removed in 1978. They also incorporate the actual changes in structure relating to the faculty of Liberal Arts and Sciences last adopted by the administration in 1979 after approval by the Senate following the understanding reached between Tulchin and Kaplan.

The manner in which the new Academic Freedom and Tenure Committee was organized, including the protest of six faculty members elected at a meeting of the joint faculty to the unilateral imposition of the committee, has been previously described supra.

Except for the period of time, 1978 to 1980, covered by the labor agreement, I agree with the testimony of Provost Kaplan that the various governance committees

functioned substantively in accordance with the way their functions were described in the 1964 governances and that most of the amendments adopted thereafter dealt essentially with the composition of the committees and not so much with their functions. Even during the contract period, the admissions, curriculum, and academic standards committees in the Art and Architecture Schools continued to function as they had prior thereto. In the Engineering School these committees functioned in accordance with the governance provisions adopted and promulgated by Dean Tan.

During academic year 1980-1981, shortly before the Lacy goverances went into effect, an incident arose in which the Senate's vote on a matter of alleged breach of academic freedom was not fully followed by the administration. An exhibition of graphics of the Mobil Corporation had been planned for the gallery located in the Foundation Building. A student constructed a free-standing conceptual work of art which was intended as a critical commentary on the use of oil by portraying the relationship between oil and militaristic helmets and weapons. It was displayed on the building's fourth floor until the evening of the opening of the gallery exhibit when it was moved to a location outside and immediately in front of the building where it would be seen by Mobil executives and other invited guests. At some point during the evening, it was alleged that the superintendent of maintenance for Cooper Union had summoned police and firemen. While police kept students away, firemen hosed the piece into the gutter and down the drain, destroying it. The student claimed it was up to the Senate to protect his academic freedom of expression and sought an investigation. Professor Wurmfeld, the Senate president, called an emergency meeting and requested that the administration produce Dean Sadek, who was present the evening in question, and the superintendent to respond to the student's claims. After the Senate took testimony from students the administration produced only Provost Kaplan and President Lacy, who explained what happened and expressed certain regrets. The Senate then recommended to the president that the maintenance superintendent be reprimanded for violating emergency procedures previously established in the late 1960's for the maintenance of public order in the Cooper Union campuses by a joint faculty ad hoc committee at the request of the president and required by state law, and, further, that the administration also issue an apology to the student and pay his expenses in the reconstruction of the piece. The administration did pay the student's expenses, but never produced the principals involved in the incident, nor did it issue any reprimand to those responsible. Although the president accepted Dean Sadek's resignation as Dean shortly afterward, there was never any public statement connecting his resignation in any way to the incident.

N. The Deans' Council

Provost Kaplan described the deans' council as an informal body within the institution which consisted of the dean and president and which met regularly for several years to discuss and develop a consensus on various matters of academic and administrative concern.

The record shows that those persons invited to attend the periodic meetings included the academic deans, the deans of students, records and admissions, and continuing education, the vice president of business affairs, the provost, the president, and Mrs. Callcote Kindler, the administrative assistant to the president and secretary to the board of trustees, who kept her own shorthand notes of the major items discussed. Kindler retired September 1, 1981.

The meetings were held monthly during the academic year between September 1975 and November 1979. After President White retired at the end of December 1979, President Lacy did not continue to hold them in the second semester of academic year 1979-1980 nor in academic year 1980-1981. However, biweekly meetings of the president, the three academic deans, and the chairperson of the department of humanities were held commencing in October 1981 at least through the close of the hearing in March 1982. No minutes or other written memoranda were kept of these meetings.

A review of the notes of these private meetings show that the subjects discussed generally fell into a recurrent pattern which by and large reaffirmed the positions in both academic and nonacademic matters which the administration was manifesting in its public dealings with the faculty and in its decision-making process. For example, building matters were a recurrent concern. Just as the exhibits and testimony already show the unilateral nature of the administration's determinations relating to maintenance, safety, security of buildings, permissible use, official hours, and establishment of mechanical and electrical support facilities (such as the audio-visual center) and location of divisions (such as the move of the LA&S department from the foundation building to the engineering building), the notes show the manner by which the unilateral decisions in these areas were reached. In contrast, however, when the discussions dealt with matters of curricula, or other matters subject to the committee system of governance, the role of the faculty was affirmed. For example, Dean Hejduk on April 4, 1977, reported on the very good change made in the sequence for math and physics courses and better placement of English and humanities courses. Although faculty are not referred to, these changes could only have been accomplished by them under the governances. On May 1, 1979, it was agreed that Hejduk call a meeting of the curriculum committee on the problem of teaching physics to architects.

In terms of academic standards, on January 13, 1977, President White stated that the schools (indubitably meaning the faculties) should reconsider what probation means in the institution in terms of who puts the status into effect, how long it should last, and what the conditions are for its establishment. When a matter of seeking to change existing institutional policy on prohibiting internal transfers was raised, while discussion ensued there is no evidence that the existing policy described in the catalog limiting graduates to only a higher level curriculum in another discipline was ever changed. On January 31, 1978, Dean Hejduk spoke of submitting a draft of a uniform definition of an incomplete grade in view of the

different standards for permitting and time limits for removing in place in each school. Again, there is no evidence of any change being made or implemented in the existing standards set by the academic standards committees although the dean's expressions of concern on these matters never came to the attention of the faculty governance bodies having jurisdiction over them.

As to the joint degree program with NYU, the four academic deans were advised to provide an opportunity to their faculties to elect a library advisory committee, without permitting them to interfere on personnel or other matters in the two institutions' areas. On January 13, 1977, the notes show, the joint degree program was ready to go to the Engineering faculty committee concerned for its approval. As to a problem of student cheating, it was the consensus this was a matter for individual faculty concern in terms of grade and not a matter for disciplinary hearing. On December 5, 1978, Dean Gore confirmed that a draft of a code of conduct for students was being prepared by the Student Activities Committees and the provost notes it should be presented to the Senate. With respect to another item relating to academic standards—change of grades—it was noted this should be taken up with the Senate as an issue of policy. At the last meeting, on November 6, 1979, it was reported that a full-time admissions counselor was being hired on the strong recommendation of the admissions committees primarily to recruit minority students for all three schools. On October 3, 1975, the president directed the engineering dean to send a memo to the faculty saying the requirements have been completed by math, physics, and distributive science students and they will be recommended for graduation unless there are substantial objections.

During the period from 1975 to 1978 that the faculty-student Senate voluntarily ceased to function, certain matters were determined by the deans' council "in lieu of the Senate," such as recommending the grant of emeritus titles at graduation and fixing the school year calendar.

Periodically, Provost Kaplan reported on his dealings with the Union, both during negotiations and contract administration, discussing as well the Union's filing of unfair labor practice charges, and noting in this regard on March 12, 1976, that in terms of the governance the committee structure is a prerogative of the administration, unrelated to working conditions.

On certain occasions, dissatisfaction was expressed as to the liberties faculty were taking in making too many unauthorized schedule changes and granting leave for student independent study in an unwarranted fashion. The deans were to issue policy statements but it is unclear whether they ever did so. On at least one occasion, Dean of Admissions Liebeskind notified a single professor on January 26, 1981, that unauthorized schedule changes which he continued to make each semester were creating difficulties for some classes and in locating students.

On certain matters of administration as to which the independent nature of the institution's decision-making process has already been established on this record, the notes again reaffirm this process. In the recurrent consideration of the accreditation study being undertaken by

the Middle States Association (MSA), both the manner in which the self-study was prepared by the institution and the manner in which arrangements were made to meet with the study team and its chairman show no or ineffective input by faculty. When on September 12, 1978, during the contract period the Engineering dean disclosed plans for establishment of an advisory council of outside people and government officials—like a visiting committee—to visit the school once or twice a year, no faculty involvement in its establishment was acknowledged. In fact, on December 5, 1978, Dean Tan informed the Engineering School administrative committee that the advisory council would visit the school on December 12 and advise on its educational programs, but after faculty objection to its establishment the dean agreed to the faculty meeting the council after its preliminary meeting with the trustees. Two faculty members, at least one an outspoken opponent of the council, resigned a week later from the committee. Similarly, budgetary matters, such as an increase in student and graduation fees, were routinely decided without faculty involvement as the record has independently established

V. ANALYSIS

The standard for determining the status of college faculty was set in the Supreme Court's decision in *NLRB v. Yeshiva University*, 444 U.S. 672 (1980). Managerial employees were defined as those employees who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." Id. at 682, citing *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 288 (1974) (quoting *Palace Laundry Dry Cleaning Corp.*, 75 NLRB 320, 323 fn. 4 (1947)). An employee represents management interests "by taking or recommending discretionary actions that effectively control or implement employer policy." Id. at 683.

In determining that the faculty in *Yeshiva* were managerial, the Supreme Court found that the faculty effectively determined the curriculum, grading system, admission and matriculation standards, academic calendars, and course schedules. In addition, the faculty effectively determined faculty hiring, tenure, sabbaticals, termination, and promotion. Further, some faculties made final decisions regarding the admissions, expulsion, and graduation of individual students. Others decided questions involving teaching loads, student absence policies, tuition and enrollment levels, and location of the school. Id. at 676-677.

The Court summarized its views regarding the faculty's high degree of authority and participation in decision making in the following words (Id. at 686):

The controlling consideration in this case is that the faculty of Yeshiva University exercise authority which in any other context unquestionably would be managerial. Their authority in academic matters is absolute. They decide what courses will be offered, when they will be scheduled, and to whom they will be taught. They debate and determine teaching methods, grading policies, and matriculation standards. They effectively decide which stu-

dents will be admitted, retained, and graduated. On occasion their views have determined the size of the student body, the tuition to be charged, and the location of a school. When one considers the function of a university, it is difficult to imagine decisions more managerial than these. To the extent the industrial analogy applies, the faculty determines within each school the product to be produced, the terms upon which it will be offered, and the customers who will be served.

The Court rejected the Board's distinction between managerial decisions and decisions requiring "independent professional judgment" as inconsistent with the goal of "ensur[ing] that employees who exercise discretionary authority on behalf of the employer will not divide their loyalty between employer and union." *Id.* at 687-688. The Court described "[t]he problem of divided loyalty [as] particularly acute for a university like Yeshiva, which depends on the professional judgment of its faculty to formulate and apply crucial policies constrained only by necessarily general institutional goals. The university requires faculty participation in governance because professional expertise is indispensable to the formulation and implementation of academic policy." *Id.* at 689.

The Court also limited the reach of its holding as follows (*id.* at 690-691 fn. 31):

We recognize that this is a starting point only, and that other factors not present here may enter into the analysis in other contexts. It is plain, for example, that professors may not be excluded merely because they determine the content of their own courses, evaluate their own students, and supervise their own research. There thus may be institutions of higher learning unlike Yeshiva where the faculty are entirely or predominantly nonmanagerial. There also may be faculty members at Yeshiva and like universities who properly could be included in a bargaining unit. It may be that a rational line could be drawn between tenured and untenured faculty members, depending on how a faculty is structured and operates. But we express no opinion on these questions, for it is clear that the union approved by the Board was far too broad.

An examination will first be made of the faculty's input into academic matters in light of the *Yeshiva* standard.

The governances of the institution have consistently maintained a strong role for faculty responsibility for the educational programs of the respective schools. While the deans chair their respective school faculties, preside at their regular and special meetings, and are the initiators of a number of the items which are presented for faculty review and consideration, the collective faculties of each school have a significant, indeed indispensable, part in weighing and recommending changes and modifications in academic policy. Their most significant input is made through the operations of the various faculty elected governance committees, in almost all of which faculty predominate, and each of which has authority

over a direct area of academic concern. Normally, no matter involving a new academic policy or raising an academic concern of institutional dimensions may be ultimately considered by the administration or board of trustees until it has first received faculty consideration through the governance committee structure.

The administrative committee, as the conduit for faculty curriculum proposals among other reports received by it from the standing committees, has a central role in faculty involvement not only in academic matters but in administrative matters having financial and personnel aspects. To the limited extent faculty play a part in budgetary matters, it is the administrative committee where faculty have input, e.g. in reviewing budgetary requests in various categories. The committee passes on adjunct promotions and reappointments in terms of contract renewals. The scope of its review of curriculum matters emanating from the curriculum committee is broad and fundamental, as evidenced by the list of its reviews in this area appearing in section IV, I, 1, b, *supra*. Administrative approval of curriculum modifications which bear the committee's approval, in conjunction with that of the curriculum committee, appears by and large to have received prompt administration and trustee affirmance. On the occasions when a serious issue has arisen over curriculum, e.g., the fixing of required humanities credits in the professional curricula of the Architecture and other schools, the active dialogue with the chief administration officials which the faculty's proposed changes prompted established a positive collegial relationship in which managerial authority was shared but in which the faculty still had the final word.

The foregoing must be tempered by the knowledge that, as chairman, the dean has on occasion been able to break a tie vote by voting for or against proposals submitted to a vote of the membership. Further, by retaining the prerogative to call its meetings, the dean was able for a 4-year period to make the committee in the Architecture School inoperative. While the dean appears also to control the agenda, items have been added from time to time which reflect particular faculty interests and concerns. One such instance was the Engineering faculty's success in arranging an early meeting with the school's newly formed alumni adversary council. Many other instances abound in the subject areas catalogued, in section IV, I, 1, b, *supra*.

The introduction of new teaching methods, such as the SHAPE program, is illustrative of an area of faculty input which shows both faculty initiative in academic policy as well as faculty divisiveness grounded on academic content leading to some faculty isolation from academic planning. The program was started by a full-time faculty member who obtained its funding. The study was announced and discussed at Engineering faculty meetings. Those faculty who were interested were free to become involved and absorb the literature. That it became a source of controversy, in which the dean finally backed an emeritus, now adjunct, professor against the involvement of the full-time physics faculty who sought belated participation, while regrettable, should not detract from the fact that it shows the faculty inspired and

spearheaded introduction of an innovative experimental teaching technique into the curriculum

As to the curriculum committee, it did not become involved in the SHAPE controversy until faculty, belatedly, sought its involvement, illustrating, I believe, another fact which bears comment as a recurrent theme in faculty participation. That theme is an informality in the workings of the standing committees which sometimes has led faculty to avoid invoking the broad jurisdictional reach of the committees. This holds true for the limited number of elective courses initiated by faculty directly with the dean which might have received different consideration by the respective curriculum committee, if not the administration, if submitted directly to the committee under the governance. In any event, it is clear that faculty determine the required curriculum, and have continually wrestled with its adequacy and breadth, effectively modifying and amending it in each school as circumstances and inclination have warranted.

The incident involving the nonrenewal of a full-time probationary faculty member in film and video illustrates another recurrent theme which must be acknowledged. When economic considerations are deemed paramount by the administration, faculty concerns with curriculum and with student sentiment have a tendency to take a back seat. It is apparent that in this instance the faculty was ineffective in seeking to sustain an educational benefit derived from the retention of a full time faculty resource person in the field. While the record contains other incidents of an even more significant nature showing administration overriding of faculty views on the retention of programs, such as the mid-1970s elimination of the three degree-granting programs and the termination of associated tenured faculty, it nonetheless remains true that on determinations of curricula, particularly required curricula but also regarding electives but to a somewhat lesser extent, in the institutions' three main professional training programs faculty make the effective decisions. The same holds true for the establishment of such new programs as the joint degree program with NYU and the integrated masters programs in Engineering.

The earlier extensive fact presentation establishes the predominant faculty role in the decisive decisions made under the auspices and authority of the admissions committee, academic standards committee, calendar and schedules committees acting jointly, and Student Activities Committee (but to a lesser extent because of minority faculty membership on this committee).

Administration participation in the deliberations of some of these committees, notably admissions, academic standards, and calendar and schedules, through the person of the dean of admissions and registrar is extensive. Yet, it is predominantly as a resource for quantitative data, statistical studies, correlations, legal requirements, and compliance with faculty imposed admission, credit, and graduation requirements that this dean contributes to the workings of these committees. The Charging Party points to the communications between the dean and long-term chairmen which result in final determinations of the committee, in particular on admission decisions, as showing a limited faculty role in these matters. I do not agree. The faculty select the chairmen and

whether by active decision or default have permitted the chairmen to conduct the affairs of their committees in such fashion. As representatives of faculty participation in the workings of these governance committees, the chairmen are expressing the sentiment and consensuses of their brethren, whether articulated or not. The fact that neither the General Counsel nor the Charging Party saw fit, for whatever reason, to seek to rebut the testimony of Dean Liebeskind on the effective faculty determinations in the areas of these academic committees' concerns strengthens the conclusion that they exercise predominant and final authority in certain academic areas central to the institution's educational mission.

One matter involving academic standards bears closer scrutiny. The General Counsel argues that the graduation of RS and SS with their regular class after receiving failing grades in the fourth year architectural design courses shows administration disregard for the faculty grading system or matriculation standards. I do not agree. First, it is not clear that by issuing the failing grades the faculty involved meant to foreclose RS and SS from doubling up the fourth and fifth year design courses in their fifth year. Professor Wurmfield never recommended against such action although there is no evidence he was ever asked his advice on the matter. Furthermore, Dean Gore testified without contradiction that the status of both RS and SS came before the academic standards committee where both were permitted to complete their studies in their fifth year. That committee also successfully dealt with RS's attempt to establish unfair treatment by the faculty in the fourth year design course. Thus, while Dean Hejduk as leading instructor in the design courses in fall 1977 permitted these students to double up in their design course work, it would appear that his discretion here was exercised within limits previously established by the faculty itself.

Faculty participation in matters of academic freedom and tenure require separate comment. For the total period covered by the records, except for the 2-year period 1978 to 1980, faculty allegations of breaches in the four areas of concern within the jurisdiction of the Academic Freedom and Tenure Committee received the attention and active investigative participation of this joint, faculty elected committee. In every instance but one, of the six cases described within its jurisdiction, its conclusions were affirmed by the administration and trustees. That one instance concerned the apparent failure of the administration to censure the acting administrator of the math department for failure to consult faculty on the appointment of a new faculty member. Nevertheless, the administrator was, in fact, shortly thereafter during midyear, abruptly relieved of his duties, which, in spite of the president's expressions of gratitude to the administrator, was probably based on faculty dissatisfaction with his tenure, manifested, at least in part, by the conclusions of the committee.

The committee's deliberations and conclusions with regard to Professor Gormley present a mixed pattern, one in which, however, a duly constituted governance committee investigated and deliberated at length before finally making a recommendation which was affirmed by

the administration. Neither the General Counsel nor the Charging Party argues that the committee acted without a quorum. Those two faculty members who were away, by choice, were polled after the last round of interviews and were present for the earlier investigation. That Professor Stecher and perhaps the others in the majority were opponents of union organization cannot be, should not be, and has not been raised as a basis for impugning the integrity of the work of the committee. While one may disagree with its conclusions, denying a hearing to Gormley, what is persuasive here is that the committee spent considerable time, even additional time and effort at the urging of its dissenting member, in investigating and deliberating to an effective governance committee decision. On the other hand, President White frustrated majority faculty sentiment when he refused to acknowledge the legitimacy of the procedures for selecting an ad hoc committee to hear the Gormley complaints. In this instance, the governance system was unable to achieve faculty compliance with the results of its workings. Faculty efforts, taken outside the governance, proved ineffective and faculty disillusion resulted. Given the context of union tensions in which the case arose, perhaps such a result was inevitable. The failure of the joint faculty attempt to censure the president resulted from faculty failure to maintain a quorum at the meeting involved, but, in any event, should not be viewed as determinative of lack of faculty effectiveness in matters of academic freedom and breaches of procedural safeguards on tenure and other personnel matters in light of the total history of the workings of the committee, the grievance experiences under the contract, and the reinstitution of the committee in its basic pre-1978 form, but with a slightly different faculty composition and now fully recognizing humanities faculty participation.

On matters outside the strictly academic, faculty influence has been somewhat weaker. One area, in which more recent history has shown strong faculty participation, in fact joint determination, relates to the structure, location, and leadership of the humanities faculty. The facts of the administration's determinations from 1969 to 1979 regarding the institution's structure and placement and governance participation of the humanities faculty with only limited overall faculty participation has been amply documented. The final report issued in 1978 of the accreditation team from the Middle States Association makes clear the adverse effect that the many unilateral changes in academic organization had, in particular, on the morale of the faculty of Liberal Arts and Sciences. Subsequent to the entry into the collective-bargaining relationship, the unit of full-time faculty achieved a form of parity in determining this subject matter. The off-the-record meetings and negotiations between the union president and the provost led to agreements in principle and in detail on the form of the 1979 restructuring of the humanities faculty and the status, identity, and benefits of the head of that restructured division.

Amicus, New York City Central Labor Council, AFL-CIO, argues eloquently in its posthearing brief that the Act should not permit employees in a unit to lose their status because of the success of the negotiations of their bargaining representative on nonmandatory subjects

of bargaining. That brief was filed before the Board's decision issued in *College of Osteopathic Medicine*, 265 NLRB 295 (1982), which I find determinative on this issue. There, the Board rejected a union contention that a unit should not be able to "bargain itself out of the protections of the Act." It concluded that inasmuch as "[t]he *Yeshiva* decision does not expressly or impliedly distinguish situations in which managerial authority was gained through collective bargaining from situations in which such authority was granted, and we do not believe that such a distinction is required by the Act . . . we must look to the extent of managerial authority held by college faculties rather than the manner in which such authority was obtained." *Id.* at 298.

I conclude that with respect to the 1979 reorganization, the faculty, through its chief representative of the Union in the bargaining unit, jointly exercised managerial authority with the provost, even to the extent of cooperating on expediting its approval by the faculty-student Senate under the governance. As an independent, but related, conclusion, it is undisputed that since the 1979 reorganization, the humanities faculty, in whichever school they are situated, have had all governance rights and responsibilities fully restored to them. It is also apparent that the union-administration review of the governance undertaken in 1978 after execution of the collective-bargaining agreement, leading to agreement on certain changes and modifications including the exclusion of certain provisions covered as terms and conditions of employment in the agreement, involved the faculty members of the bargaining unit in an important aspect of managerial decision making.

The president's failure to call the joint faculty into session for a lengthy time following its attempt to censure him surely diminished the faculty's status during that period, although most other governance committees continued to function normally. That situation changed with the appointment of new President Lacy and has not recurred since 1980. The Senate's consideration of the incident involving administration responsibility for the destruction of a student's politically inspired artwork in 1980-1981 evidences an active Senate making an effective contribution to the governance system in which its recommendations were followed at least to the extent of the chief executive officers expressing regret over the incident and paying the student's expenses. The conclusion is also warranted that the very fact that the Senate took testimony and deliberated on the matter shows that faculty authority extended to a matter of student academic freedom not otherwise covered by the governance and probably acted as a deterrent to similar breaches of such freedom by the administration or its nonunit supervisory employees in the future.

The reason for the inactiveness of the AF&T committee following the Gormley affair is unclear but probably this committee would have continued to serve in protecting faculty procedural and academic freedom concerns had a faculty member claimed a breach of such rights during the period 1975 to 1978. There is no evidence that any faculty member did so.

The Senate's decision to discontinue meetings following the mid-1970s institutional reorganization, while understandable because of faculty frustration with its limited input into basic policy decisions which were governed by economic considerations, represented a voluntary self-limitation on the exercise of its advisory role in many areas of policymaking for a 3-year period, and caused the administration, noted at meetings of the dean's council, to determine certain matters otherwise normally within the Senate's authority under the governance.

With respect to building and real estate matters, fixing budgets and allocation of funds, and faculty compensation and benefits (except for the 1978-1980 contract period), the faculty has had either a nonexistent or extremely limited participation in decision making. As to the library consortium affecting delivery of library service at Cooper Union, unsuccessful faculty opposition to the plan is plain from the record. On hiring, reappointment, and tenure of full-time faculty, faculty consultation is required by the governance, is sought, and in practice is regularly weighed and considered, although its input has not been very effective even during periods of time when other administration policy considerations have not predominated. Faculty input on adjunct initial hiring has been even less effective, although its effective recommendations on reappointment and, by virtue of its monitoring of elective course offerings, its consistent input into the process of adjunct course assignments are borne out by the record. The faculty's advisory role in the appointment of administrators is also fairly limited.

The foregoing review of this voluminous record has not been exhaustive but has, I believe, pinpointed those areas of academic and nonacademic decision making where faculty participation has or has not risen to a level of effectiveness where its contributions could be said under the *Yeshiva* standard to constitute or not constitute an exercise of managerial authority.

Although the Board has had the opportunity since *Yeshiva* to interpret and apply the Supreme Court's standard to a number of college and university faculties, I can find no reported decision which presents a similar fact pattern to the one disclosed in this case. None of the reported decisions have shown such a limited faculty effectiveness in nonacademic areas even while exhibiting predominant faculty finality on decisions in a broad range of academic areas.

In *Lewis University*, 265 NLRB 1239 (1982), the faculty exercised little actual authority with respect to many academic areas, and its role was effectively limited by the terms of both a master contract and a faculty handbook. Here, the faculty exercise considerable academic authority which is reaffirmed in both the governance provisions and the collective-bargaining agreement while in effect. The management-rights clause in the 1978 contract is considerably narrower than that executed by the Lewis University faculty. In *Florida Memorial College*, 263 NLRB 1248 (1982), unlike in this case, no faculty were tenured, a layer of intermediate administrators was employed between faculty and higher administration, and there was no effective faculty input into the catalog,

standards for retention of student status, or teaching loads.

In *College of Osteopathic Medicine*, supra, in which the Board found the faculty to be managerial, among other factors it weighed were the faculty's considerable influence on hiring of its members and effectively recommending their initial rank and subsequent promotions, and administration reliance on tenure committee recommendations—areas of important nonacademic matters where Cooper Union faculty have more limited input. In *Loretto Heights College*, 264 NLRB 1107 (1982), unlike the situation at Cooper Union, in no area was faculty authority absolute and there was an administrative staff of program directors and coordinators who acted as a buffer between faculty and higher administration. In *Puerto Rico Junior College*, 265 NLRB 72 (1982), unlike the governance committee structure at Cooper Union, the faculty were in the majority on only one committee in a hierarchy of governing committees.

In *Ithaca College*, 261 NLRB 577 (1982), the faculty enjoyed considerable authority in both academic and nonacademic areas, and in *Bradford College*, 261 NLRB 565 (1982), faculty recommendations in a broad range of academic areas were ignored. While the Board also specifically referred to and weighed an accreditation report in deciding that the faculty did not enjoy managerial authority, I do not deem the 1978 Middle States Association accreditation report discussed on this record to have similar weight, since it did not conclude that faculty lacked participation in academic decision making, which they had, but rather stressed that faculty participation in academic organization and, in particular, humanities faculty participation in faculty governance was lacking—both of which were changed so that by 1979 the Cooper Union faculty jointly participated in the last reorganization and humanities faculty have since enjoyed full governance status.

In *Thiel College*, 261 NLRB 580 (1982), where faculty enjoyed similar status under its constitution, at least as to academic affairs, as Cooper Union faculty enjoy under its governance, that faculty, unlike the Cooper Union faculty, also enjoyed considerable authority over budgetary matters, salary issues and their grievance adjustment, and in the areas of hiring, tenure, sabbaticals, terminations, and promotions. In *Duquesne University*, 261 NLRB 587 (1982), unlike the situation at Cooper Union, the faculty had veto power over any hiring decision made by the dean.

In spite of the foregoing factual distinctions in each of the Board decisions in this area, some common principles may be gleaned from them. In *Thiel College*, supra, the Board noted that lack of faculty involvement in certain nonacademic areas was not "vitally significant" in determining managerial status. These matters included tuition, enrollment levels, and the continuance and location of the program at the college's overseas Bregenz school. Furthermore, the Board minimized the importance of administration changes in faculty prepared budgets where the changes were made due to intermittent institutional financial problems. In *Duquesne University*, supra, the Board concluded that while several faculty members re-

ceived notices of termination in spite of faculty votes to the contrary and the dean was reinstated for a second 5-year term despite a negative faculty vote, the lack of authority in this area, less than that exercised by the Yeshiva faculty, was not determinative given the similar authority exercised in other areas previously outlined, including both academic and nonacademic. In *Duquesne*, the Board also took pains to comment favorably on the fact that the school's bylaws, just as does the faculty governances on this record, provide that faculty members shall enjoy full academic freedom in the classroom.

It is also significant that the Supreme Court in *Yeshiva* gave paramount importance to the faculty's role in academic matters, "effectively decid[ing] which students will be admitted, retained, and graduated," ahead of its role in certain nonacademic areas, in determining its managerial authority in conducting the central "business" of the university. I am also influenced by the limited number of administrators employed by Cooper Union, whose total number involved in faculty governance, 8, contrary to Charging Party's claim, is not large compared to the number of faculty, over 50, and this factor was deemed significant in at least three of the Board decisions reviewed above. It is also significant that only four administrators, the three deans and one chairperson, stand between the faculty and the president and provost in academic decision making under the governances.

While the issue is not entirely free from doubt, I conclude that based on the Cooper Union faculty's predominance and considerable authority in such academic areas as student admissions and class size, academic standards and retention, grading standards, requirements and system, curriculum, calendar, standards and fixing of class and examination schedules, and the protection of academic freedom in the classroom and in the school and due process in the determinations of tenure, promotion, and terminations relating to other than the elimination of entire academic programs, its authority in jointly deter-

mining and implementing the most recent academic reorganization placement of humanities faculty and identity and status of its chairperson, and its considerable consultative role in other nonacademic areas of faculty concern, such as tenure, promotion, and hiring of full-time faculty, among other areas, the full-time faculty employed by Cooper Union exercise managerial authority in sufficient areas deemed significant or "vital" by the Supreme Court and the Board so as to share the real responsibility for governance of the institution and to constitute managerial employees within the meaning of the Act. Accordingly, I conclude that the allegations of the complaint have not been sustained.

Having reached this decision, I deem it unnecessary to determine the supervisory status of the librarians or faculty, although if required to determine these issues I would find the assistant librarians to be nonsupervisory, since they supervise nonunit student employees for only a small fraction of their time, *Adelphi University*, 195 NLRB 639, 643-645 (1972), they do not supervise other library employees, and the record fails to establish that faculty members supervise laboratory technicians, shop assistants, or any other employees within the meaning of Section 2(12) of the Act. Furthermore, while the unit sought includes assistant librarians who do not exercise managerial authority, I also conclude that, just as in *Yeshiva*, it is far too broad to permit the three library employees included to constitute a separate unit appropriate for bargaining under the Act. For the same reason I also conclude now that the Charging Party, where membership is limited to Cooper Union staff, is not a labor organization within the meaning of Section 2(5) of the Act. The three library assistants constitute a group of statutory employees whose number is de minimus with respect to the overall unit.

[Recommended Order for dismissal omitted from publication.]