

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

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**In the Matter of**

**COLUMBIA COLLEGE CHICAGO,**

**Respondent,**

**and**

**Case 30-CA-18888  
(formerly 13-CA-46562)**

**THE PART-TIME FACULTY ASSOCIATION  
AT COLUMBIA COLLEGE CHICAGO,  
IEA-NEA,**

**Charging Party**

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**COLUMBIA COLLEGE CHICAGO'S COMBINED REPLY  
TO THE UNION'S AND THE ACTING GENERAL COUNSEL'S ANSWERING BRIEFS**

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Dated: October 23, 2012

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**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

**Columbia College Chicago**

**and**

**Case 30-CA-18888  
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**The Part-Time Faculty Association  
at Columbia College Chicago,  
IEA-NEA**

**COLUMBIA COLLEGE CHICAGO’S COMBINED REPLY  
TO THE UNION’S AND ACTING GENERAL COUNSEL’S ANSWERING BRIEFS<sup>1</sup>**

**I. The ALJ Violated the College’s Right to Due Process by Finding a Violation Not Alleged in the Complaint.**

Contrary to the Union’s claim, the due process issue here involves more than mere “semantics” (U. Br. at 29). The GC alleged that the College implemented a very specific change: “limiting the number of classes Unit employees could be assigned to teach per semester” (Tr. 10-15; GC Ex. 1-N; Amended Complaint, ¶ 9(a)). The College defended this allegation with abundant evidence that no limit on teaching assignments had been implemented, and it is undisputed that the ALJ found no such limit.

To avoid the fatal due process flaw, the Union attempts to blur the issue by arguing that the College was “on notice that *an* alleged change in the process of its course scheduling was at issue” (U. Br. at 30 (emphasis supplied)). Yet, the Union concedes that the only change actually alleged in the complaint was a class assignment limit (U. Br. at 29-30). Moreover, it concedes that its bargaining demands and information requests related only to an alleged two-class limit

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<sup>1</sup> The Union incorrectly asserts the College “in its brief, fails to identify the argument supporting each exception as required,” and cites Board Rule §102.46(c) (U. Br. at 21-22). Rule §102.46(c)(2), however, only requires that questions presented contain a “reference to the specific exceptions to which they relate.” The College’s questions presented contain the appropriate reference to specific exceptions.

(U. Br. at 29-30).<sup>2</sup> Thus, the Union's proffer establishes the College's point that this case has always been about an alleged two-course limit, not about a broader, more general change to the rollover system.

The Union and GC claim the College had ample opportunity to litigate a change to the rollover system (U. Br. at 30-31; GC Br. at 6-7), but do not explain why it would have done so. The College was not on notice that a supposed change to the rollover system as a whole, or even any part of it, was under attack. Witness testimony about the rollover system provided only background and context for the class-assignment limit alleged in the complaint.<sup>3</sup> In essence, the Union and GC's argument is that the two-class limit is the same as the rollover system and that litigating one is litigating the other. The ALJ did not see it that way. His 9-step description of the rollover system does not even mention a limit on class assignments (ALJD at 4).

The centerpiece of the GC's case is GC Exhibit 5, from which the notion of a two-class limit originated. The College offered evidence that no such limit had been implemented. For example, it offered the testimony of Cadence Wynter, the author of GC Exhibit 5, who testified that she did not assign any particular number of classes to part-time faculty, that class assignments fluctuated based on a variety of factors, and that there was no two-class limit (*see, e.g.*, Tr. 428-43, 463-68, 481-83, 534). The College impeached GC witness Stevenson's testimony that before spring 2011, he had always taught three classes per semester by showing that in fact, he taught only two in fall 2010 (Tr. 95, 97-98, 104, 111). It also introduced evidence

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<sup>2</sup> Neither the Union nor the GC address the fact that while the underlying ULP charge in this case alleged that the College violated the Act by "eliminating its practices with respect to 'roll-over' of classes..." (GC Ex. 1(e) at p. 2, sixth full paragraph), the complaint contains no such allegation. Instead, the Union's charge relative to the broader rollover system was either dismissed or withdrawn.

<sup>3</sup> Brock provided background on the rollover system and her class assignment practice and policy. The Union claims Brock was the "College's own witness" (U. Br. at 31; *see also* GC Br. at 6). That is disingenuous at best; the Union called Brock (Tr. 37) and Brock no longer worked for the College at the time she testified (Tr. 83).

such as Respondent Exhibits 6-11, 16, and 17, all of which went to the class-assignment limit issue.

The Union cites an unreviewed ALJ decision, *Anglo Kemlite Laboratories*, 2012 WL 983242 (NLRB ALJ Mar. 22, 2012), as an example of the “close connection” required by *Pergament United Sales*, 296 NLRB 333, 334 (1989), *enfd* 920 F.2d 130 (2d Cir. 1990). *Anglo*, however, supports the College. There, the GC alleged that the employer had *terminated* 22 employees in retaliation for a strike. The employer denied it terminated the employees, but admitted that it had accelerated their *layoff* and not recalled them. Not surprisingly, the ALJ found a close connection “between the complaint allegation that the employees were terminated . . . and the question of whether the Respondent laid them off.” *Id.*

No such “close connection” is present here. Unlike *Anglo Kemlite*, where the only difference between the complaint and the issue litigated *was* semantics (termination versus layoff without recall), the alleged two-class limit and a change to the rollover system are distinct issues with entirely separate factual elements. Indeed, the Union’s own unfair labor practice charge demonstrates that they are distinct; it made allegations regarding both, only one of which made it into the complaint.

## **II. Effects Bargaining**

### **A. There was no change giving rise to an effects bargaining obligation.**

The GC and Union mischaracterize the record evidence. As they would have it, Brock assigned three classes to any “high performing and senior” adjunct faculty member who was “qualified and available” (U. Br. at 9 (citing Tr. 64), 32 (“faculty could depend upon continued three course assignments”)) or “willing and approved” to teach three courses (GC Br. at 11-12). But Brock said more than the Union and GC acknowledged. Brock, the Union’s witness, testified twice to an important qualifier to her assignment “practice”: assignments were based not only on

qualifications and availability, but also on whether the College “needed them to teach” (Tr. 64, lines 12-15)). The Union and the GC painted the course assignment model as a three-course guarantee for anyone who wanted three courses. Brock made clear, however, that nothing was guaranteed (Tr. 63 (not mandated to give a “part-timer three classes’’)). With no guarantee of a particular course load, Wynter’s e-mail (GC. Ex. 5) changed nothing.<sup>4</sup>

The Union and GC ignored other evidence proffered by the College to establish that there was no change. For example, Wynter left open the possibility that third courses would be assigned as “student enrollment deem[ed it] necessary” (which is consistent with Brock’s testimony) (GC Ex. 5); 22 adjuncts in HHSS received a third course assignment for spring semester 2011 (Resp. Exs. 6-8), and another three adjuncts were offered but turned down a third assignment (Resp. Exs. 9-11).

The Union offered the testimony (and related exhibits) of only two adjuncts, Carroll and Stevenson, to establish that there was a three-course guarantee (U. Br. at 33). The cited exhibits and testimony, however, do not support the Union’s claim.

In Carroll’s case, although she taught three courses per semester for a multi-year period until spring semester 2011, no evidence was offered that she was assigned courses on anything other than an as-needed basis. As Wynter explained, the College simply did not need Carroll to teach three courses during spring semester 2011 because other course offerings in the history division had plenty of openings for student enrollment (Tr. 481-83), a fact the Union ignores.

As for Stevenson, he admitted that his testimony that he “had been assigned three courses [for] probably about seven semesters” prior to spring 2011 and that he taught three classes in the fall of 2010 was false (Tr. 97, 111; GC Ex. 4, p. 1; Resp. Exs. 6, p. 5 and 7, p. 6). In short,

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<sup>4</sup> The Union cites no evidence to support its guess that under the rollover system, “faculty members could expect to continue teaching three courses per semester” (U. Br. at 9).

Carroll's testimony was limited and anecdotal, Stevenson's was false, and the Union's proof fell far short of that which is necessary to establish that there was a three-course guarantee.

The GC relies on GC Exhibits 41- 43 (GC Br. at 11), but they do not establish that third course assignments were guaranteed. The exhibits establish no more than that *some* adjuncts who requested three assignments received three *in the first instance*. Even the GC concedes that not *every* adjunct who requested three received three, and in fact, the exhibits do not establish the number received at all and do not prove that the adjuncts "actually taught those classes" (Tr. 331). At most, this evidence establishes only that as of the date on the forms, faculty had been assigned those classes (Tr. 332).

The notion of "change" hangs over this case in two ways: (1) the course limit change alleged in the complaint, and (2) the Union and the GC's efforts to shift the discussion away from the two-class limit and towards a more general consideration of the rollover system. As to the first, there was no change—three-course loads for adjunct faculty were not guaranteed and the ALJ did not find that they were.

As to the second change (to the rollover system for assigning classes), the Union and the GC imagine a "system" that was static. The facts, however, belie any notion that the rollover class assignment system was static. The undisputed evidence established that the rollover process changed all the time based on multiple factors, *e.g.*, enrollment (Tr. 340-42; 438, 441, 467-68; Resp. Ex. 2), universal start times and teacher availability (Tr. 49-52), and teacher qualifications and performance (Tr. 63-64, 67). Indeed, as Brock testified, "there were often some changes" (Tr. 49) and "one of the things that's important is that these things [rollover components] changed" (Tr. 52). In the end, the undisputed evidence makes clear that change was inherent in the process (*see, e.g.*, CP Ex. 1, p.1 ("We will try to honor your choices but **cannot guarantee**

**anyone a particular schedule**”); Resp. Ex. 21, p. 1, first paragraph (Union’s website which warns its members that uncertainty from semester to semester was the status quo for part-time faculty).

**B. A thorough review of the evidence establishes waiver.**

The GC and the Union commit the same mistake as the ALJ (GC Br. at 13-16; U. Br. at 36-37). They fail to acknowledge that even though the contract does not say “the Union waives its right to engage in effects bargaining,” the clear contract language nonetheless establishes the parties already bargained over the College’s right to determine part-time faculty workloads and the effects of any workload reductions. *Columbus Electric Co.*, 270 NLRB 686, 686 (1984).

Several provisions of the CBA, none of which the Union or GC meaningfully consider, establish that the Union waived its right to bargain over the effects of any “change.” As context, the CBA expressly allows the College “sole discretion” to determine which and how many courses to offer, how to schedule them, and how to staff them and grants the College the right to “establish, modify, and discontinue . . . policies . . . and practices relating to the performance of work, including workload [and] scheduling of work” (GC Ex. 2, Art. II(C), p. 2). Moreover, “the final decision of who teaches each course is the sole prerogative of the department Chairperson” (GC Ex. 2, Art. VII (2), p. 9; Tr. 338).

In light of the College’s unfettered right to implement course scheduling changes, the parties included language in the CBA dealing with the effects of such decisions. They agreed that a part-time faculty member’s sole remedy for not being assigned a class “routinely taught” would be limited bumping rights, for unit members with 51 or more accumulated credit hours (GC Ex. 2, Art. VII(1) and (2), pp. 8-9). Indeed, the CBA specifically addresses the “three-to-two” scenario alleged in the amended complaint. The parties agreed that no unit member who has

already been assigned two courses would have any bumping right whatsoever (GC Ex. 2, Art. VII(1), p. 8).<sup>5</sup>

The parties were familiar with the exclusive “effects remedy” provisions of their CBA (Tr. 64-66, 192, 582-84, 618-19; Resp. Ex. 15, p. 2). To ignore it now is to undo the parties’ carefully calibrated agreement for dealing with the effects of the College’s indisputable right to implement schedule changes.

**C. The College satisfied any obligation to engage in effects bargaining.**

The Union (U. Br. at 34-35) and GC (GC Br. at 8) claim the College did not bargain, but abundant evidence to the contrary establishes that the College satisfied any bargaining obligation it had. It met promptly and regularly with the Union and, in the end, it was the Union that abandoned bargaining.<sup>6</sup>

The Union first requested effects bargaining over course scheduling for spring semester 2011 by its December 15 letter (GC Ex. 27). From there, the College met with the Union; made its representatives available to discuss the bargaining and grievance issues; discussed the issues at length; and specifically asked the Union for proposals, but received nothing (Tr. 138, 152, 180-81, 239-40, 387-89, 575, 577, 606-08, 611; Resp. Exs. 15, 26 (at p.5); GC Ex. 32).

Eventually, the Union abandoned bargaining. The parties were scheduled to effects bargain on January 21, 2011, with the aid of a mediator, but the Union deemed another issue more urgent and thereafter, never again requested to resume effects bargaining (Tr. 192, 579-80,

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<sup>5</sup> Similarly, the CBA also prescribes the “effects” or “impact” of a course cancellation: the unit member receives \$100 (GC Ex. 2, Art. VIII(7), p. 11). The CBA constitutes a waiver of bargaining rights in this instance also.

<sup>6</sup> The Union’s transcript cites on page 34 of its brief are suspect. For example, page 277 does not support the Union’s claim that Love said “the College was not ready to bargain.” Nor does page 419 support the Union’s claim that Marcus “had not read the Union’s information request carefully.”

582-84, 618-19; Resp. Exs. 15 (at p. 2) and 22 (“2. Scheduling/Assignments (Effects/Impact bargaining)”).<sup>7</sup>

### **III. The College Complied with its Duty to Provide Information.<sup>8</sup>**

#### **A. The Union’s December 15<sup>th</sup> information request.**

If there was no change, there was no duty to bargain over the effects of the change. Likewise, if the Union waived its right to effects bargaining, there was no duty to bargain over the effects of the change. If there was no duty to bargain, there was no duty to provide information. *See e.g., Ingham Reg’l Med. Ctr.*, 342 NLRB 1259, 1262 (2004)

The Union and the GC suggest a broader purpose for this information request in order to make an argument that the information was presumptively relevant, (U. Br. at 23; GC Br. at 17-19). Clearly, the Union made its December 15 information for no other reason than bargaining (GC Ex. 27). Since there was no duty to bargain, the College was under no duty to respond.

Even if the Union was entitled to the information it sought, it already had it or had access to it from the College’s OASIS system. The Union’s claim that Ms. Vallera was “unable” to gather the information rings hollow (U. Br. at 25). The undisputed record evidence demonstrates that the Union had already used OASIS to prepare spreadsheets regarding held courses in HHSS long before it ever submitted information requests to the College (Tr. 114-15, 320-22). Since the Union already possessed “held” courses information, it had no need for it from the College.

The Union is wrong about *Kroger Company*, 226 NLRB 512, 513 (1976) (U Br. at 24-25). The Board did not hold simply that the employer “fail[ed] to provide requested information” and that a union “need not engage in a burdensome exercise” to obtain it, as the Union

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<sup>7</sup> It is no defense to claim, as the Union and GC do (U. Br. at 34-35; GC Br. at 8), that the Union could not bargain because it did not have the information it needed. As discussed below, the Union had everything it needed.

<sup>8</sup> Contrary to the Union’s claim (U. Br. at 25, n.3), the College excepted to the ALJ’s findings regarding the December 15 information request. *See* Exceptions 23 and 28 and the College’s exceptions brief at pp. 18-20, 43-46.

mistakenly claims (U Br. at 24). Instead, the Board disagreed with the ALJ because Kroger had the “information available *in a more convenient form.*” See *Kroger*, 226 NLRB at 513 (emphasis added). The College did not have “a more convenient form” of the information. The most convenient form—OASIS—was equally available to and had been utilized by the Union to obtain information. More importantly, unlike *Kroger*, where the union would have had to undertake a burdensome analysis of timecards, the Union here faced no such burden to obtain the desired information.

**B. The College met its duty with respect to the Union’s December 20 information request.**

When considering the timeliness of a response, the law does not require instant production, but instead considers all the circumstances related to production. *West Penn Power Co.*, 339 NLRB 585 (2003). The College produced substantial evidence to support the timing of its response. (See *e.g.*, Tr. 389-91, 396-99; Resp. Ex. 13 (numerous, extensive, and unclear information requests just before holiday break; the volume of information requests; the loss of personnel to help Marcus respond; the unavailability until late January 2011 of some of the requested information; the College’s efforts to update the Union and the Union’s lack of response or objection to the timing)).

The Union and GC ignore the College’s rationale for the timing of its response, and the Union blames the College for not responding instantly (U. Br. at 25-28). The record, however, does not support the Union’s argument. For example, to bolster its claim the College delayed, the Union claims it requested information in November 2010 (U. Br. at 26, citing Tr. 170-71 and GC Ex. 27), but neither record cite even remotely establishes the Union sought information then. The Union (U. Br. at 27-28, citing GC Ex. 6) also claims it first requested information on

November 5, 2010, but that communication was not the December request the ALJ considered and, in any event, Wynter met with the Union to discuss it (Tr. 465-66).

#### **IV. Remedy**

The ALJ's recommended remedy violates established remedial principles and is indefensible. The Union's asserts that all adjunct faculty are entitled to a monetary remedy based on the unsupported claim that "faculty were essentially guaranteed three courses each semester" (U. Br. 39). The facts belie the Union's claim. It is undisputed that only three adjuncts (2.3% of those who taught in HHSS during the 2010-11 academic year) were adversely affected by the College's decision. Thus, there is no reasonable basis upon which to order the College to pay the value of a three-credit course to 129 unit employees.<sup>9</sup>

Respectfully submitted,

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Dated: October 23, 2012

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<sup>9</sup> The Union claims that this case should be remanded for investigation of matters outside HHSS and that a College-wide remedy is appropriate (U. Br. at 13, 40-41). No such further investigation is necessary or appropriate. The GC foreclosed the Union's request when he narrowed the complaint to HHSS, a move specifically approved by the ALJ over the Union's objection (Tr. 10-15) and to which the Union failed to except.

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that she caused a copy of the foregoing to be served via electronic mail 23rd day of October 2012, as follows:

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