

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COLUMBIA COLLEGE CHICAGO)	
)	Case Nos.
)	13-CA 073486,
AND)	13-CA-037487, et. al.
)	
PART-TIME FACULTY ASSOCIATION AT COLUMBIA)	
COLLEGE CHICAGO – ILLINOIS EDUCATION)	
ASSOCIATION/NATIONAL EDUCATION ASSOCIATION)	

**Exceptions of Charging Party P-FAC to
ALJ Carter’s Decision of March 15, 2013**

Charging Party, Part-Time Faculty Association at Columbia College Chicago,
Illinois Education Association / National Education Association (“P-FAC”), pursuant to
NLRB Rules and Regulations, 102.46, files the following exceptions to the ALJ’s
Decision dated March 15, 2013.

**Exceptions Involving Finding that the College did not discriminate against Vallera in not
assigning her a course to teach in Summer 2012.**

1. The ALJ erred as a matter of law in finding that the College did not discriminate against Union President and bargaining unit member Diana Vallera by not assigning Vallera a course to teach in Summer 2012 (ALJ Decision, 47-48). The ALJ should have taken into consideration Vallera’s qualifications and ability to teach a number of courses offered in summer 2012 (GCX 97, 98A, Tr. 263-297, 876-79, 890-93).

2. The ALJ erroneously minimized the evidence of animus. The ALJ considered the timing of animus, but not the degree or severity of animus. The ALJ erroneously concluded that the timing between the animus and the decision to not assign Vallera a course in Summer 2012, was a coincidence (ALJ Decision, 47-48). The ALJ should have considered that in addition to the timing, the General Counsel presented overwhelming evidence of Vallera’s union activity and the College’s animus that cannot be disregarded:

(a) An October 2011, Vallera speech at the American Association of University Professors Board meeting held at Columbia College (GCX 67, Tr. 160), published in the *Acadeem* magazine Spring of 2012 (GCX 67, Tr. 162-63). Advertised in a “constant contact” email, Vallera helped planned and participated in

two demonstrations on December 6-7, 2011 (Tr. 166-67). On March 2, 2012, Vallera gave a speech at a NEA Conference regarding the exploitation of part time faculty and insisted that unions should organize around the issue (Tr. 186-87). Vallera was also very involved in representing her members, making information requests to the College for information relevant to the bargaining unit, demanding effects bargaining, challenging certain decisions through the grievance process, and attempting to bargain a successor collective bargaining agreement (ALJ Decision, pp. 6-7, 14, 18, 25, 35, 41, 48).

(b) The Employer permitted another adjunct faculty member's negative statements regarding Vallera to be printed in the school sponsored paper and permitted Management staff to circulate the statement to their students in December 2011. (ALJ Decision, p. 29, fn 28). Even though the statements were ultimately considered protected under Section 7, this does not alter the fact that at the time the Employer knew or should have known that it was disparately enforcing its policies to denounce pro-union statements and promote anti-union statements.

(c) Also in December 2011 Vallera was involved in a dialogue with management regarding the Union's information request and demand to bargain effects of the Employer's new Early Feedback Evaluation System (R. Ex. 43, Tr. 941). Specifically, Vallera sent Love an email demanding that the employer "immediately cease and desist implementation" of this program (GCX 46).

(d) On January 30, 2012 the Union filed a ULP over the Employer's failure to respond to this request. On February 17, 2012 Susan Marcus – the same person who interjected herself into the dialogue regarding assignment of classes to Vallera for the Summer and Fall 2012 semesters (GCX 92) – took up the dialogue on this request and told Vallera that institution of the new evaluation program was in management rights and hence would not rescind the program, and failed and refused to provide the Union with any information regarding the program on the basis that the request was overbroad and ambiguous (R. Ex. 43). As the ALJ noted, Marcus' explanations for her failure and refusal to respond to Vallera's information requests were either bogus (ALJ Decision, p. 36 fn 31) or otherwise totally inexcusable since, as Marcus ultimately admitted at trial, she never even reviewed the College's description of the Early Feedback System when she prepared her response to PFAC's information request regarding this matter. (ALJ Decision, p. 36 lines 15-20). It was that same day – February 17, 2012 – that Vallera asked for an update on her summer class assignment (R. 95). It is now undisputed that Marcus was monitoring these emails and weighing in on, if not exclusively deciding how to respond to them. (See ALJ Decision, p. 40 fn 38). Marcus did not review communications concerning any other employee. As the ALJ properly found, it was "highly unusual" for Marcus to get involved in these types of issues (assignment of classes to adjuncts)(ALJ Decision, p. 41, fn. 40). Yet Marcus interjected herself into the discussion regarding assignment of classes to Vallera.

(e) On February 6-8, 2012, Vallera sat at counsel table and assisted in the successful litigation of an ULP against Columbia College. (ALJ Decision, p. 39 lines 34-

38), and continued to file and/or amend charges from January 30 through May 16, 2012. It was just two weeks after that trial that Vallera inquired about summer classes and was advised on February 27th that she would not get a class (R. Ex. 96).

(f) The Decision to assign summer classes to Vallera in the first instance was made by coordinator Elizabeth Ernst (ALJ Decision, fn 35), and the assignment was “rolled over” year to year thereafter. Ernst, who, made the initial decision to assign a Summer class to Vallera, was clearly antagonistic towards Vallera as of the time that summer class assignments for 2012 were being made. Ernst characterized Vallera as a “trouble maker,” and the ALJ expressly rejected Ernst’s testimony that she (Ernst) was “only” making that statement about Vallera in context of petty department issues that Vallera raised, rather than in Vallera’s role as Union president. (ALJ Decision, p. 43 fn 45).

3. The ALJ erred in finding no evidence to support a finding that Associate Vice President for Academic Affairs Susan Marcus influenced Fitzpatrick’s decision not to assign Vallera a course in Summer 2012 (ALJ Decision, p. 48 fn 51). As the ALJ noted elsewhere in his Decision, Marcus was specifically monitoring Department Chair Fitzgerald’s communications regarding Vallera, but was not monitoring communications regarding any other employee in Fitzgerald’s department. (ALJ Decision, p. 40, fn 38). By email dated March 23, 2012, Marcus demands that Vallera provide a basis for Vallera’s conclusion that she “lost” a summer class (GCX 92). Marcus had no business interjecting herself into this dialogue in March and, per Fitzgerald’s admission, this conduct was constant. Therefore, the undisputed Record evidence indicates that Marcus was involved in monitoring all decisions regarding assignment of classes to Vallera during the 2011/12 academic year, including the assignment (or non-assignment) of a summer class to Vallera.
4. The ALJ erred in not considering the lengthy testimony offered at trial regarding the College’s specific intent to punish Vallera because of her union activity by only assigning her “View Camera” classes in the future, fully aware that it was planning to phase out View Camera as a course in the future. (Tr. 1277-81, CPX 7). This evidence – which was unrefuted by the Employer – demonstrates clear unlawful motivation by the Employer to intentionally limit assignment of classes to Vallera, of those classes that were being phased out at the College. The ALJ’s failure to consider this unrefuted evidence at all as express animus regarding the non-assignment of classes to Vallera is reversible error.
5. The ALJ made an error of law in relying solely on the fact that the College did not offer the View Camera Class in Summer 2012, to find that the College did not discriminate against Vallera by not assigning her a course in summer 2012 (ALJ Decision, pp. 47-48). Rather, the ALJ should have taken into consideration Vallera’s qualifications and ability to teach another course in summer 2012 (GCX 97, 98A, Tr. 263-297, 876-79, 890-93). The ALJ

likewise should have taken into account that the College had a practice of finding replacement courses for adjuncts whose course had been dropped, and that Vallera was the only adjunct for whom the College failed to find a replacement class to teach in the Summer 2012 Semester (GCX 90(c), Tr. 1291-96).

Exceptions Involving Unilateral Changes to Bargaining Unit and Grievance Procedure

6. The ALJ erred as a matter of law in finding that the College did not make a unilateral change in the scope of the bargaining unit (ALJ Decision, pp. 56-57). The ALJ should have found that the College in fact changed the scope of the unit when it only agreed to discuss matters pertaining to faculty currently teaching a course (GCX. 9, 59, 92, 93A, 93B, Tr. 309-313). For example, the College refused to provide information or bargain over the effects of its decision to reduce credit hours because of its view that P-FAC represented only faculty currently teaching courses (GCX 52, 31).¹ On March 23, 2012, citing to an arbitration decision, Susan Marcus refused to meet with PFAC about changes in the photography department (GCX 92). In May, 2012, the College refused to acknowledge any obligation to negotiate over the effects of the forthcoming “prioritization” process on the basis that P-FAC “lacked standing” to do so (ALJ Decision, p. 25, lines 39-42, GCX 59). For the same reasons, the College had refused discussion with PFAC about future course assignments (GCX 92).
7. As a matter of law, the ALJ improperly considered that sometime after March 23, 2012, the Employer allegedly “cured” its unlawful conduct by later ceasing to engage in its unlawful course of action. The ALJ erred in considering a potential cure rather than address the specific legal question alleged in the Complaint: whether the employer’s conduct on or about March 23, 2012 was unlawful (Complaint, ¶ 1(ff), ALJ Decision, p. 57).
8. The ALJ improperly found that the employer “cured” its unlawful conduct (ALJ Decision, p. 57). The ALJ failed to consider that: the alleged cure was three months later and thus too late, the alleged cure was from the employer’s attorney and not the employer, and the alleged cure was only made to the NLRB, and not to charging party, P-FAC (GCX 94(a)). Moreover, the ALJ failed to consider continued conduct evidencing the College’s view that the bargaining unit only included faculty currently teaching courses, thus unlawfully changing the scope of the bargaining unit. (See GCX 94(b)).

¹ Moreover, since the ALJ found unlawful the College’s refusal to provide information on the credit hours, which it refused because of its interpretation of the Union’s “status,” the ALJ should have found the College’s conduct to be an unlawful withdrawal of recognition.

9. The ALJ erred as a matter of law in no finding that the College violated Sections 8(a)(1) and (5) when it repudiated the contractual grievance procedure (ALJ Decision p. 58). The ALJ compared the College's refusal to to honor the grievance process to a procedural violation on a specific grievance, rather than denying that it had no obligation to hear PFAC's grievances (ALJ Decision, p. 58).

Exceptions Involving ALJ's Failure to Award Special Remedies.

10. The ALJ erred as a matter of law in not awarding special remedies to Charging Party P-FAC (ALJ Decision, p. 78). Given the ALJ's findings of overall bad faith bargaining (ALJ Decision, p. 75), the College's failure to bargain a successor collective bargaining agreement in good faith (ALJ Decision, pg. 16), the College's failure to bargain over the impact and effect of course credit reductions (ALJ Decision, p. 23), the College's failure to provide information to the Union in violation of § 8(a)(5) concerning the College's early feedback system, class assignments, and the investigation into Vallera's alleged misconduct (ALJ Decision, pp. 37, 50, 62-63, 67), and the College's discrimination against Vallera by notifying her of its intent to discipline her for protected activity and by failing to assign her more than one course for fall, 2012 (ALJ Decision, pp. 48-49, 69), special remedies are appropriate.
11. The ALJ erred in deciding not to award special remedies, claiming that the Employer has not shown a proclivity to violate the Act (ALJ Decision, p. 78, line 37). Instead, the ALJ should have considered the College's history of violating its obligations to engage in effects bargaining. Specifically, the ALJ should have considered the College's history including that: (a) on Oct. 22, 2010, the College settled a case that required effects bargaining; (b) the Employer attempted to remove the right to effects bargaining in response to that settlement; (c) another case goes to trial over effects bargaining and the Employer is found in violation, Columbia College, 2012 NLRB LEXIS 437, at * 33-36 (2012); (d) the employer again tried to remove effects bargaining from the CBA (GCX 21(b)(contract proposal that PFAC waive right to effects bargaining); (e) the Employer, for the third time in the current case is found to have violated the law by failing to engage in effects bargaining (ALJ Decision, p. 23). This demonstrates willful conduct that should give rise to increased remedies.
12. The ALJ erred as a matter of law in not issuing a broad remedial order (ALJ Decision, pp. 78-79). Given the ALJ's findings of overall bad faith bargaining (ALJ Decision, p. 75), the College's failure to bargain a successor collective bargaining agreement in good faith (ALJ Decision, p. 16), the College's failure to bargain over the impact and effect of course credit reductions (ALJ Decision, p. 23), the College's failure to provide information

to the Union in violation of § 8(a)(5) concerning the College's early feedback system, class assignments, and the investigation into Vallera's alleged misconduct (ALJ Decision, pp. 37, 50, 62-63, 67), and the College's discrimination against Vallera by notifying her of its intent to discipline her for protected activity and by failing to assign her more than one course for fall, 2012 (ALJ Decision, pp. 48-49, 69), a broad remedial order was appropriate.

13. The ALJ erred as a matter of law by not ordering the College to compensate PFAC for its bargaining and litigation expenses (ALJ Decision, pp. 79-80). Rather, the ALJ should have considered these remedies in light of his findings of overall bad faith bargaining (ALJ Decision, p. 75), the College's failure to bargain a successor collective bargaining agreement in good faith (ALJ Decision, p. 16), the Colleges' failure to have representatives at the table who knew the status of negotiations (ALJ Decision, p. 8, lines 33), and with authority to bargain (ALJ Decision, p. 9, lines 1-5, fn. 10).

Conclusion

The National Labor Relations Board should adopt the portions of the Recommended Order and Decision not excepted to by the General Counsel or Charging Party. Charging Party respectfully requests that the Board modify the decision in the manner described above.

Respectfully submitted,

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