UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

In the Matter of	**Cases 13-CA-73486**
	13-CA-73487
COLUMBIA COLLEGE CHICAGO,	**13-CA-76794**
	13-CA-78080
Respondent,	**13-CA-81162**
	13-CA-84369
and	
THE PART-TIME FACULTY ASSOCIATION AT COLUMBIA COLLEGE CHICAGO, IEA-NEA,	
Charging Party	

COLUMBIA COLLEGE CHICAGO'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Dated: May 10, 2013

Submitted by:

Lisa A. McGarrity
lam@franczek.com
Abizer Zanzi
az@franczek.com
Franczek Radelet, P.C.
300 South Wacker Drive
Suite 3400
Chicago, IL 60606
Phone: 312-986-0300
Fax: 312-986-9192

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STATEMENT OF THE CASE

The General Counsel's ("GC") consolidated complaint ("Complaint") against Respondent Columbia College Chicago ("Columbia" or the "College") arises from six unfair labor practice charges filed by the Charging Party, The Part-time Faculty Association at Columbia College Chicago – IEA/NEA ("P-Fac" or the "Union"), which represents the Columbia's adjunct faculty. In these charges, P-Fac alleged dozens of violations of the National Labor Relations Act ("Act"), the great majority of which were dismissed or withdrawn before the Complaint was issued. The remaining allegations were tried before Administrative Law Judge Geoffrey Carter who issued a Decision and Order on March 15, 2013 ("ALJD" or "Decision"). The College takes exception to the ALJ's rulings on certain allegations contained in Paragraph IX of the Complaint. Specifically, Columbia appeals the ALJ's rulings that it violated Section 8(a)(5) and (1) of the Act by failing or refusing to bargain the effects of its decision to reduce credit hours for ten courses for fall semester 2011.[1]

This is not a typical effects-bargaining case. It does not involve a plant closing, site relocation, layoff or other major management decision where the Board has traditionally found an effects-bargaining obligation. Instead, it concerns routine curriculum changes at a college – the type of changes made every day by institutions of higher learning in their exercise of the academic freedom guaranteed by the First Amendment.

Moreover, this case differs from the norm because Columbia's adjuncts are contingent employees with no guarantee of continued employment from semester to semester. In the typical effects-bargaining case, the employees at issue have a reasonable expectation of continued

[1] While Columbia disagrees with several of the ALJ's other rulings, only these are sufficiently critical to its ongoing operations to warrant the filing of formal exceptions.

employment due to contractual provisions providing "just cause" protection against arbitrary termination, guaranteed hours of work, exclusive rights to perform "bargaining-unit work," and the like. Columbia's adjuncts have no such reasonable expectation. Columbia has retained "sole discretion" over who is assigned to teach the courses it offers. It may assign them to full-time faculty, graduate students, part-time faculty not represented by P-Fac, or represented adjuncts. In essence, the collective bargaining agreement between Columbia and P-Fac ("CBA") is a "pre-hire" contract: *if* the College elects to hire an adjunct to teach a course during a particular semester, his or her terms and conditions of employment will be as set forth in the CBA for that semester. In between semesters for which they are hired to teach, adjuncts have virtually no rights under the CBA, and the College is not obliged to re-hire them. Accordingly, the effects or impact of a credit-hour reduction or other curriculum change scheduled to be implemented in a future semester are simply too remote or speculative to warrant imposing an effects-bargaining obligation.

The ALJ disregarded these realities when he ruled that Columbia's credit-hour reductions created an effects-bargaining obligation. He based his decision solely on the fact that credit hours determine adjunct compensation. He ignored the fact that the College makes hundreds of curriculum changes for a variety of academic reasons each semester as part of its routine business operations. Most of these changes could conceivably impact a part-time faculty member's employment, if he or she were hired by the College. But it simply is not feasible for the College to bargain with the Union over every curriculum decision that might potentially affect an adjunct. If the ALJ's decision on this issue stands, it would effectively strip the College of its ability to exercise its academic freedoms and conduct its operations. The consequences would be calamitous.

The ALJ's ruling was wrong in several other respects. The ALJ erred by finding that the Union did not waive its bargaining rights by making an untimely request to bargain and through its negotiation of the CBA itself. The ALJ also erred in finding that the College unlawfully set preconditions to bargaining. Finally, the ALJ ignored the fact that three of the ten course credit-hour reductions at issue had no impact on adjunct compensation whatsoever; the reductions affected only graduate students, not part-time faculty.

For these reasons, the College now appeals the ALJ's rulings against it relative to the credit-hour reductions.

QUESTIONS PRESENTED

1. Whether the ALJ erred when he found that the College had a legal obligation to bargain the effects of 10 course credit-hour reductions? (Exceptions 1, 8-9, 11, 13, 15-17, 19-22, 24-29)

2. Whether the ALJ erred when he found that the Union's request to bargain the effects of course credit-hour reductions was not untimely? (Exceptions 2, 5-6, 12, 15, 17, 22, 25-29)

3. Whether the ALJ erred when he found that the Union did not waive any right to bargain the effects of course credit-hour reductions in the collective bargaining agreement itself? (Exceptions 18-19, 22, 25-29)

4. Whether the ALJ erred when he found that the College had an obligation to bargain the effects of credit-hour reductions in three graduate-level courses where these changes did not impact adjunct compensation for teaching the courses? (Exceptions 1, 4, 15, 22, 25-29)

5. Whether the ALJ erred when he found that the College unlawfully set preconditions to bargaining the effects of course credit-hour reductions? (Exceptions 3, 7, 10-12, 22-29)

STATEMENT OF FACTS

I. The Parties

Columbia is a private college focusing on media, communication and the arts, located in Chicago, Illinois. It offers many undergraduate programs and a smaller number of graduate programs (Tr. 452-53). The College is comprised of three schools – Media Arts, Liberal Arts & Sciences, and Fine & Performing Arts – within which there are 23 academic departments. The schools are run by deans; the departments by chairs (Tr. 453-54). The College operates on a traditional semester system, with its basic academic year consisting of fall and spring semesters (Tr. 452-53). It also offers a summer term during which fewer courses are offered than in the fall and spring, as well as a short January term during winter break (Tr. 453).

The College employs both full-time and part-time or contingent/adjunct faculty to teach the courses it offers. There are approximately 360 full-time faculty members and 1,250 adjuncts (Tr. 454-55). The full-time faculty is not represented. However, P-Fac has represented the adjuncts for about 14 years (Tr. 455).

Full-time faculty members have preference for course assignments. Full-time tenured and tenure-track faculty are obliged to teach three courses (nine credits) per semester and six courses (18 credits) in an academic year. Full-time lecturers and senior lecturers are obliged to teach four courses (12 credits) per semester and eight courses (24 credits) in an academic year (Tr. 456). In contrast, part-timers have no obligation to teach whatsoever. Instead, they are *limited* to teaching a maximum of 18 credit hours per academic year and 12 credit hours per

semester, regardless of department (Resp. Ex. 1, Art. VIII(5), p. 11). Accordingly, part-time faculty are assigned the courses that remain after courses have been assigned to full-time faculty (Tr. 456).

In recent years, enrollment at the College has fluctuated from a high of about 12,000 students to a low of 10,000. Currently, enrollment is at the low end. Each semester the College offers approximately 3,000 courses (Tr. 1063). However, the number of courses offered varies with enrollment. As one might expect, when there are fewer students enrolled, fewer courses are offered and available for part-time faculty to teach (Tr. 457).

II. Nature of Unit Members' Employment

A. The Parties' Collective Bargaining Agreement

The CBA (Resp. Ex. 1), which on its face was due to expire in 2010, was instead extended indefinitely by agreement of the parties pending their successful negotiation of a successor. As of the date of the hearing before the ALJ in this matter, their negotiations were on-going and the CBA remained in effect (Tr. 455).

In Article II of the CBA – Management Rights – the parties agreed that the College has "sole discretion" to exercise a host of rights. Among its management rights, the College has sole discretion to "hire," "assign," "terminate," "appoint," and "reappoint" adjuncts, as well as to "establish, modify, and discontinue . . . policies . . . and practices relating to the performance of work, including workload [and] scheduling of work . . . except as may be modified by this Agreement" (Resp. Ex. 1, Art. II(C), p. 2). Moreover, the CBA prescribes the effect or impact on part-time faculty of course-scheduling changes. That is, under certain circumstances adjuncts with 51 or more accumulated credit hours have a right to "bump" other adjuncts with fewer than 21 accumulated credit hours (Resp. Ex. 1, Art. VII, pp. 8-9). The CBA contains no provision

granting members of the P-Fac bargaining unit an exclusive right to perform any work (*i.e.*, there is no such thing as "bargaining-unit work"). Rather, in all instances, the "final decision of who teaches each course is the sole prerogative of the department Chairperson" (Resp. Ex. 1, Art. VII(2), p. 9). Courses may be assigned to full-time faculty, graduate students, part-time faculty not represented by P-Fac, or represented adjuncts.

In Article XIV – Entire Agreement – the parties agreed that each had the opportunity during negotiations to make demands and proposals on any subject and that the CBA itself was the sole agreement between them regarding wages, hours, and other terms and conditions of employment (Resp. Ex. 1, Art. XIV, p. 15).

B. The Nathan Arbitration Award

On February 11, 2012, Arbitrator Harvey Nathan issued an arbitration award under the CBA (GC Ex. 54; Tr. 925). P-Fac had filed the underlying grievance on behalf of Ryan Preston, an adjunct who had been assigned to teach two sections of a course for fall semester 2010, but was removed from the schedule prior to the semester's start because the College believed that he had resigned in a voicemail message. Preston testified that an imposter had left the message in question. P-Fac argued that the College had terminated Preston in violation of the CBA's "just cause" requirement for "termination of employment during a semester" (Resp. Ex. 1, Art. X(1), p. 12; GC Ex. 54, p. 7). The College, on the other hand, argued that the "just cause" provision was inapplicable because, among other reasons, Preston was not removed from the schedule "during a semester" (GC Ex. 54, p. 7-9).

Arbitrator Nathan denied the grievance in its entirety, finding that the grievant was not even covered by the CBA in between semesters for which he had been hired to teach. He wrote: "The parties in composing the [CBA] carefully established that an adjunct, or part-time,

instructor is employed only when he or she is teaching a course during a finite period of time. Between teaching assignments the adjunct has no status as an employee. He or she is hired solely for the period of time during which the teaching occurs" (GC Ex. 54, p. 10). He further observed that throughout the CBA, the parties expressed their intent that a part-timer's employment be "intermittent" and "piecemeal" (GC Ex. 54, pp. 10-11). For example, according to Article VII of the CBA, the "structure for unit members to be assigned courses" and again become "an employee of the College" starts each semester with their submission of a "teaching availability form." However, their submission of the form "does not obligate the College in any way to provide an appointment or a particular assignment to that unit member" (Resp. Ex. 1, Art. VII(4), p. 10; GC Ex. 54, p. 11). Accordingly, Arbitrator Nathan ruled that the "just cause" limitation on adjunct terminations applies only "during teaching periods" and is not applicable to "renewals or rehires for future teaching assignments" (GC Ex. 54, p. 11-12). Because the College removed Preston from the teaching schedule before fall semester 2010 began, he was not covered by the CBA and "had no rights at all." Instead, he was merely an "applicant for employment and the College was not restricted in the way in which it treated his application" (GC Ex. 54, p. 12).

P-Fac did not file a lawsuit to vacate the arbitration award (Tr. 925-26).

C. P-Fac's Publications

In its own publications on its website, P-Fac has repeatedly acknowledged its members' "intermittent" and "piecemeal" employment status: "The bad news: we are contingent faculty; that is, our jobs are contingent upon the College's need and desire for our services from semester to semester" (Resp. Ex. 40 (February 2011 publication) and 41 (October 2012 publication), p. 1, first paragraph; Tr. 936-937). Similarly, in a speech in October 2011, at an American

Association of University Professors ("AAUP") meeting – which was later republished in an AAUP magazine – P-Fac President Diana Vallera conceded that part-time faculty at Columbia have no "assurance of continued employment" (GC Ex. 67, p. 12, final paragraph). Indeed, in Vallera's opinion, the College has historically treated part-time faculty like "freelancers who can be discarded" (GC Ex. 67, p. 3, paragraph numbered 2).

D. Case No. 13-CA-45973

In 2010, Region 13's Regional Director refused to issue a complaint in Case No. 13-CA-45973, an unfair labor practice charge filed by P-Fac against the College alleging that it changed P-Fac President Diana Vallera's teaching schedule in retaliation for her union or protected activities. P-Fac appealed the Regional Director's decision to the NLRB's Office of the General Counsel. On November 30, 2010, the GC denied P-Fac's appeal, finding that "the evidence indicated no contractual right of part-time faculty to any particular course or schedule. Though Ms. Vallera may have preferred to be assigned studio classes that were scheduled for certain days and times, neither the collective bargaining agreement nor past practice conferred such a right on part-time faculty instructors" (Resp. Ex. 7, pp. 1-2).

III. Effects-Bargaining Allegations

In Paragraph IX of the Complaint, the GC alleged that the College failed and refused to bargain with P-Fac over the effects of the College's decisions to reduce credit hours for certain courses. The Complaint did not allege that the College had an obligation to bargain over the decisions themselves, but only over their alleged effects.

A. The credit-hour reductions at issue

Effective for fall semester 2011, the College reduced credit hours for the following 12

courses:[2]

- Art Director/Commercial Photography (22-3500)
- Directing I (31-2700)
- Government Politics Seminar (53-6615)
- State and National Government Politics Seminar (53-6635)
- Screenwriting Workshop (55-5326)
- Adaptation in LA (55-5327)
- Acquiring Intellectual Property (55-5328)
- Accounting (28-2110)
- Art Director/Copywriter Team (22-3525)
- Theory, Harmony and Analysis I (32-1120)
- Theory, Harmony and Analysis II (32-2121)
- Professional Survival and How to Audition (31-3900)

(GC Ex. 51; Resp. Ex. 11; Tr. 560-61). The College also increased credit hours for 11 courses for fall semester 2011. However, P-Fac demanded bargaining only over the 12 credit-hour reductions (GC Ex. 49).

The majority of the credit-hour reductions over which the Union demanded bargaining did not even arguably impact members of the bargaining unit. Four of the 12 courses were not being taught by bargaining-unit members when the reductions became effective. One such

[2] Ten of these courses were in the School of Fine & Performing Arts ("SFPA") and two in the School of Media Arts. Credit hours were reduced in the SFPA courses as part of a much larger curriculum overhaul, in order to bring them in line with the College's pre-existing policy regarding course types and credit hours (Tr. 576; Resp. Ex. 11). Credit hours were reduced in the Media Arts courses to accommodate new 1-credit workshops in technology in the graduate Journalism program (Tr. 514-15).

course, Art Director/Commercial Photography (22-3500), was taught only by a full-time faculty member, Kay Hartmann, since fall 2009 (Tr. 567-68; Resp. Ex. 12 at p.1). Another course, Directing I (31-2700), was taught only by full-time faculty members Michael Ryczek and Terrence McCabe in academic year 2011-12, although it had been taught by part-time faculty previously (Tr. 569; Resp. Ex. 12 at p.7). When the College stopped assigning these courses to part-time faculty and assigned them instead to full-time faculty, P-Fac acquiesced and demanded no bargaining (Tr. 568-70).

Similarly, two Journalism department courses, Local Government Politics Seminar (53-6615) and State and National Government Politics Seminar (53-6635), were taught only by full-time faculty or part-time faculty who were not members of the bargaining unit. Course 53-6635 was taught only by full-time faculty members, Curtis Lawrence and department chair Nancy Day, since 2006 (Tr. 527; Resp. Ex. 8). Course 53-6615 was taught by a part-timer, Thom Clark, in fall 2008 and before, but by full-timer Len Strazewski in 2009 and 2010. In fall 2011, the course was taught by Don Terry, a Pulitzer-prize winning journalist who was not in the bargaining unit because he taught only one semester at Columbia and did not qualify (Tr. 523-26; Resp. Ex. 12 at pp.13-14). P-Fac acquiesced and demanded no bargaining when the College assigned 53-6615 to Strazewski and/or Terry instead of to a bargaining-unit member (Tr. 525). Day explained that as chair of the Journalism department, it is her prerogative to decide who teaches the courses offered in that department (Tr. 524).

Three of the credit-hour reductions affected only the credits earned by graduate students, not the number of credit hours for which part-time faculty were paid for teaching those courses: Screenwriting Workshop (55-5326), Adaptation in LA (55-5327), and Acquiring Intellectual Property (55-5328) (Tr. 571-74; Resp. Ex. 12). These three courses are offered at both the 4000

(undergraduate) and 5000 (graduate) levels, but are taught together by the same instructor, in the same classroom (Tr. 573). The 3-to-2 credit-hour reductions affected only graduate students, not undergraduates or the part-time instructor assigned to teach all three courses, Craig Gore. After the effective date of the change, Gore continued to be paid for teaching 3-credit courses, as in the past (Tr. 574-75; Resp. Ex. 12 at pp. 14-16). Thus, the three credit-hour changes in the Fiction Writing department had no effect on adjunct compensation whatsoever (Tr. 575).

The five remaining courses for which credit hours were reduced – Accounting (28-2110), Art Director/Copywriter Team (22-3525), Theory, Harmony and Analysis I and II (32-1120 and 32-2121), and Professional Survival and How to Audition (31-3900)[3] (Resp. Ex. 11) – were taught by P-Fac bargaining-unit members in academic year 2011-12 (Resp. Ex. 12). As discussed more fully below, each adjunct assigned was individually notified of the credit-hour reductions months before fall semester 2011 began, as required by the CBA (Resp. Exs.13-16).

B. The College's compliance with the CBA

Under the CBA's management rights clause, the College has "sole discretion . . . to plan, establish, terminate, modify, and implement all aspects of educational policies and practices, including curricula . . . graduation requirements and standards; scheduling . . . and the establishment, expansion, subcontracting, reduction, modification, alteration, combination, or transfer of any job, department, program, course, institute, or other academic or non-academic activity and the staffing of the activity, except as may be modified by this Agreement" (Resp. Ex. 1, Art. II(A), p. 2).

[3] Course 31-3900 was historically taught exclusively by a part-timer, Barbara Robertson. In spring 2011 and thereafter, however, a full-timer, Ashton Byrum, was assigned to teach a section of it (Tr. 583-84; Resp. Ex. 12). P-Fac acquiesced in and demanded no bargaining over this change (Tr. 584).

With respect to the College's unfettered right to "alter[] . . . any . . . course" (Resp. Ex. 1, Art. II(A), p. 2) – for example, to change the number of credit hours offered for it – the CBA prescribes the remedy for such changes: "If any class routinely taught by a unit member is altered significantly, the unit member must be notified in a timely manner" (Resp. Ex. 1, Art. VII(2)(C), p. 9). On May 2, 2011, the College individually notified affected adjuncts of the credit-hour reductions. That is, their hiring letters for fall semester 2011 specified the number of credits being offered for the courses they had been assigned to teach, as well as the amount of money they would be paid for teaching the courses (Resp. Exs. 13-16).

C. Past practice

The term "curriculum" encompasses "everything taught to . . . students" (Tr. 548-550). It includes course content, learning objectives, course enrollment caps, pre-requisites and co-requisites, credit hours, new programs, new courses, eliminating old programs and courses, majors, minors, and degree requirements (Tr. 550-52, 606-07). Since at least 2009, all three schools within the College have been required to follow a "Curriculum Approval Process" for any type of curricular change (Tr. 552-54; Resp. Ex. 9).[4] Each category of change -- among them, "Changes to Existing Courses" (*e.g.*, titles, pre-requisites, descriptions, credits); "Review and Approval of New Courses;" "Program Changes" (*i.e.*, requirements, core and concentrations); and "New Curriculum" (*i.e.*, major, minor, certificates, degree programs and concentrations) -- is subject to its own process. Bargaining with P-Fac is not and has never been part of any of these processes (Tr. 627; Resp. Ex. 19).

According to William Frederking, faculty member since 1983 and associate dean in charge of curriculum of SFPA from 2008 to 2012 (Tr. 548-49), curricular changes at Columbia

[4] SFPA has its own internal process for curricular changes which supplements the College's processes (Tr. 598; Resp. Ex. 18).

occur every semester, on an on-going basis. Just during his four-year tenure as associate dean, there were "[m]any, very many . . . [h]undreds" of curricular changes just in SFPA (Tr. 584). Indeed, over 200 requests for changes to existing courses, some major and some minor, were submitted to Frederking and approved by the dean in spring semester 2009, including at least three requests for credit-hour changes (Resp. Ex. 19; Tr. 603-04, 614).[5] A comparable number of changes were made during other semesters (Tr. 605). P-Fac did not demand bargaining over any of these changes (Tr. 604-05).

Similarly, in the Journalism department (which is in the School of Media Arts), curriculum is changed "fairly often" because journalism has changed so rapidly due to new technology. Journalism graduates today are expected to have multi-media competencies as well as foundational research and reporting skills, and course content is constantly evolving to keep current (Tr. 530-31). Among other things, the department has changed credit hours offered for courses (Tr. 531-32). P-Fac never demanded bargaining over any curricular change in the Journalism department prior to demanding effects bargaining over the credit-hour reductions at issue in this case (*Id.*).

Some of the College's curricular changes have been far more significant than the credit-hour reductions at issue here. When Frederking began as associate dean, Dean Eliza Nichols was working on a strategic plan for SFPA that was aligned with the College's strategic plan. As part of the plan, Frederking recommended that SFPA review all curricula (Tr. 585-86). His recommendation was driven in part by the provost's desire that each school do a full curriculum audit (Tr. 586). Frederking believed that SFPA should be "ahead of the game," so he started to

[5] See, for example, Feb. 13, 2009 request from Nissan Wasfie regarding Music Publishing: The Law & Licensing (1 to 3) (toward front of exhibit); Feb. 17, 2009 request from Margi Cole regarding Dance Fundamentals (2 to 4) (middle of exhibit); Feb. 9, 2009 request from Michael Ryczek regarding Drafting for the Stage (2 to 3) (end of exhibit).

work on SFPA's curricula immediately. Of particular concern to him was that curricula comply with national accrediting standards and College policy (Tr. 556-57, 586).

Frederking found that many of the departments within SFPA had credit-hour requirements for majors that were "way out of alignment with national standards" (Tr. 588). The Music department, for example, had a 78 credit-hour requirement, whereas the national standard is 36 to 42 credits. These discrepancies made it difficult for students to complete their degrees in a reasonable period of time and at a reasonable cost. So, in collaboration with department chairs, he reviewed curricula in each department and recommended major changes in their BA programs, which were approved (Tr. 587-88). In or around December 2010, he summarized the changes in a letter and attachment sent to interim provost Louise Love, explaining that the changes would become effective for fall semester 2011 (Resp. Ex. 17; Tr. 589-91). Credit-hour requirements for majors are published in the College's catalog both on OASIS (the College's course-scheduling system) and on Columbia's website (Tr. 597).

Among the changes made were reductions in credit-hour requirements for degrees in the following departments: Art & Design (51 to 42); Arts, Entertainment & Media Management ("AEMM") (58 to 42); Dance (57 to 42); Fashion Studies (58 to 48); Fiction Writing (54 to 36); Music (54-78 to 45); Photography (54 to 42); and Theatre (51-60 to 44-46). In addition, certain concentrations were eliminated and new ones were implemented (Resp. Ex. 17). When credit-hour requirements were reduced, many courses that used to be required became elective, and consequently fewer sections were offered (Tr. 591-92). P-Fac never demanded any bargaining over these changes despite their impact on bargaining-unit members' work opportunities (Tr. 591-92).

In her speech at the AAUP meeting, P-Fac's Vallera lamented what she perceived to be the "corporatization" of Columbia over the past decade, including curriculum changes to "guarantee higher [student] retention rates and cost-saving[s];" promote "standardization," leaving faculty with fewer choices regarding syllabi and texts; and increase classroom enrollment caps. She opined that "the administration was able to run the school for 12 years as if there was no union" (GC Ex. 67, p. 1). In other words, the Union did not challenge management's right to make curriculum changes, and did not demand any effects bargaining over the many changes made.

D. P-Fac's demand to bargain over credit-hour reductions

The credit-hour reductions effective for fall 2011 were first published months before in March, when the College's course catalog, which includes course credit-hour information, became available to any member of the public on the College's website (Tr. 528). At the same time, the catalog "went live" for student registration on OASIS. Anyone with an OASIS identification number, which includes all part-time faculty (and therefore P-Fac officials), had access to the catalog on that system as well as on the website (Tr. 528, 562). Then, in early May, all part-time faculty assigned to the courses for which there were credit-hour changes were individually notified as required by the CBA in their hiring letters (Resp. Exs. 13-16). Yet, P-Fac made no demand to bargain until December 20, 2011, almost ten months after the catalog was published, eight months after the hiring letters went out, and four months after fall semester 2011 began (GC Ex. 49).

E. Bargaining over credit-hour reductions in Art & Design

In October 2010, the College agreed to bargain with P-Fac over the alleged effects of certain credit-hour reductions in the Photography department in order to settle an ULP charge

(Tr. 463; GC Exs. 3, 4).[6] This bargaining occurred late in 2010 and early in 2011 (Tr. 464). During the course of bargaining, on February 25, 2011, P-Fac's Vallera sent an email to vice president for academic affairs and interim provost Louise Love, who was a member of the College's bargaining team at that time, summarizing a negotiating session that had occurred on February 11. According to Vallera's email, the parties had discussed the fact that some courses for which credit hours had been reduced in the Photography department were cross-listed with courses in the Art & Design department (Tr. 464-65: Resp. Ex. 4; *see also* Tr. 576-77).

On March 4, 2011, Love responded to Vallera's email (Tr. 465; Resp. Ex. 5). She attached a spreadsheet showing the credit-hour reductions for Art Director/Commercial Photographer (22-3500) and Art Director/Copywriter Team (22-3525), both in the Art & Design department (Resp. Ex. 5, p. 2). In her cover memorandum, Love noted that the parties were already bargaining over the impact of these changes (Resp. Ex. 5, p. 1). Love handed the memorandum to Vallera at a bargaining session. P-Fac's team caucused to review it. Upon their return, they told the College's team that they would respond to the memorandum in writing and provide a proposal regarding the alleged effects of the credit-hour reductions in Art & Design (Tr. 466-69; Resp. Ex. 6). However, P-Fac never did so. Rather, the Union simply dropped the issue (Tr. 469-70).

F. The parties' bargaining over the remaining credit-hour reductions

On February 21, 2012, the College responded to P-Fac's December 20, 2011 request to bargain the effects of credit-hour changes by informing P-Fac that it was willing to meet to discuss the issue, while asking P-Fac to identify which of its members it believed had been

[6] The credit-hour reductions in the Photography department were effective for academic year 2010-11, and are not at issue in this proceeding.

affected so that the College could better understand the nature and scope of the request (GC Ex. 52; Tr. 1061-63). Beginning June 25, 2012, the parties met several times to bargain the alleged effects of the credit-hour reductions (Resp. Exs. 60, 62, 64).

IV. The ALJ's Decision

The ALJ found that the Union waived bargaining for the two courses in the Art & Design department for which credit hours were reduced: Art Director/Commercial Photographer (22-3500) and Art Director/Copywriter Team (22-3525) (ALJD at 21:26-22:16). The College agrees with and does not take exception to that finding.

With respect to the other ten courses, however, the ALJ ruled that the College violated Sections 8(a)(5) and (1) of the Act by failing and refusing to bargain with the Union over the effects of the College's implementation of course credit-hour reductions for those courses (ALJD at 23:1-23:7). Furthermore, the ALJ awarded a back pay remedy to each P-Fac member who taught one of the ten courses at issue after the credit hours were reduced (ALJD at 77:17-78:2). The remedy requires the College to make such P-Fac members whole for the compensation they would have received if the credit hours had not been reduced for a period of five days after the Decision was issued until certain conditions are met, pursuant to *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). The College takes exception to these rulings.

ARGUMENT

I. The ALJ Erred in Finding the College Had an Obligation to Bargain the Effects of Course Credit-hour Reductions.

The ALJ based his decision that the College must bargain the effects of course credit-hour reductions on a single fact: the number of credit hours designated for a course determines a part-time faculty member's compensation if selected to teach the course (ALJD at 21:12-21:15, 22 n.24). In so doing, the ALJ oversimplified the issue by failing to consider the context

necessary for a proper determination of whether the reductions amounted to material, substantial and significant changes in P-Fac members' working conditions. As explained below, that context is critical and requires reversal of the ALJ's decision.

A. The credit-hour reductions did not change working conditions.

The ALJ failed adequately to consider whether any "change" actually occurred. An employer may violate the NLRA if it makes a unilateral change in wages, hours, or other terms and conditions of employment without first giving its employees' union representative notice and an opportunity to bargain. *See, e.g.*, *NLRB v. Katz*, 369 U.S. 736, 743 (1962). The law is clear that there must be a change in working conditions to trigger a bargaining obligation. *See Daily News of Los Angeles*, 315 NLRB 1236, 1237 (1994), *enforced*, 73 F.3d 406 (D.C. Cir. 1996) ("[T]he vice involved in [a unilateral change] is that the employer has *changed* the existing conditions of employment. It is this *change* which is prohibited and which forms the basis of the unfair labor practice charge.") (emphasis in original).

The credit-hour reductions at issue did not change unit members' working conditions. Each semester, and for many years, the College has made hundreds of changes to its nearly 3,000 course offerings and many degree programs and majors, including credit-hour changes. Constant curriculum change is part of the College's routine business operations and indeed, constitutes the *status quo*. Curriculum, by its nature, is dynamic and ever-evolving to meet student needs, academic best practices, technological change, market conditions, and to contain costs to students. The specific curriculum changes challenged in the Complaint were not new or noteworthy events; they were simply a continuation of a long-standing practice. As such, they did not amount to "changes" in unit members' working conditions. *See Post-Tribune Co.*, 337 NLRB 1279, 1280 (2002) ("where an employer's action does not change existing conditions –

that is, where it does not alter the status quo – the employer does not violate Section 8(a)(5) and (1)"); *Courier-Journal*, 342 NLRB 1093, 1094 (2004) ("[A] unilateral change made pursuant to a longstanding practice is essentially a continuation of the status quo – not a violation of Section 8(a)(5)."); *see also KDEN Broad. Co.*, 225 NLRB 25, 35 (1976) ("where the past practice is so commonplace as to be a basic part of the job itself a continuation of that past practice cannot be characterized as a unilateral change in working conditions").

The ALJ misconstrued the parties' past practice on this issue. He found that the Union did not consistently request bargaining when the College made curriculum changes, but "expected and demanded" effects bargaining over course credit-hour reductions specifically (ALJD at 22-23 n.24). The ALJ gave too much weight to the fact that P-Fac requested bargaining over credit-hour reductions on *one* prior occasion, the instance involving courses in the Photography department that resulted in a ULP charge and settlement (*Id.*). However, the record evidence establishes that until just recently, the Union simply acquiesced in curriculum changes (including credit-hour changes) and demanded no bargaining of any kind, despite publicly lamenting such changes (GC Ex. 67, p. 1). Indeed, some of the changes in which the Union acquiesced over time were far more significant that those at issue here, for example, SFPA's decision to reduce dramatically the number of credit hours required for its various majors, thereby reducing the amount of work available to be assigned to adjuncts. Likewise, P-Fac repeatedly acquiesced in the College's decisions to assign courses to full-time faculty or non-represented part-time faculty instead of to unit members. The Union's repeated acquiescence to these curriculum and scheduling changes precludes any right to bargain the effects of such decisions. *See Courier-Journal*, 342 NLRB 1093 (2004); *Berkshire Nursing Home*, 345 NLRB 220 n.2 (2005).

Under Board precedent, the context in which management makes a change is relevant to whether it amounts to a change in working conditions; the change cannot be considered in isolation. The Board has repeatedly found no change in working conditions in situations where management's routine conducting of its operations affected availability of work and employee compensation. *See, e.g.*, *KDEN*, 225 NLRB at 34-35 ("The Board has clearly indicated that schedule and hour changes that are consistent with an employer's past practice are not violative of the Act."); *Kal-Die Casting Corp.*, 221 NLRB 1068, n.1 (1975) (finding no bargaining obligation to bargain changes to "routine production scheduling and adjustments relating to diminishingly available hours of work"). The context of the employer's decision matters. The ALJ erred by failing adequately to consider the parties' past practices with respect to curriculum changes.

B. The credit hour reductions were not material, substantial and significant.

In order for a unilateral change to be unlawful, it must have been "material, substantial and significant." *Berkshire*, 345 NLRB at 221. *See also Mitchellace, Inc.*, 321 NLRB 191, 193 n.6 (1996) (listing examples of such changes); *United Techs. Corp.*, 274 NLRB 609, 621 (1985). The curriculum changes at issue do not meet this standard. As explained above, the credit-hour reductions were routine academic decisions made in the normal conduct of the College's business.

The Board has historically not required an employer to bargain the effects of such routine operational decisions. *See, e.g.*, *Berkshire*, 345 NLRB at 221; *Post-Tribune Co.*, 337 NLRB at 1279; *KDEN*, 225 NLRB at 25; *Kal-Die Casting Corp.*, 221 NLRB at 1068 n.1. Indeed, the law of effects-bargaining was originally designed to address the impact of major events such as plant closings, site relocations, and subcontracting. In the typical effects-bargaining case, employees

have lost their jobs or experienced other major events impacting their working conditions. While the law of effects bargaining has since evolved, it is clear that an obligation to bargain does not arise every time an employer exercises its managerial discretion in a way that could conceivably affect employees.

In determining whether a duty to bargain exists, the Board has routinely considered the impact that a bargaining obligation would impose on the employer's business in light of the circumstances of the decision at issue. *See, e.g.*, *Scott Lumber Co.*, 117 NLRB 1790, 1822 (1957) ("In the efficient operation of industrial establishments, minor changes for the purpose of efficiency must be made almost daily. To hold that no change in working arrangements can be made by management, without prior consultation with the Union would be to destroy management's right to manage."); *KDEN*, 225 NLRB at 34-35 ("[I]f an employer were prevented from operating it its normal routine fashion once a union is certified, it would bring the business to a grinding halt.").

The same practical considerations apply here. The ALJ's ruling that the College has an obligation to bargain the effects of credit-hour reductions creates an untenable slippery slope. The College constantly revises its curriculum to respond to student needs (including for cost containment), academic best practices, technological change, and market demands. In any given semester, any number of variables may require the College to cancel a course, reduce the number of sections offered, modify or update the content, increase or decrease the enrollment cap, or increase or decrease the credit hours awarded for successful completion of the course. Any of these decisions could theoretically impact a P-Fac member if he or she is subsequently selected to teach the course. However, these decisions are made well before it is determined who will teach the course. Of the hundreds of curriculum changes that occur each semester, some may

involve courses historically taught by a full-time faculty member. Others may involve courses previously taught by P-Fac members but are not expected to be in the future due to a new full-time hire, for example. There is simply no way to predict the impact on adjuncts, if any, until the course assignment process is completed.

The number of academic decisions that must be made each semester is high, and the window of time in which the decisions must be made is narrow, in order for the College to respond flexibly to the academic needs of the students. If the College has a legal obligation to bargain the impact of these decisions on P-Fac members, who may or may not ultimately be selected to teach the course, the College's academic operations would be significantly impaired.

Equally important, curriculum changes, including credit-hour changes, are matters of academic discretion and judgment. For example, the College reduced credit hours in eight of the courses at issue as part of a much larger curriculum overhaul in the SFPA (Tr. 576; Resp. Ex. 11). Meanwhile, credit hours were reduced in the two Journalism courses to allow graduate students to take technology workshops to keep up with developments in their chosen field (Tr. 514-15). For three of the courses at issue, the College made a judgment that undergraduates enrolled in the courses would be awarded three credits for successful completion, whereas graduate students would be awarded only two (Tr. 572-75). Such academic decisions by a college are constitutionally protected exercises of academic freedom. *See, e.g.*, *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring); *Webb v. Board of Trs. of Ball State Univ.*, 167 F.3d 1146, 1149-50 (7th Cir. 1999). *See also NLRB v. Lewis University*, 765 F.2d 616, 626 (7th Cir. 1985) (recognizing that "principles developed for use in the industrial setting cannot be imposed blindly on the academic world") (internal citations omitted). To require effects-bargaining for all curriculum changes that might have an impact on adjuncts'

terms and conditions of employment would unreasonably hamper the College's ability to exercise its First Amendment rights.

The ALJ disregarded these considerations by relying on a quote by an administrative law judge in the case *Public Service Company of Oklahoma* (ALJD at 23 n.25). In that case, the judge commented that the inefficiencies of U.S. industrial relations and an employer's perceived need to take unlimited actions regarding the bargaining unit is not a sufficient basis to insist on contract proposals that strip unions of their bargaining rights. *See Public Serv. Co. of Okla.*, 334 NLRB 487, 498 (2001). The ALJ's reliance on this quote is misplaced for several reasons. First, it is taken out of context. That case did not involve an employer's duty to bargain the effects of routine managerial decisions. It concerned allegations that the employer engaged in bad-faith bargaining by insisting that the union agree to language that would give the employer unilateral control over the terms and conditions of employment. *See Public Serv. Co. of Okla.*, 334 NLRB at 498-99.

Second, the ALJ incorrectly attributed the quote to the Board as an example of the Board's rejection of "a similar practical effects argument" (ALJD at 23 n.25). In fact, the Board did not make this comment, and did not address it on appeal. *Public Serv. Co. of Okla.*, 334 NLRB at 487-90. As explained above, the Board has not adopted a position that an employer must relinquish its ability to run its business in order to engage in effects bargaining over every routine decision. *See, e.g.*, *Scott Lumber Co.*, 117 NLRB at 1822; *KDEN*, 225 NLRB at 34-35. The ALJ should have followed Board precedent and considered the result his ruling would have on the College's ability to conduct its most basic academic functions. His failure to do so is grounds for reversal.

C. P-Fac members are not impacted by curriculum changes.

The effects-bargaining allegation also fails because P-Fac members were not impacted by the credit-hour reductions. Adjuncts are contingent employees who serve at the pleasure of the College. They are hired on a semester-by-semester basis, and have no right to continued employment or future class assignments. P-Fac repeatedly has conceded this point (Resp. Exs. 40, 41; GC Ex. 67 at 3, 12; Tr. 936-937) and the Nathan arbitration award confirms it (GC Ex. 54). Unlike many collective bargaining agreements, the parties' CBA has no "bargaining-unit work" provision because P-Fac members do not have any right, much less an exclusive one, to teach the courses offered by the College. The College can assign any course to a full-time faculty member, a graduate student, a P-Fac member, or even an unrepresented part-time instructor at its sole discretion and regardless of whether a P-Fac member has taught the course in the past. Indeed, P-Fac members were not assigned to five of the ten courses at issue when the credit-hour reductions were implemented, and the Union never challenged these assignments. Credit-hour reductions do not impact adjuncts because they have no future right to teach a course *at all*, much less to teach it at the same credit-hour level.

In a footnote to his Decision, the ALJ opined that the Nathan award does not relieve the College of its obligation to engage in effects bargaining with P-Fac and that the award "at most addressed the right of individual employees to contest teaching assignments through the grievance process" (ALJD at 21 n.22). The ALJ misinterpreted the Nathan award and its relevance to this case. The College does not contend that the award eliminated all effects-bargaining obligations. Similarly, it does not dispute that P-Fac represents the interests of its bargaining-unit members even when they are not employed by the College.

Nevertheless, the Nathan award is significant for several reasons. It establishes that P-Fac members are employed only for a finite period of time during a semester for which they are hired to teach (GC Ex. 54, p. 10). In between semesters for which they are hired, they are simply applicants for employment (*Id.* at 10, 12). The College has no obligation to hire any P-Fac member or assign any course to a P-Fac member in any given semester (*Id.* at 10-11). Instead, it has "sole discretion" to hire whom it pleases.

The arbitrator's decision and award constitutes the parties' agreed-upon and binding interpretation of employees' rights under the CBA. *See Fournelle v. NLRB*, 670 F.2d 331, 344 (D.C. Cir. 1982) ("To put it succinctly: '(a)n [arbitration] award interpreting a collective bargaining agreement usually becomes a binding part of the agreement and will be applied by arbitrators thereafter.'"); *Bethenergy Mines, Inc*., 308 NLRB 1242, 1245 n.11 (1992) ("The arbitrator's interpretation of the agreement is, in law, the agreement of the parties."). The ALJ's ruling that a curriculum change made before a P-Fac member is even hired somehow impacts his or her terms and conditions of employment is inconsistent with the CBA as clarified by the Nathan award. Given the nature of adjuncts' employment, any effect or impact of a credit-hour reduction or any other curriculum change is simply too remote or speculative to give rise to an effects-bargaining obligation.

II. The ALJ Erred in Finding the Union's Effects-Bargaining Request Was Not Untimely.

Because the credit-hour reductions did not change the terms and conditions of P-Fac members' employment, the College had no obligation to notify the Union of its proposed changes before they were implemented. In any event, the ALJ erred in finding that the Union did not receive adequate notice of the curriculum changes (ALJD at 20:42-20:45). The College published course credit-hour information in its course catalogue – a document available to the

general public as well as to the entire Columbia community – in March 2011, nearly five months before fall semester 2011 commenced (Tr. 528, 562). Then, in early May, all part-time faculty assigned to the courses for which there were credit-hour changes were individually notified, as required by the CBA, in their hiring letters (Resp. Exs. 13-16). The College was not required to give any formal notice of these decisions; the Union's actual notice was sufficient. *See Medicenter, Mid-South Hosp*., 221 NLRB 670, 678 (1975).

Regardless of when P-Fac had actual notice, the Union did not make its request to bargain the effects of credit-hour reductions for fall 2011 courses until December 20, 2011 (Tr. 531-32, 1061; GC Ex. 49), nearly four months after the semester began and over seven months after the College formally notified adjuncts of the changes to fall semester courses (*see* Facts section III(A)(1); Resp. Exs. 13-17). P-Fac's grossly tardy demand to bargain constitutes a clear bargaining waiver. *See, e.g, Medicenter*, 221 NLRB at 678-79; *Boeing Co*., 337 NLRB 758, 762 (2002)

III. The ALJ Erred in Finding the Union Had Not Waived Any Right to Bargain the Effects of the Credit-hour Reductions in the CBA.

Under the management-rights clause of the CBA, the College has an unambiguous and unqualified right to modify unilaterally its course offerings (Resp. Ex. 1, CBA Art. II). Furthermore, the CBA specifically addresses the effects on part-time faculty members of the College's exercise of that right. That is, it states, in relevant part, "[i]f any class routinely taught by a unit member is altered significantly, the unit member must be notified in a timely manner." (Resp. Ex. 1, Art. VII(2)(C). By agreement of the parties, this notice provision constitutes a unit member's sole remedy for the alteration of a course that the member has "routinely taught."[7]

[7] This section of the CBA also provides limited bumping rights in situations where the course alteration results in the bargaining-unit member becoming unqualified to teach the altered

The parties invoked this sole remedy for years without objection from P-Fac.

In Article XIV of the CBA, the zipper clause, the parties agreed that they each had the opportunity during negotiations to make demands and proposals on any subject and that the CBA itself is the sole agreement between them regarding wages, hours, and other terms and conditions of employment (Resp. Ex. 1, Art. XIV, p. 15). Thus, the Union acknowledged that it exercised its statutory right to bargain over the effects of course alterations when it negotiated this provision. Because the CBA specifically addresses the effects of course alterations on part-time faculty, the Union was not entitled to any further bargaining on that issue.

When, as here, a union agrees to a management-rights clause that gives the employer exclusive rights as well as other provisions that govern the effects of management's exercise of those rights, the NLRA requires no further bargaining on those issues. *See, e.g., Good Samaritan Hosp.*, 335 NLRB 901, 902 (2001). Instead, as the Court of Appeals for the District of Columbia has observed, "[t]he union may exercise its right to bargain about a particular subject by negotiating for a provision in the collective bargaining contract that fixes the parties' rights and forecloses further mandatory bargaining as to that subject." *Local Union No. 47, IBEW v. NLRB*, 927 F.2d 635, 640 (D.C. Cir. 1991); *accord Chicago Tribune Co. v. NLRB*, 974 F.2d 933, 937 (7th Cir. 1992). This principle applies equally to effects-bargaining. *See, e.g., Enloe Med. Ctr. v. NLRB*, 433 F.3d 834, 838-39 (D.C. Cir. 2005); *Allison Corp.*, 330 NLRB 1363, 1365 (2000).

In evaluating these cases, the D.C. and Seventh Circuits apply a "contract coverage" test to determine whether an employer may invoke contract language as a defense to an alleged

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course. The course alterations at issue in this proceeding – credit-hour reductions – do not present such circumstances.

failure to bargain over changes in mandatory subjects of bargaining. *Local Union No. 47, IBEW*, 927 F.2d at 640; *Chicago Tribune Co.*, 974 F.2d at 937. As discussed above, the CBA details the "effects" or "impact" of course alterations on part-time faculty (Resp. Ex. 1, Art. VII(1), p. 8). The Union exercised its statutory right to bargain over these terms of employment, "but it gave up that right, so far as the subjects comprehended" by the CBA are concerned by agreeing to the provisions of the CBA. *Chicago Tribune Co.*, 974 F.2d at 937.

Even applying the NLRB's "clear and unmistakable" waiver standard, rather than the D.C. and Seventh Circuits' "contract coverage" test, the GC's allegation that P-Fac had a right to effects bargaining still fails. *See, e.g.*, *Omaha World-Herald*, 357 NLRB 156 (2011); *accord Allison Corp.*, 330 NLRB at 1365. Clear and unmistakable evidence of the parties' intent to waive a duty to bargain "is gleaned from an examination of all the surrounding circumstances including but not limited to bargaining history, the actual contract language, and the completeness of the collective-bargaining agreement." *Id.* (citing *Columbus Electric Co.*, 270 NLRB 686 (1984)). The totality of the circumstances provides the clear and unmistakable evidence of the parties' intent to waive bargaining over the effects of course alterations.

In a footnote, the ALJ relied on the College's agreement to bargain the effects of credit-hour changes in the Photography department in Case No. 13-CA-46171 as evidence that the Union did not waive its right to bargain the impact of curriculum changes in the CBA (ALJD at 23 n.24). He also commented that the College subsequently proposed language for the successor CBA regarding the College's right to exercise its management rights without having to bargain the effects of those decisions (*Id.*). The ALJ's conclusion that these actions "would not have been necessary" if the existing agreement had an effects-bargaining waiver incorrectly presumes the College's reasons for taking these actions (*Id.*). The College's settlement of Case No. 13-

CA-46171 was just that – a settlement of a particular charge. Parties settle ULP charges all the time for a variety of reasons. They are encouraged to do so, and the fact that a respondent chooses to settle a charge is not an admission that the charging party's allegations have legal merit. The College's agreement to bargain the effects of credit-hour reductions in the Photography department was a resolution of that particular issue and had no broader implications. It certainly was not a concession by the College of any obligation to bargain the effects of curriculum decisions (Tr. 1133). On the contrary, soon after settling the charge, the College added proposed language to its draft of the successor CBA reiterating its management right to make curriculum decisions without an effects-bargaining obligation. The purpose of the proposed language was to affirm the College's legal obligations as they existed and avoid future legal dispute over the issue.

Because P-Fac clearly and unmistakably waived any right to bargain over the effects of course modifications on its members, the effects-bargaining allegation of the Complaint should be dismissed.

IV. The ALJ Erred in Finding Reductions to Credit Hours for Three Graduate-Level Courses Impacted Part-Time Faculty Members' Compensation.

Surprisingly, the ALJ found that the College failed to bargain the effects of credit-hour reductions for three courses that were cross-listed as graduate and undergraduate courses: Screenwriting Workshop (55-5326); Adaptation in LA (55-5327); and Acquiring Intellectual Property (55-5328) (Tr. 571-74; Resp. Exs. 11-12). The ALJ based his ruling on his determination that "changes to course credit hours affect the wages and terms and conditions of employment of P-Fac members" (ALJD at 21:12-21:14). However, it is undisputed that these credit-hour reductions affected only graduate students enrolled in the courses and not the part-time faculty member, Craig Gore, who taught them. Before and after the change, Gore was paid

for teaching three 3-credit courses (Tr. 574-75; Resp. Ex. 12 at pp. 14-16). Thus, the ALJ's determination that the College had an obligation to bargain with respect to these courses defies even his own logic and should be reversed. On a broader level, the nuances of the College's academic decisions regarding these courses illustrate how burdensome it would be to impose an effects-bargaining obligation on the College with respect to the hundreds of similar curriculum changes that occur each year.

V. The ALJ Erred in Finding the College Set Preconditions to Bargaining the Effects of Course Credit-Hour Reductions.

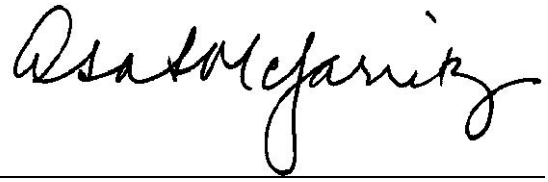
The ALJ's determination that the College required P-Fac to satisfy preconditions before it would engage in effects-bargaining is wrong both factually and as a matter of law (ALJD 21:2-21:9). As an initial matter, for the several reasons described above, the College had no legal obligation to bargain the effects of credit-hour reductions. Even so, in response to P-Fac's December 20, 2011 request to bargain effects, the College responded that it was willing to meet to discuss the issue. Because P-Fac members do not have any right to or reasonable expectation of future employment, the College did not understand what P-Fac wanted to bargain over or which faculty members it believed had been impacted. Therefore, the College asked P-Fac to provide this basic information (GC Ex. 52; Tr. 1061-63). The College's request was not in any way a precondition. The College was simply trying to figure out what P-Fac wanted to bargain over so that such bargaining could be meaningful and productive. The College acted in good faith, as evidenced by the fact that it met several times to bargain the effects of credit-hour reductions beginning in June 2012, even though it believed it had no obligation to do so (Resp. Exs. 60, 62, 64).

CONCLUSION

For all of the foregoing reasons, the portions of ALJ's Decision and Order to which the College takes exception and any corresponding remedies should be reversed. Further, the allegations in Paragraph IX of the Complaint should be dismissed.

Respectfully submitted,

Columbia College Chicago



By: _____
Lisa A. McGarrity

Lisa A. McGarrity
Abizer Zanzi
FRANCZEK RADELET P.C.
300 South Wacker Drive, Suite 3400
Chicago, Illinois 60606-6785
(312) 986-0300

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that she caused a copy of the foregoing to be served via electronic mail 10th day of May 2013, as follows:

Laurie M. Burgess
Burgess Law Offices, P.C.
One South Dearborn
Suite 2100
Chicago, IL 60603
lburgess@burgess-laborlaw.com

Daniel Murphy
Counsel for the General Counsel
NLRB Region 13
209 S. LaSalle Street, 9th floor
Chicago, IL 60606
Daniel.Murphy@nlrb.gov

Lisa A. McGarrity