

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

COLUMBIA COLLEGE CHICAGO

and

**Cases: 13-CA-073486
13-CA-073487
13-CA-076794
13-CA-078080
13-CA-081162
13-CA-084369**

**PART-TIME FACULTY ASSOCIATION AT COLUMBIA
COLLEGE CHICAGO – ILLINOIS EDUCATION
ASSOCIATION/NATIONAL EDUCATION ASSOCIATION**

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS TO
THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Counsel for the Acting General Counsel files this Answering Brief in Response to Respondent's Exceptions to the Administrative Law Judge's decision in this matter.¹

I. Introduction

An examination of the record does not support Respondent's 29 Exceptions concerning the overall determination by Judge Carter that the Respondent failed and refused to bargain with Pfac over

¹ Hereafter the National Labor Relations Board will be referred to as the "Board" and the National Labor Relations Act as the "Act." Respondent Columbia College Chicago will be referred to as "Respondent" or the "College." Part-Time Faculty Association at Columbia College Chicago Illinois Education Association/National Education Association will be referred to as "Pfac" or the "Union." With respect to the record developed in the case, the transcript will be designated as "Tr.;" the General Counsel's exhibits as "GCX;" and references to the ALJ's decision will be designated "ALJD" followed by the page and, if applicable, the lines of the page. Respondent's Exceptions Brief will be identified as "Respondent's brief" followed by the page, if applicable.

the effects of credit hours changes in the Respondent's school of fine and performing arts. Rather, the record contains credible evidence which fully supports the ALJ's findings that: 1) Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to bargain in good faith with the Union over the effects of its decision to reduce the course credit hours assigned to 10 classes in various departments in the school of fine and performing arts. (ALJD 23:1-23:8). Respondent's arguments also lack merit because Judge Carter's findings of fact, credibility resolutions, and conclusions of law appropriately rely upon the evidence and have ample legal support. Judge Carter was well within his discretion to make accurate credibility determinations and fairly judged Respondent's complete lack of critical documentary proof as insufficient to rebut the Acting General Counsel's case.

Accordingly, neither Respondent's Exceptions nor brief in support raise any issues of fact or law which call for a different decision than that reached by Judge Carter. Thus the recommendations of Judge Carter should be adopted in their entirety.

II Judge Carter Properly Found that Respondent Failed to Bargain in Good Faith over the Impact and Effects of its Reduction of Course Credit Hours Awarded to Ten Classes in the School of Fine and Performing Arts

In the context of Section 8(a)(5) of the Act, it cannot be seriously disputed that the curriculum changes developed and implemented by the Respondent involving reductions in the number of course credit hours assigned to a particular class impacts on the terms and conditions of employment of the part-time faculty and constitute a mandatory subject of bargaining. *Kendall College*, 228 NLRB 1083 (1977). In the instant case, the Acting General Counsel maintains that Respondent failed to provide Pfac with timely notice and an opportunity to bargain over the effects of the course credit hour

charges implemented by the school of fine and performing arts for the 2011-2012 academic year. *NLRB v. Katz*, 369 U.S. 736,743 (1962); *NLRB v. Borg-Warner Corp.*, 356 NLRB 342 (1958).

It is undisputed that the Respondent changed the course credit hours assigned to various classes in the school of fine and performing arts to be effective for the fall 2011–spring 2012 academic year. (R- 11, GCX-51.) According to Pfac President Vallera, the Union initially suspected that Respondent had changed course credit hours assigned various classes without notice in early December 2011, 3 months after the start of the academic year.² On December 20, 2011, the Union officially requested that the College provide it with information on the topic as well as demanded to bargain over the effects of the changes. (ALJD 18:22; GCX-49.) The Respondent finally provided the Union with a single sheet of paper describing the classes it had changed two months after the information was requested, and thereafter unlawfully demurred on beginning to bargain over the changes until June 2012 – 16 months after the changes were implemented. (ALJD 21:8-24.)

A. Respondent’s Arguments that Course Credit Hour Reductions do not Constitute a Material Change in Terms and Condition of Employment or that the Union failed to request bargaining in a timely manner are Contrary to Undisputed Record Evidence and Reasoned Analysis

Initially, Respondent asserts that the course credit hour changes implemented by the College did not constitute a change in unit members terms and conditions of employment sufficient to trigger an

² It should be noted that by December 22, 2011, when the Union first requested information concerning the issue, the Respondent had already been in the process of implementing those changes for the previous 9 months. (ALJD 19:14-18.) There is also no evidence in the record showing that the College had ever notified Pfac of the changes at any time prior to March 2011 or at any time prior to February 21, 2012 – almost a year after the College began the process of implementing the disputed changes. On their face, these undisputed facts prove that the Respondent failed and refused to notify and provide Pfac with an opportunity to bargain over the effects of curriculum changes before their implementation. Under current Board law, once an employer makes a decision to change terms and conditions of employment, the time is ripe for effects bargaining. At that point, an employer has a "duty to give pre-implementation notice to the union" to allow for meaningful effects bargaining. See *Los Angeles Soap Co.*, 300 NLRB 289, 295 fn. 1 (1990); *Willamette Tug & Barge*, 300 NLRB 282, 282-283 (1990). In this regard, Respondent clearly failed to meet its obligations.

obligation to bargain over any potential impact because “the specific curriculum changes challenged in the complaint were not new or noteworthy events; they were simply a continuation of a long standing practice.” (Respondent brief p. 18). In support of the argument, Respondent notes that the College has made hundred of changes to the 3000 course offerings over the years as part of the its business enterprise, and in that process of decision making, Pfac never interfered with or demanded bargaining over those changes. Thus, the College argues that it has historically made so many changes in its academic programs without interference from Pfac that the Union has waived, by past practice, *ad infinitum*, its right to bargain over the effects of any curriculum decisions made by the Respondent.

In support of this argument, Respondent cites to a set of cases for the proposition that routine operational changes made throughout a long period of time with the union’s knowledge and acquiescence are not violations of Section 8(a)(5) of the Act. *Post Tribune*, 337 NLRB 1279 (2002); and *Courier Journal*, 342 NLRB 1093 (2004). (Respondent brief p. 19). However, as properly noted by the ALJ, this argument is unavailing. In so finding, Judge Carter correctly explains in detail that:

[T]he College maintains that PFAC waived its right to request effects bargaining about the changes to course credit hours because the College had a past practice of making similar changes without any objection from PFAC. The College is correct that PFAC did not consistently request bargaining when the College made changes to its curriculum (including some significant curriculum changes, such as the College’s decision to lower the number of credits required for majors in the school of fine and performing arts). However, whatever PFAC’s practices might have been regarding curriculum changes, the record is clear that when it came to course credit hour reductions (as here), PFAC expected and demanded effects bargaining, as indicated by the Board charge and eventual 2010 settlement in Case 13–CA–046171 regarding course credit hour changes in the photography department.

Respondent’s theory of an overall waiver by inaction is further eroded by the fact that the College made the reductions in the credits assigned to the disputed classes a result of the implementation

of a strategic review by the school of fine and performing arts in the spring of 2010. (Tr. 576, 587; ALJD 17.) Such a strategic review is hardly a routine past practice at the College. Moreover, there is no dispute that the Union was not invited to participate in the review process nor was it involved in the administrative process of changing the course offerings (Tr. 627.) There is also no dispute that the Union was not notified of the ‘hundreds’ of curricula changes that were made by the College in 2010-2011 nor was it notified specifically that 10 classes had their assigned credit reduced at any time prior to February 2012 – over a year after the dean of the school of fine and performing arts had decided to make the changes. (Tr. 562.) There certainly can be no waiver by past practice, inaction, or implicit acquiescence by Pfac when the one-time strategic review of curriculum by the school of fine and performing arts resulted in implemented curriculum changes, including course credit reductions outside the knowledge of or input from the Union.

Under fundamental Board law, timely notice to the Union of a decision to make changes in terms and conditions of employment is required. *McClatchy Newspapers, Inc.*, 339 NLRB 1214, 1215 (2003). See also, *Oklahoma Fixture Co.*, 314 NLRB 958, 961 fn. 7(1994) (once an employer decides to implement a change in terms of employment, time is ripe for effects bargaining); *Burk Enterprises*, 313 NLRB 1263, 1268 (1994) (failure to give union pre-implementation notice of change in terms of employment excused only where employer shows emergency). Effects bargaining must also occur sufficiently before actual implementation of the decision so as not to present the union with *a fait accompli*. *Woodland Clinic*, 331 NLRB 735, 738 (2000); *Willamette Tug & Barge Co.*, 300 NLRB 282, 283 fn. 3 (1990). In the instant case, once the Respondent made the decision to implement the changes in course credit hours the time was ripe for effects bargaining. The Respondent then had a “duty to give pre-implementation notice to the union” to allow for meaningful effects bargaining. See, *Los Angeles Soap Co.*, 300 NLRB 289, 295 fn. 1 (1990). Moreover, even

assuming that the parties had a long standing practice of conducting periodic strategic reviews resulting in curriculum changes including reductions in credits assigned to courses, the Board has clearly held that past acquiescence to previous changes to terms and conditions of employment by a union does not operate to waive a union's right to demand bargaining over future changes. *Owens-Brockway Plastic*, 311 NLRB 519, 526 (1993).

The Respondent further attempts to avoid its obligation to bargain over the effects of course credit hour reductions by defining those changes as not being material, substantial or significant to the terms and conditions of bargaining unit employees.³ This argument is specious, and ignores the College's own extensive use of course credit hours to measure overall faculty workload on a semester-to-semester basis. The measure is akin to the use of hours to measure and compensate employees that are paid by the hour. The part-time faculty members at the school are limited by the current collective bargaining agreement to teaching 18 credit hours per academic year and no more than 12 credit hours per department. (R-1, p. 11.) Course credit hours are also used to measure how much work is being performed by full-time instructors. The parties also use accumulated credit hours to define when bargaining unit employees are granted rights under the contract's Appointment/Reappointment clause, Article VII. Additionally, accumulated credit hours are used to measure the limits for eligibility to teach under a full academic year appointment under Article VIII paragraph 5. In short, the parties at Columbia College negotiated a definition of course credit hours and then used it to define experience, workload and salary structure. The use and relative value of course credit hours is without question a

³ Of course, such an attempt to minimize the impact of curriculum changes on the Pfac bargaining unit erodes the College's own plea to the Board that affording Pfac with notice and the opportunity to bargain over the effects of curriculum changes would "effectively strip the College of its ability to exercise its academic freedoms and conduct its operations. The consequences would be calamitous." (Respondent Brief at 2.)

fundamental aspect of employment for academic teaching professionals and a mandatory subject of bargaining. See, *Kendall College* 288 NLRB 1205, 1212 (1988).

The Respondent further claims that the Union waived its right to bargain over the effects of the course credit hour changes to the 10 classes in the school of fine and performing arts by failing to request bargaining in a timely manner. (Respondent brief at 25-30.) The Respondent argues that the Pfac received adequate notice of the course credit changes after the changes were implemented and published on the College's OASIS course catalog in March 2011. (Respondent's brief at 26). In so doing, Respondent argues that the course catalog, published in March 2011, listed the classes in their new changed form, and, presumably the Union, would be able to compare and contrast the new course catalog with previous course catalogs, and parse out the changes made by the College. There is no claim that Respondent notified Pfac of the pending changes in curriculum prior their implementation in March 2011. The only 'notice' provided by the College consisted of the opportunity to discern changes from previous course catalogs which were made available to the public in general. Even assuming that the mere publication of the new course catalog constitutes notice to employees of the changes, such notice is not sufficient under Section 8(a)(5) of the Act. Notification to unit employees is not equivalent to providing notice to their collective-bargaining representative. As noted by the Board in *Bridon Cordage, Inc.*, 329 NLRB 258, 259, (1999):

There is a legal distinction between employees and their selected representative. As the Supreme Court stated in *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967), "*only the union may contract the employees' terms and conditions of employment.*" (Emphasis added.) See, *NLRB v. Walker Construction Co.*, 928 F.2d 695 (5th Cir. 1991) (respondent is required to notify the union itself, not just bargaining unit employees, of a new wage and health and benefits program); *NLRB v. Rapid Bindery, Inc.*, 293 F.2d 170 (2nd Cir. 1961) (notice of changes to employees is not an adequate substitute for notice to the union); *Ciba-Geigy Pharmaceuticals Div.*, 264 NLRB 1013, 1016 (1982), *enfd.* 722 F.2d 1120 (3d Cir. 1983) (most important factor in finding that the employer's announced change was a *fait accompli* was that it was made

without special notice in advance to the union and the union's officers became aware of the change merely because they themselves were employees); Accordingly, we find that the Respondent's May 9 notice to employees did not constitute notice to the Union of the May 23 layoff.

Id. The College never provided any notice to the Union prior to the implementation of the changes, and as a result the Union's December 22, 2011 demand to bargain over the effects of the changes was timely and did not operate as a waiver of the Union's right to bargain over the effects of the undisputed changes.

B. Judge Carter Properly Determined that Pfac did not Contractually Waive its Right to Engage in Effect Bargaining over Curriculum Changes

The Respondent steadfastly maintains through a confluence of contract language, including the management rights and zipper clause contained in the parties' expired collective-bargaining agreement, that it possesses an unqualified right to make unilateral decisions⁴ concerning curriculum changes in course offerings and is additionally excused from any statutory requirement to engage in bargaining over the impact and effects of those changes on bargaining unit employees. (Respondent's brief p. 26). As correctly noted by Judge Carter, this argument is unavailing, because "the College's own actions demonstrate that the existing collective-bargaining agreement does not contain a clear and unmistakable waiver of PFAC's right to engage in effects bargaining." (ALJD p. 22-23 fn 24).

It is well-settled that the Board will generally scrutinize contract language, including management rights and zipper clauses, to assure that it properly and specifically can be construed as a waiver for a specific unilateral action. It is fundamental that a waiver will not be inferred

⁴ It is undisputed that language contained in the parties CBA waives the right of the union to engage in decisional bargaining over curriculum and other matters involving course offerings.

"from general contract language that the parties intended to waive a statutory protected right unless the undertaking is explicitly stated." *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). Management rights clauses that are couched in general terms and make no reference to the particular subject in dispute will not likely be considered to have waived statutory bargaining rights. *Control Services, Inc.*, 303 NLRB 481,483-484 (1991). With respect to the specific topic of effects bargaining, the Board has noted,

[t]hat to meet the clear and unmistakable standard, "the contract language must be specific, or it must be shown that the parties alleged to have waived its rights consciously yielded its interest in the matter." *Allison Corp.*, at 1365. Furthermore, in addressing effect bargaining, the Board has held that it must be clear and unmistakable that effect bargaining is being waived. *Good Samaritan Hospital*, 355 NLRB 901, 902 (2001).

Rochester Gas and Electric Corporation, 355 NLRB 86 (slip op. at 20 (2010)). Further, the Board generally finds zipper clause language not to constitute a clear and unmistakable waiver. See, *California Newspapers Partnership*, 350 NLRB 1175, 1176 fn. 3 (2007); *Johnson-Bateman Co.*, 295 NLRB 180, 184 fn. 23 (1989). More specifically, while the Board has permitted a zipper clause to be utilized as a 'shield' against demands for bargaining, *GTE Automatic Electric Inc.*, 261 NLRB 1491, 1491-1492 (1982), it has specifically found that such clauses may not be used as a "sword" to accomplish a change in the status quo without an attending bargaining obligation. *Michigan Bell Telephone Co.*, 306 NLRB 281, 282 (1992). In the instant case, the Respondent clearly wishes to utilize language designed to shelter it from bargaining demands concerning its decisional freedom to make curriculum changes as it sees fits without the bother of bargaining with the Union about the effects.

Judge Carter properly found Respondent's waiver argument to be unreasonable for a variety of well documented and concise reasons. (ALJD p. 16.) Among those reasons, Judge Carter specifically

noted that it is the Respondent's "burden to show that a contractual waiver is explicitly stated, clear and unmistakable. In this regard, the Respondent failed to show such an explicit contractual waiver existed between the parties". *Id.* In its exceptions on this issue, Respondent continues to conflate arguments in support of its right to unilaterally make decisions concerning curriculum under the terms of its collective bargaining agreement as a justification for its refusal to bargain with the Union over the effects of its decisions to change a fundamental term and condition of employment. As stated in *Allison Corp.* 330 NLRB 1363, 1365 (2000):

While a contract clause may constitute a waiver of a bargaining right, it does not automatically follow that the same contract clause waives a party's right to bargain over the effects of the matter in issue. As the Board has stated: an employer has an obligation to give a union notice and an opportunity to bargain about the effects on unit employees a managerial decision even if it has no obligation to bargain about the decision itself." *Kiro*, 317 NLRB 1325, 1336 (1995).

Significantly, Respondent fails to cite any precise wording in the contract that addresses effects bargaining in general or the expressed waiver of the Union's right to bargain over the effects of a change in the work scheduling system in particular. Respondent also fails to provide any evidence that Pfac specifically waived its right to bargain over effects of scheduling in the past.

Additionally, the only historical evidence in the record shows that the Respondent proposed the inclusion of a specific effects bargaining waiver into the contract in an effort to gain an express contractual effects bargaining waiver. As properly noted by Judge Carter:

[T]he College asserted that PFAC waived its right to effects bargaining about course credit hour changes in the existing collective-bargaining agreement. That waiver argument falls short because the College's own actions demonstrate that the existing collective-bargaining agreement does not contain a clear and unmistakable waiver of PFAC's right to engage in effects bargaining. See *Kingsbury, Inc.*, 355 NLRB 1195, 1206 (2010) (explaining that it is the respondent's burden to show that the contractual waiver is explicitly stated, clear and unmistakable); see also *Omaha World Herald*, 357 NLRB No. 156, slip op. at 3 (2011) (endorsing

the proposition that clear and unmistakable evidence of a parties' intent to waive a duty to bargain is gleaned from all of the surrounding circumstances, including bargaining history, actual contract language and the completeness of the collective-bargaining agreement). Indeed, when the College and PFAC settled Case 13-CA-046171, the College agreed to bargain with PFAC about the effects of credit hour changes to courses in the photography department. Further, in light of that settlement, the College immediately proposed that PFAC waive its right to effects bargaining in the successor agreement. Those actions would not have been necessary if the existing agreement had an effects bargaining waiver.

(ALJD at 23 fn. 24.) Clearly, the evidence in this record does not show that the Union waived its right to effects bargaining over Respondent's managerial decisions either in the contract or by past practice. Again, as noted by the by the Board in *Allison*:

[I]n determining whether or not the Union waived its right to bargain by agreeing to certain contractual language the Board looks to the precise wording of the relevant contractual provisions....Here, the contractual language does not address the effects of any [work scheduling changes]. Thus, the language is insufficient to waive the Union's right to bargain over the effects [work scheduling changes]. Second, we note that a waiver may be inferred from extrinsic evidence of contract negotiations and/or past practice. The record here contains no evidence regarding contractual negotiations pertaining to the subject of effects bargaining in general, or bargaining regarding the effects of [work scheduling changes] specificallyAccordingly, we do not find any past practice of the parties that might constitute a "clear and unmistakable" waiver by the Union of its statutory right to bargain regarding the effects on the bargaining unit of the decision... We therefore find that the Union has not waived its statutory right to bargain regarding the effects on the bargaining unit of the decision to [change the work scheduling system).

Id at 1366.

There simply is no question under current Board law that once the Respondent made the decision to change the course credit hours assigned the 10 disputed classes, the time was ripe for effects bargaining. The Respondent then had a "duty to give pre-implementation notice to the union" to allow for meaningful effects bargaining. See *Los Angeles Soap Co.*, 300 NLRB 289,295 fn. 1 (1990); *Willamette Tug & Barge*, 300 NLRB 282,282-283 (1990). Respondent clearly failed to meet its obligations. Thus, by failing to give the Union prior

notice and an opportunity to engage in meaningful negotiations regarding the effects of its decision to change the credit hours assigned to 10 classes in the school of fine and performing arts, as properly found by Judge Carter, the Respondent violated Section 8(a)(5) and (1) of the Act.

C. Respondent's Claim that the College did not Set Preconditions to Bargaining the Effects of Course Credit Hour Reductions is Contrary to Undisputed Record Evidence

Respondent bluntly claims, without record support and in contradiction to the testimony of its own witnesses, that the College acted in good faith by requesting that the Union provide it with information about "which faculty members it believed had been impacted" by the change in course credit hours. (Respondent Brief at 30.) This claim is unsupported by the basic facts contained in the record.

The Union initially suspected that Respondent had changed course credit hours assigned various classes without notice in December 2011. (Tr. 123.) Since it is undisputed that Respondent itself had not notified P-fac that any changes had occurred, Union sent a written demand for information and demand for bargaining to Respondent on December 20, 2011. (GCX-49.) On February 21, 2012 the Respondent, through Susan Marcus, Associate Vice President for Student Affairs, replied to the information request by informing P-fac that Respondent had indeed reduced the course credit hours of 12 classes across six academic departments. (GCX-51.) She did not respond to the Union's request to bargain. Instead, Respondent replied through Interim Associate Provost Len Strazewski, to Vallera on February 21, 2012, that Respondent:

...does not believe that it has an obligation to engage in effect bargaining over this issue, but is willing to meet with P-fac to discuss the issue as well as its effects, of any.

Please provide us, in writing, with any proposal P-fac might have regarding the effects along with a list of unit members who P-Fac believes

have been affected. Once we have this information, we will contact you to schedule a meeting. (Emphasis added)

(GCX-52.) Strazewski testified that Respondent's management had unquestionably assigned teachers to the disputed classes and that the Union would be searching for information that Respondent had generated under the direction and control of its various departmental managers. (Tr. 1128-1129.)

Strazewski explained that the reason he conditioned bargaining on the Union's providing the Respondent with information Respondent already possessed was because he wanted the Union to "compile that information" because it was "their charge" (Tr. 1129-1130.) Strazewski further testified that the Respondent unquestionably took the position that it "did not have any obligation to bargain over [the] credit hour change." (Tr. 1131.)

P-fac President Vallera replied to Respondent's February 21, 2012 e-mail from Strazewski on March 23, 2012. In relevant part, the e-mail stated:

This is in reply to your email dated February 21, 2012, which was your response to p-fac's request dated December 20, 2011, to bargain the effects and the decision of the course credit hour changes. You requested that p-fac supply a list of the names of the affected part-time faculty in order for bargaining or even any discussion to proceed; however, the college would have these names, not us. We repeat our request for dates and times for when negotiations can resume. In addition, we repeat our request to bargain the decision and the effects of the credit hour changes. We need to meet face to face and need dates and times from the school in order to proceed. pfac has provided the school with dates and times to meet to continue to bargain since last October 2011.

At no point has p-fac agreed to bargain electronically. We will be prepared with a proposal to bargain the credit hour change at our meeting once the school agrees and sends to a date and time to meet.

(GCX-30.) Receiving no reply, Vallera reiterated her request to bargain over the course credit hour changes on April 13, 2013. Respondent, Strazewski, replied in an e-mail dated April 16, 2012. In pertinent part, Respondent stated:

The College reiterates that Columbia does not believe that any bargaining obligation exists. Curriculum changes are entirely within the purview of College's management rights, and none of the credit changes affected the wages, terms, and conditions of employment for any unit members. Notwithstanding, on February 21, 2012, I asked P-fac to furnish a list of unit members that P-fac claims were impacted by any alleged change. Since the College does not believe that any unit members were affected, it would make sense for P-fac to provide the College with any information it has concerning affected members. If P-fac does not have any names of any affected members, how can it claim members are affected? The College cannot fulfill any bargaining obligation unless and until the Union responds to Columbia's information request by specifying what it wants to bargain and who it believes was affected.

P-fac repeated this request in its April 13, 2012 e-mail. Due to the extensive backlog of P-fac-related matters pending with the College, it may be some time before the various issues can be addressed. Generally, requests will be responded to in the order in which they have been received.

(GCX-31.) On this record, therefore, there can be no factual debate over whether the College set the precondition of receiving information from the Union, information it admittedly possessed, before it would begin bargaining with the Union. It did so repeatedly. Not surprisingly, Judge Carter determined on this record that the Respondent had unlawfully insisted on an unlawful precondition and delayed meeting with the Union for months. (ALJD 21.) This finding is amply supported by the record and should not be disturbed.

D. Judge Carter's Proposed Order was Proper

Inasmuch as that portion of Judge Carter's recommended decision on the merits finding that Respondent violated Section 8(a)(5) of the Act by, inter alia, setting unlawful preconditions that the Union must satisfy before Respondent will engage in face to face bargaining or effects bargaining and by failing to bargain in good faith with the Union about the effects of Respondent's decision to reduce the number of credit hours awarded for certain courses, was fully supported by the record and long standing Board precedent, Judge Carter's recommended remedial action to address those violations,

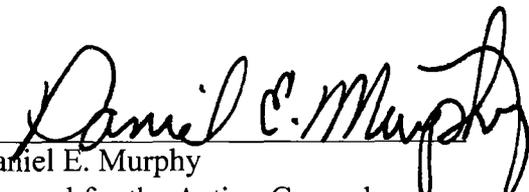
including his award of backpay and his ordering Respondent to engage in effects bargaining are entirely appropriate. Accordingly, Respondent's Exceptions to those portions of Judge Carter's Recommended Decision and Order (Exceptions 26 – 29) should be overruled.

III. CONCLUSION

For the foregoing reasons, Counsel for the Acting General Counsel respectfully requests that Respondent's Exceptions be overruled in their entirety and that Judge Carter's decision including his findings, conclusions, and recommendations, addressed by Respondent's Exceptions be adopted by the Board.

DATED at Chicago, Illinois, this 14th day of June, 2013.

Respectfully submitted



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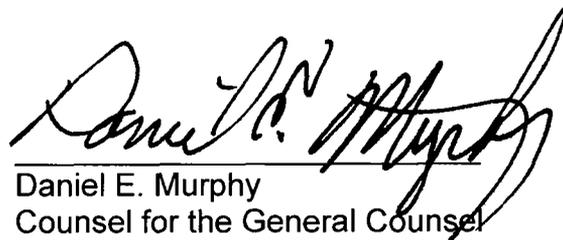
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **Counsel for the Acting General Counsel's Answering Brief to Respondent's Exceptions to the Decision and Recommended Order of the Administrative Law Judge** was electronically filed with the Board's Office of Executive Secretary on June 14, 2013 ; true and correct copies of that document have been served in the same manner to the parties listed below.

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