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 REPLY BRIEF IN SUPPORT OF EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Dated: June 28, 2013

Submitted by:

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Columbia College Chicago ("Columbia" or the "College") filed exceptions to Administrative Law Judge Geoffrey Carter's ruling that it violated Sections 8(a)(5) and (1) of the Act by failing or refusing to bargain with its part-time faculty union (the "Union" or "P-Fac") over the effects of its decision to reduce credit hours for ten courses, effective for the fall 2011 semester. The General Counsel (the "GC") and the Union filed responses to the College's exceptions, both of which utterly ignore the premise of the exceptions: that the general principles of effects bargaining do not apply to the facts and circumstances of this case. For the reasons explained in the College's original brief and below, Columbia's exceptions should be granted.

I. The Response Briefs Fail to Address the Unique Facts and Circumstances of This Case.

Both the GC and the Union repeatedly make the argument that because course credit hours are used to determine adjunct faculty members pay, changes in credit hours necessarily affect their terms and conditions of employment and the College must bargain over the effects of those changes. This argument is overly simplistic and indeed, misses the point of the College's appeal. As explained in the College's opening brief, the bargaining-unit members in this case are contingent employees who have no reasonable expectation that they will be employed in any given future semester, let alone any expectation that they will be assigned any particular course. A decision to change the number of credit hours offered for completing a course is made before the College has even determined whether an adjunct faculty member will teach the course, and therefore does not impact the terms and conditions of adjuncts' employment. Moreover, the curriculum changes at issue are part of routine academic decisions made every day at institutions of higher learning, and as a matter of law are not material, substantial or significant changes that

create an effects-bargaining obligation. Given the number and frequency of such changes, an effects-bargaining obligation would significantly disrupt the College's operations.

The GC relies on two Board decisions involving two higher-education institutions (both named Kendall College) to argue that the effects of credit-hour changes are mandatory subjects of bargaining. *See Kendall College*, 228 NLRB 1083 (1977) (cited at GC Br. at 2); *Kendall College*, 288 NLRB 1205 (1988) (cited at GC Br. at 6-7). The 1977 *Kendall College* decision does not support the GC's argument for a number of significant reasons. First, the union in that case represented only full-time faculty members who had a reasonable expectation of employment under their contract. *Kendall College*, 228 NLRB at 1087. Part-time faculty members who were employed on a per-course basis were explicitly excluded from the bargaining unit. *Id.* Thus, the GC cannot legitimately claim that Columbia's part-time faculty have the same bargaining rights as the full-time faculty members in *Kendall College*, given the different contractual nature of their employment. Second, the management decision at issue concerned Kendall College's alteration of its past practice of consulting with the full-time faculty union on schedule changes and its decision to change the start and end-times of the full-time faculty members' previously established daily work schedules. *Id.* Unlike the parties in that case, the College and P-Fac have no past practice of bargaining the effects of curriculum changes. Instead, after years of acquiescing in hundreds if not thousands of curriculum changes, the Union's insistence on effects bargaining is a recent phenomenon. Moreover, the curriculum changes at issue in this case are not in any way comparable to the management decisions in *Kendall College* because they were made well in advance of hiring decisions for the semester in which they became effective.

The GC's reliance on the 1988 *Kendall College* decision is equally unavailing. That case involved a college's decision to change the number of undergraduate and graduate credit hours that an prospective employee must complete before being eligible for hire as a faculty member. *Kendall College*, 288 NLRB at 1212. It had absolutely nothing to do with the issues in this case. The GC's claim that *Kendall College* stands for the general proposition that "the use and value of course credit hours" is a mandatory subject of bargaining is unfounded and misleading.

For its part, the Union acknowledges that its members are employed on a contingent basis (P-Fac Br. at 13), but makes the argument that credit-hour changes nevertheless impact adjuncts' employment because credit hours can affect their compensation and the accumulation of credit hours needed to obtain limited bumping rights under the contract (P-Fac Br. at 11, 13). This argument is conceptually flawed because it assumes that P-Fac members will be assigned to teach a course for which credit hours have been altered. As explained in the College's opening brief, there is no legitimate basis for this assumption. Columbia has sole discretion to determine who teaches a course -- including to assign it to a full-time faculty member (who have priority), a graduate student, an unrepresented adjunct, or a P-Fac member -- and decisions to reduce credit hours are made months before hiring decisions are made. If the College reduces the credit hours offered for a course, there is no guarantee or expectation that the College will assign that course to an adjunct faculty member, whether or not an adjunct previously taught the course. The GC's and P-Fac's insistence that the College has a duty to engage in pre-implementation effects bargaining under these circumstances does not make any practical sense. How can the College and P-Fac possibly bargain the effect of a curriculum change when neither party has any idea whether a bargaining-unit member will even be impacted by it? The College could simply make hiring decisions that guaranteed that no adjunct faculty member would be assigned a course that

had its credit hours reduced. The College would be well within its rights to do so, and the Union would have no standing to complain.

Notably, neither the GC nor the Union even attempts to address the issue of academic freedom as it applies to this case. As explained in the College's opening brief, the curriculum changes at issue are expressions of academic freedom afforded special protections under the law including the First Amendment. *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). This issue is critical to the understanding of the nature of the management decisions at issue in this case and cannot be ignored without the risk of infringing upon the College's ability to exercise its First Amendment rights.

II. The GC's and the Union's Arguments Against Waiver Lack Merit.

In its opening brief, the College argued that P-Fac waived any right to bargain the effects of curriculum changes in the CBA itself. Both the GC and the Union contest this argument by erroneously stating that the College did not identify language in the CBA establishing such a waiver. On the contrary, the College's brief points specifically to Article VII(2)(C) of the CBA which expressly provides a remedy for the alteration of a course that a faculty member has routinely taught, and to its corresponding zipper clause in Article XIV (Resp. Ex. 1). As explained in the College's opening brief, these provisions, taken together, constitute a waiver on the issue of effects bargaining over curriculum changes.

III. The Union's Argument Regarding the Three Graduate-level Courses Lacks Any Support in the Record.

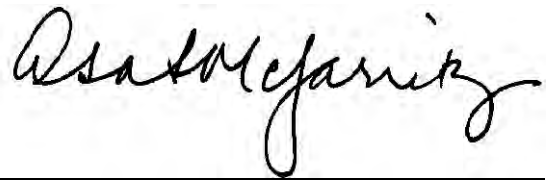
As explained in the College's opening brief, the ALJ's decision that the College failed to bargain the effects of the credit-hour reductions for three courses that were cross-listed as graduate and undergraduate courses contradicts his own reasoning, and is thus an obvious error. The credit-hour reductions affected only the number of credits that would be awarded towards completion of a graduate degree; they did not change the number of credit hours used for determining the pay of the adjunct faculty member who was ultimately assigned to teach the courses. The GC sensibly does not attempt to refute this demonstrable reality. The Union, on the other hand, speculates that the reduction in credit hours could still impact adjunct faculty members if only graduate students happened to enroll in the course at some point in the future. P-Fac's conjecture is unsupported by any evidence in the record, and only serves to illustrate the remote and speculative nature of credit-hour alterations on adjuncts. The credit-hour reductions in the three Fiction Writing courses did not even arguably impact adjuncts' pay, regardless of who enrolled in the course.

CONCLUSION

For all the reasons stated here and in the College's Brief in Support of its Exceptions, 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



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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 28th day of June 2013, as follows:

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