

STATE OF CONNECTICUT  
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the matter of

BOARD OF TRUSTEES, CONNECTICUT  
STATE UNIVERSITY

**-and-**

CONNECTICUT STATE UNIVERSITY,  
AMERICAN ASSOCIATION OF  
UNIVERSITY PROFESSORS (AAUP)

Case No. SPP-12,009

Decision No. 2948

September 30, 1991.

A P P E A R A N C E S :

Naomi R. Stonberg, L.R. Consultant  
for the Board of Trustees

Paul E. Wenger, President and  
William S. Zeman, Esq.  
Counsel for the AAUP

DECISION AND DISMISSAL OF COMPLAINT

On March 14, 1989, the Connecticut State University Professors (the Complainant) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Board of Trustees for the Connecticut State University (the Respondent) had engaged and was engaging in practices prohibited by the Act Concerning Collective Bargaining for State Employees (the Act) in that the Respondent, by Resolution on September 9, 1988, had assigned bargaining unit work to non bargaining unit employees.

After the requisite preliminary steps had been taken, the parties appeared before the Labor Board for a hearing on October 2, 1990. Both parties were represented and were provided full opportunity to adduce evidence, examine and cross examine witnesses and make argument. After the Complainant completed its case in chief, the Respondent moved to dismiss the complaint, arguing that the Complainant had failed to make out a prima facie case. The Labor Board reserved decision on the Respondent's motion to dismiss. Both parties filed post hearing briefs.

On the basis of the whole record before us, we make the following findings of fact, conclusions of law and dismissal of complaint.

### FINDINGS OF FACT

1. The Respondent is an employer within the meaning of the Act.

2. The Complainant is an employee organization within the meaning of the Act and at all times material has been the exclusive bargaining representative of instructional faculty employed by the CSU with exclusions not here relevant.

3. The collective bargaining agreement between the parties, effective from August 28, 1987 through August 23, 1990, defines the unit as follows :

2.1 The Board hereby recognizes the CSU-AAUP, pursuant to certification by the Connecticut State Board of Labor Relations in case nos. SE-3271, SE-3272, SE-3334, and SE- 7671, as the exclusive bargaining representative for the members of the Instructional Faculty Bargaining Unit of the Connecticut State University for all matters of collective bargaining as set forth in **Secs. 5- 270 - 5- 280 C.G.S.** The bargaining unit shall consist of all full-time and part-time instructional faculty, including department Chairpersons and Academic Division Directors, academic researchers, librarians and counselors, and exclude all Deans, Vice Presidents, all other managerial and confidential personnel pursuant to **Secs. 5- 270 - 5-280 C.G.S.** and all other employees.

(Exh 2)

4. On January 12, 1979, the Respondent passed a resolution concerning additional compensation for management personnel. This resolution reads as follows:

WHEREAS, From time to time management personnel of the State Colleges are requested to perform for limited periods of time research, consulting services, or other activities for which they are uniquely qualified but which are beyond the scope of their normal duties, and

WHEREAS, Such activities, unlike teaching regularly scheduled courses, can be accomplished at times which can be flexibly selected and adjusted so as not to conflict with their regular duties, and

WHEREAS, Such functions can enhance the professional skills of management personnel in their professional fields and simultaneously enhance the reputation and stature of their colleges, and

WHEREAS, Federal grants and other sources of funding are available to support such activities, now, therefore, be it

RESOLVED, That with the approval of the College President or, in the case of the Executive Staff or College Presidents, with the approval of the Executive Director, management personnel may be compensated for performance of research, consulting, and other activities which are beyond the scope of their normal duties, provided that such activities can be accomplished on personal time in such a way as not to conflict with normal duties and provided further that in every case payment is made directly to the management person or, if payment to the management person is made by the College or the Board of Trustees, the College or the Board of Trustees shall be reimbursed for such payment by a funding source other than the State of Connecticut, and be it

RESOLVED, That, this Resolution notwithstanding, management personnel may not be compensated for teaching regularly scheduled courses in the established curricula of the colleges.

(Exh.3)

5. On September 9, 1988, the Respondent passed "a resolution entitled Addition of Article 7.11 Teaching and Consulting to the personnel Policies for Management Personnel and Confidential Professional Personal Version **1.1**" which is outlined below:

WHEREAS, The Personnel Policies for Management Personnel and Confidential Professional Personnel carry no provision concerning outside teaching, consulting or related activities, and

WHEREAS, A new provision concerning outside teaching, consulting and related activities will increase the usefulness of the Policies to the benefit of Connecticut State University, now, therefore be it

RESOLVED, That a new Article 7.11 concerning teaching, consulting and related activity as written in the attached proposal shall be inserted in the Policies, and be it further

RESOLVED, That SCR#79-6 is herewith repealed.

(Exh 4)

6. Historically, members of the administrative non faculty unit have taught courses at the University. (Tr.36,40)

7. At the time the September 9, 1988 resolution passed, AAUP President Paul Wenger contacted Dr. David Newton and expressed his concern regarding the new policy. Newton responded that he didn't believe the resolution made any substantive change. (Tr.36)

8. The Complainant alleges a number of contract articles it feels are relevant to this dispute. These are as follows:

4.6 Part-time members shall be assigned to available courses depending on credentials, experience, and teaching merit, as evaluated by the department and approved by the dean. When part-time members have similar credentials, experience, and teaching merit, assignments shall be made based on length of service to the department.

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4.7.1 Following review of departmental recommendations, the President or designee shall appoint part-time members with no prior employment at the particular university to a part-time classification.

xxx

5.13 The Board endorses the concept of participation of instructional faculty in the process of selection of academic administrators. The role of the instructional faculty in selection of an administrator should be commensurate with the legitimate faculty interest in the position.

xxx

5.15 Except as specifically provided in other sections of this Agreement, the academic department is the structure through which the instructional faculty shall participate in academic and personnel matters.

### XXX

5.17 The department shall have responsibility for the content and development of courses, curriculum and programs of study within its discipline, research and service, and for evaluation of the performance of all department members, subject to all other provisions of this Agreement. Curricular changes involving individual courses and departmental programs shall be initiated at the departmental level and departmental programs shall be initiated at the departmental level following procedures of review as established by the Senate and approved by the President. Curricular changes involving core curricula shall be initiated in the appropriate university-wide curricular body and shall follow established procedures of that body. Program review recommended by a department, University Curriculum Committee, Senate or any member of the University administration shall directly involve the affected department(s) at the earliest practicable time. Class size limits shall be determined on sound educational principles by the appropriate academic Dean in consultation with the department. Under normal circumstances the department shall have primary responsibility for individual teaching assignments within the department. The academic department may establish and administer policies on grading and admissions to and academic standings in its programs, providing such policies are consistent with **university-wide** policies established by the Senate and approved by the President.

### CONCLUSIONS OF LAW

1. Unilateral assignment of bargaining unit work to non bargaining unit personnel will constitute a violation of the Act when the work in question is by law required to be performed exclusively by bargaining unit personnel or by practice has been exclusively performed by bargaining unit personnel, and the collective bargaining agreement provides no justification for the unilateral change.

2. Where work has been by practice shared between bargaining unit and non bargaining unit personnel, the continuation of non bargaining unit personnel performing such work results in no change in a condition of employment.

3. There has been a continued practice of having administrative personnel perform teaching duties. The continuation of this practice does not constitute a violation of the Act.

## DISCUSSION

We have consistently held that an employer's unilateral change in an existing condition of employment that is a mandatory subject of bargaining will constitute a refusal to bargain in violation of the Act unless the employer proves an adequate defense. *Town of Hamden*, Decision 2394 (1985); *Town of Newington*, Decision No. 1116 (1973). To make out a prima facie case on this theory the Union must show the existence of a fixed practice prior to the alleged change and a clear departure from that practice without bargaining *Redding Board of Education*, Decision No. 1922 (1980). It is well settled that the contracting out or transferring of work performed by bargaining unit members concerns a mandatory subject of bargaining when the transfer is to non bargaining unit personnel. *City of Waterbury*, Decision No. 1436 (1976). Where, however, the work has historically been performed by both bargaining unit and non bargaining unit personnel, the continuation of that practice constitutes no violation of the Act. *Hartford Board of Education*, Decision No. 1938 (1980) ; *Hartford Board of Education*, Decision No. 2573 (1987).

In the present case, the sole basis for the Union's complaint was that the September 9, 1988 resolution authorized the performance of bargaining unit work by non bargaining personnel.<sup>1</sup> This resolution unlike the January 1, 1979 resolution expressly provides that management personnel could perform outside teaching functions. However, this resolution did not ban teaching by management personnel, it merely forbade management personnel from being compensated for teaching a regularly scheduled course in the established curriculum. Therefore, we see no change between the September 9, 1988 resolution and the January 12, 1979 resolution in regard to management personnel teaching courses at the University. More importantly, the practice has not changed. The uncontroverted evidence reveals that members of the administrative bargaining unit have over the years been teaching courses without

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<sup>1</sup> The Union has raised a number of issues in its brief which were not a part of its original complaint. For example, it alleges the CSU action constitutes a repudiation of contract; it also argues that subcontracting is not applicable to the facts presented here thus attempting to disavow its original complaint.. While we are liberal in allowing a complaining party to amend its complaint at the hearing and will even conform the pleadings to the proof where it is clear that the responding party had notice and opportunity to respond to the alternative theory, no **such opportunity** existed here *Town of Manchester*, Decision No. 2900 (1991). We will therefore not consider these arguments. **§10-153e-22** Regulations of Ct. State Agencies.

compensation with the full knowledge of the AAUP. Clearly, there has been a practice of shared work. The fact that management personnel have not been compensated for these teaching duties does not in any way render our shared work doctrine inapplicable as the AAUP suggests. Where the work in question has not been by practice exclusively the work of the bargaining unit, it is irrelevant whether the non bargaining unit personnel performing the work have been compensated for it. We conclude that the AAUP has failed to make out its prima facie case and accordingly dismiss the complaint.

ORDER

By virtue of and pursuant to the powers vested in the Connecticut State Board of Labor Relations by the Act Concerning Collective Bargaining for State Employees, it is hereby

ORDERED, that the complaint herein be, and the same hereby is, dismissed.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

By s/Patricia V. Low  
Patricia V. Low

s/Susan Meredith  
Susan Meredith

s/Ann McCormack  
Ann **McCormack**

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