

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

DECISION NO. 5123

STATE OF CONNECTICUT
DEPARTMENT OF LABOR

MARCH 16, 2020

-and-

A & R EMPLOYEES UNION, AFT-CT,
LOCAL 4200

Case No. SE-33,496

IN THE MATTER OF

STATE OF CONNECTICUT
DEPARTMENT OF LABOR

-and-

A & R EMPLOYEES UNION, AFT-CT,
LOCAL 4200

Case No. SE-33,497

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

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for the State

Attorney Eric Chester
for the Union

**DECISION AND DISMISSAL OF OBJECTIONS
AND MODIFICATION OF UNIT**

On December 19, 2018, the Administrative & Residual Employees Union Local 4200, AFT-CT (the Union) filed petitions with the Connecticut State Board of Labor Relations (the Labor Board), consolidated January 10, 2019, seeking to modify an existing bargaining unit of certain employees of the State of Connecticut, to include the Department of Labor (the State or DOL) job classifications of Unit Director (SE-33,496) and Director of Unemployment Insurance Field Services and Adjudications (SE-33,497).

After the requisite preliminary steps had been taken, the parties entered into a partial stipulation of exhibits and the matter came before the Labor Board for a hearing on eight dates between March 25, 2019 and September 4, 2019.¹ All parties appeared, were represented by counsel and allowed to present evidence, examine and cross-examine witnesses and make argument. The parties submitted post-hearing briefs on November 15, 2019. Based on the entire record before us, we make the following findings of fact, dismiss the objections to the petition, and modify the unit.

FINDINGS OF FACT

1. The State is an employer within the meaning of the Act.
2. The Union is an employee organization within the meaning of the Act and at all relevant times has represented the NP-5 bargaining unit, which consists of State employees holding administrative and professional positions in various State departments and agencies, including DOL. (Ex. 23).
3. The DOL is organized into divisions, units, and programs located at a central office in Wethersfield, certain field units, and five American Job Centers (AJCs).² For administrative purposes, DOL units and AJCs are divided into three groups, each of which is managed by the DOL commissioner or one of two deputy commissioners.
4. The Director of Unemployment Insurance Field Services and Adjudications (Adjudications Director) oversees the Adjudications Unit, a support unit of the UI Benefits Division which processes disputes over eligibility for benefits and issues approximately 85,000-90,000 decisions per year. The job description for Adjudications Director (Ex. 6) describes the duties of the position, in relevant part, as follows:

¹ March 25, 2019, March 27, 2019, April 1, 2019, May 13, 2019, May 15, 2019, June 3, 2019, June 24, 2019, and September 4, 2019.

² The AJCs are located in Hamden, Montville, Waterbury, Hartford, and Bridgeport and provide services to job seekers in each region.

Directs the staff and operations of the section ... coordinates, plans and manages section activities; formulates program goals and objectives; develops or assists in the development of related policy...

...

5. The Adjudications Director is subject to the Performance Assessment and Recognition System (PARS) established by the Department of Administrative Services. Incumbents in positions subject to PARS must set personal goals and objectives for the upcoming year, regularly review progress and participate in an annual review. All DOL employees are annually evaluated for job performance. Each employee is rated by his/her immediate supervisor and the evaluation is then submitted to and reviewed by successive higher classifications. The Adjudications Director is the final signature on employee evaluations in his unit. (Ex. 9).

6. The Adjudications Director does not have the authority to hire or fire personnel but does, however, identify which vacancies need to be filled, sit on hiring panels, recommend candidates, and train or arrange training for subordinates. The Adjudications Director cannot impose discipline greater than a reprimand and plays no role in administering collective bargaining agreements.

7. At all times relevant hereto, Ken Petow (Petow) has been the Adjudications Director.³ Petow reports to deputy commissioner Daryle Dudzinski (Dudzinski) and oversees 50 adjudicators and supervisors in the central office and two field units. Petow is consulted on difficult cases, responds to staff inquiries, and reviews eligibility adjudications for timeliness and quality. Petow has issued memoranda to staff and participants in various DOL-administered programs summarizing applicable statutes and regulations. In addition, Petow is involved in projects to downsize UI "call centers", implement the Statewide Information Data Exchange (SIDES) automated claims processing system, and streamline the adjudications hearing process. Petow also serves on the UI Integrity Advisory Committee, which works to reduce benefits fraud and the National Association of State Workforce Agencies (NASWA), which is a federally-funded coalition of state labor departments.

8. There are 13 Labor Department Unit Director (Unit Director) positions, five of which are assigned to regional AJCs. The job description for the Unit Director classification (Ex. 7) describes the duties of the position, in relevant part, as follows:

FIELD UNIT: Directs staff and operations ... plans, coordinates and manages comprehensive employment services programs ... formulates ... goals and objectives and develops policies and procedures to achieve them ...

...

9. Unit Directors are subject to PARS. Unit Directors do not have the authority to hire or fire personnel, but may participate in the hiring process, recommend candidates, provide training for subordinates, and may or may not be the final signature on employee evaluations in their units. Unit Directors cannot impose discipline greater than a reprimand and play little or no role

³ Petow is also the head of the Unemployment Insurance Benefits Division. (Ex. 8, p.1).

in administering collective bargaining agreements. Other Unit Director functions differ depending on the unit that the position is assigned to oversee. (Exs.10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22).

10. Regional AJCs are designed to be “one-stop” centers for reemployment and workforce development services, including UI claim filing assistance, career counseling, and job training. Each AJC is overseen by a regional Workforce Development Board (WDB) which prepares an annual plan containing the board's priorities and goals and contracts with service providers. Many of the services provided by AJCs are funded through federal legislation and programs such as the Workplace Innovation and Opportunity Act (WIOA), Wagner-Peyser Act, the Trade Act, the Reemployment Services and Eligibility Assessment (RESEA) program, and the Jobs First Employment Services (JFES) program.⁴

11. Victor Fuda (Fuda)⁵, Lisa Arends, Sandra Mello, Angel Rivera, and Stephen Romano are Unit Directors of the five regional AJCs. Fuda is the Unit Director at the Southwest Regional AJC in Bridgeport and oversees the day-to-day-operations which include managing 17 staff members, ensuring adequate coverage, fielding questions, assisting customers, and requesting additional technology and equipment as needed. Fuda also helped to develop a statewide AJC conduct policy. On one occasion, Fuda heard a grievance at the first step of a contractual grievance procedure. Fuda has been a voting member of the Bridgeport WDB⁶ since 2001 and attends WDB meetings for approximately ninety minutes each quarter.

12. Prior to 2016, Laurie Colbourn (Colbourn) was Unit Director of the WIOA Administration Unit, which monitors AJCs to ensure that they are complying with the Act’s requirements. In 2016, Colbourn transferred to another unit and Mark Polzella became the Unit Director. Responsibilities of the position include approving contracts between WDBs and approved service providers, authorizing payments to such providers, and reviewing requests for additional funding and quarterly financial reports filed by WDBs. Colbourn and Polzella collectively issued no less than 24 administrative directives and memoranda notifying WIOA program participants of new or updated policies and regulations issued by the federal government. At all relevant times, the WIOA Administration Unit has been staffed by approximately 20 employees, including dedicated teams that monitor “programmatic and fiscal”

⁴ The WIOA, 29 U.S.C. § 3102 *et seq.*, provides federal funding for DOL-administered programs designed to help job seekers access employment, education, training, and support services needed to succeed in the labor market. The Wagner-Peyser Act, 29 U.S.C. § 49 *et seq.*, provides funding to the DOL to provide universal access to labor exchange services to job seekers, including job search, referrals and placement assistance, and reemployment services. The Trade Act, 19 U.S.C. § 2271 *et seq.*, as amended, established Trade Act Assistance (TAA) to assist certain workers displaced due to foreign competition. RESEA is a federal program established through the U.S. Department of Labor and administered by the DOL to identify “UI claimants profiled as most likely to exhaust benefits and transitioning veterans ...” and afford such claimants “entry into the full array of reemployment services available at the AJCs”. JFES “provides ... employment-related services to recipients of Temporary Family Assistance (TAF), Connecticut’s federally-funded cash assistance program for low-income families ...” (Exs. 32, 46).

⁵ Fuda was the only AJC director who testified and the record contains no evidence concerning the duties of Arends, Mello, Rivera, and Romano.

⁶ The Bridgeport WDB consists of 20-50 members, including a 12 member executive board.

compliance with federal regulations and guidelines. (Exs. 24, 25, 26, 27, 28, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42).

13. Since 2016, Colbourn has been the Unit Director of the P&A Unit which compiles, evaluates, and distributes performance and demographic data related to DOL programs and services funded by the WIOA, TAA, and other legislation. Colbourn oversees 8 staff members who review data with program administrators for accuracy, identify potential compliance issues, and file 1-5 reports, depending upon the applicable program,⁷ per year with the U.S. Department of Labor (USDOL). Colbourn helped establish a memorandum of understanding between DOL and other state agencies governing the exchange of sensitive data under the WIOA. (Exs. 8, 32).

14. At all times relevant hereto, Linda Ladas (Ladas) has been the Unit Director for Employment Services - Operations (ESO) Unit which ensures that AJCs deliver required services and meet USDOL standards for federal programs, including the Work Opportunity Tax Credit (WOTC), RESEA, and Wagner-Peyser. Ladas supervises three employees and advises WDBs, program participants, and others of changes to program requirements. For example, Ladas, Petow, and others jointly issued a memorandum regarding RESEA requirements. (Exs. 8, 32, 46).

15. At all relevant times, Kathleen Marioni (Marioni) has held the position of Unit Director of the Office of Work Force Competiveness (OWC). Marioni and her staff review WDB reports under the WIOA prior to submission to the federal government and identify potential grants to fund DOL workforce development initiatives. Marioni spends about half of her time serving on the Connecticut Employment Training Commission (CETC)⁸ ensuring that it supports the governor's workforce development initiatives. In addition, Marioni is Connecticut's team leader on the Occupational Licensing Policy Learning Consortium. In that capacity, Marioni issued a plan for reducing state licensing requirements which create unnecessary barriers to employment and participated in developing related legislation. Marioni is also a member of the National Governors Association State Collaborative Consortium to Understand and Support the On-Demand Workforce and Connecticut's Work-Based Learning Academy (CWBLA). (Exs. 59, 60, 61, 62, 63).

16. At all times relevant hereto, Deborah Beaudoin (Beaudoin) has been the Unit Director of the Agency Security Unit which is staffed by three employees and continuously audits DOL units to ensure that they are in compliance with USDOL and Internal Revenue Service (IRS) security policies for protecting Personally Identifiable Information (PII). Beaudoin issues memoranda to advise DOL units of new or updated security procedures,⁹ investigates security

⁷ USDOL dictates reporting guidelines and specifications.

⁸ The CETC is a state commission and its responsibilities include reviewing employment and training programs, implementing the WIOA, overseeing a plan for the continuous improvement of WDBs, and developing job training programs. *See* Conn. Gen. Stat. § 31-3h.

⁹ Beaudoin testified that the USDOL and IRS supply PII to the DOL and periodically issue publications dictating security policies, goals and objectives, and reporting requirements.

breaches, and generally assists units with security issues. If Beaudoin determines that a unit is non-compliant, she issues a proposed action plan to the director that sets a timetable for correcting deficiencies.

17. Christopher Gilly (Gilly) holds the position of Director for the UI Benefit Payment Control Unit but for the past 6 years has worked exclusively as Connecticut's "team leader" on a multi-state project to develop a uniform automated platform for processing unemployment insurance claims. The decision to automate the UI claims process was made at the executive level of the DOL and the agency utilized an outside project manager to create a modernization plan and manage the project, and a steering committee to set project timelines. Gilly's role¹⁰ involves adjusting the prototype system for use in Connecticut. Specifically, Gilly works with UI benefits experts and 16-20 project testers (state employees borrowed from other departments) to identify "gaps" between the prototype system's current capabilities and the state's unique operational needs. Gilly also sits on the consortium's Operational Control Board which votes on proposed changes to the system. The anticipated completion date for the modernization project is May 2021. (Exs. 8, 21, 29, 31).

18. At all times relevant hereto, Stephen Dumbrowski (Dumbrowski) has been Unit Director of the Employee and Organizational Development (EOD) Unit which creates staff training and educational programs for DOL employees. Upon request for training by a unit cost center manager,¹¹ Dumbrowski and/or his staff produce a curriculum¹² and either personally conduct the training, hire an outside vendor, or find a DOL employee with expertise in the subject matter to be presented. Dumbrowski currently assists the agency with succession planning, and serves on the "Statewide Process Improvement Steering Committee", a state program for reducing workplace inefficiency. In addition, Dumbrowski co-chairs the "Connecticut Learns and Works Symposium" which hold events for educators, counselors, training specialists, and business people interested in career and workforce development issues.¹³ (Exs. 5, 8, 43, 44).

19. At all times relevant hereto, Michael Bartley (Bartley) has been the Unit Director of a unit consisting of eight employees which monitors the use of funds allocated to WDBs under the JFES program. Bartley reviews proposed contracts between WDBs and service providers, objects to terms that he finds questionable, finalizes contracts, reviews service provider invoices, and approves payments. Bartley and a staff member are presently working with an outside

¹⁰ Gilly testified that "zero" percent of his job involves formulating policy.

¹¹ A cost center manager is the individual in each DOL unit responsible for staffing and budget.

¹² Dumbrowski testified that he primarily uses educational materials from other states which he tailors to meet the requesting unit's needs.

¹³ Dumbrowski testified that he intermittently devotes a few minutes per day on agency succession planning, although the time may temporarily increase in the coming months, spends 1-10 hours per week on the Steering Committee identifying potential "lean process improvements" (i.e., methods to decrease waste), and that his CL&W activities are largely limited to attending monthly breakfast meetings.

vendor to finalize changes to DOL’s automated “CTHires” case management system. (Exs. 52, 53, 54).

DISCUSSION

The Act defines “[m]anagerial employee” as

any individual in a position in which the principal functions are characterized by not fewer than two of the following . . .

- (1) Responsibility for direction of a subunit or facility of a major division of an agency or assignment to an agency head's staff;
- (2) development, implementation and evaluation of goals and objectives consistent with agency mission and policy;
- (3) participation in the formulation of agency policy; or
- (4) a major role in the administration of collective bargaining agreements or major personnel decisions, or both, including staffing, hiring, firing, evaluation, promotion and training of employees.

Conn. Gen. Stat. § 5-270(g). The phrase “principle functions” “connotes that the enumerated functions must be the position’s most important, consequential or influential functions.”

Department of Public Safety v. State Board of Labor Relations, 296 Conn. 594, 602 (2010). Relevant considerations in determining whether an enumerated principle function is involved include, but are not limited to:

the amount of time that the employees in the position devote to each function, whether an employee's ability to carry out an enumerated function is a prerequisite for being hired to the position and whether the failure of an employee in the position to carry out an enumerated function would have important consequences to the employer.

Id., 296 Conn. at 603. Lastly, managerial employee principle functions are to be distinguished from those that characterize a “supervisory employee” under Section 5-270(f):¹⁴

¹⁴ Conn. Gen. Stat. § 5-270(f) states, in relevant part:

“Supervisory employee” means any individual in a position in which the principal functions are characterized by not fewer than two of the following: (1) Performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees; (2) performing such duties as are distinct and dissimilar from those performed by the employees supervised; (3) exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing the provisions of a collective bargaining agreement; and (4) establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards, provided in connection with any of the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment . . .

Supervisors supervise the work of subordinates; managers head an agency subunit or facility. Supervisors apply agency policies; managers formulate those policies. Supervisors enforce collective bargaining agreements; managers play a major role in administering them. Supervisors establish and implement employee performance standards; managers decide major personnel decisions. In short, supervisors are equivalent to foremen and lower management; managers to middle and upper management.

State Management Association of Connecticut v. O’Neill, 204 Conn. 746, 759 (1987), quoting court below at 40 Conn. Supp. 381, 390 (1986). As the objecting party, the State has the burden of proof. ***City of Norwich***, Decision No. 948, p.4 (1970) (“The burden of proof rests upon the party filing the objections...”); see also ***Town of Plymouth (A. Dominy)***, Decision No. 4985 (2017).

The State contends that Petow, Beaudoin, Ladas, Polzella, Colbourn, and Bartley perform all four of the enumerated functions in Section 5-270(g) of the Act. At the outset, we disagree as to the fourth enumerated factor. None of the petitioned-for classifications play a role in “major personnel decisions”. With regard to this function, we look to the language of the statute for the legislature’s intent and “use of the conjunctive ‘and’ mandates a major role in employee staffing, hiring, firing, evaluation, promotion, *and* training.” ***State of Connecticut Dept. of Transportation***, Decision No. 5114 p. 8 (2020). In this case, none of the classifications at issue perform all four of these personnel functions. Although Unit Directors may submit a request to fill a vacant position, sit on interview panels, recommend candidates, and impose the lowest levels of discipline, *they have no authority to hire or fire personnel*. Those decisions are made at higher levels, including the commissioner of labor and DOL’s human resources division. Furthermore, while Gilly, Petow, Ladas, Colbourn, and Fuda have in varying degrees participated in training subordinates, there is a dedicated training unit which is responsible for performing the bulk of that function. Most of the Unit Directors evaluate their direct reports and indirect reports, but only Petow and possibly Ladas represent the final signature on a subordinate’s evaluation form. Lastly, Fuda alone testified to being responsible for ensuring adequate staffing at the Bridgeport AJC. Turning to collective bargaining agreements, only Fuda has been involved in collective bargaining agreement administration and that consisted of deciding a single grievance at the lowest step of the contractual grievance procedure.¹⁵ We have stated that “participat[ion] in the low levels of the grievance procedure ... [is] not enough activity to constitute a ‘major role in the administration of collective bargaining agreements’” ***University of Connecticut Health Center***, Decision No. 3694 p.8 (1999), and we believe Fuda’s extremely limited experience with deciding grievances justifies the same finding here. Accordingly, we find that the Unit Director and Adjudications Director classifications do not perform the fourth enumerated function and we turn to the second and third enumerated functions.

¹⁵ We do not know whether employee staffing, hiring, firing, evaluation, promotion, or training are subject to that grievance procedure or how often, if ever, Arends, Mello, Rivera, and Romano decide grievances.

We recently interpreted the terms “goals and objectives” and “policy” for the purpose of assessing whether a putative managerial employees satisfied Sections 5-270 (2) and (3) of the Act.

Generally, when a statutory term is not defined, we presume that it was intended to have its ordinary meaning as expressed in standard dictionaries.” *State v. Wright*, 320 Conn. 781, 802 (2016). Moreover, “goals” and “objectives” are to be distinguished from “policy” to avoid redundancy and to afford meaning to the language the legislature chose to use. *See AvalonBay Communities, Inc., v. Orange*, 256 Conn. 557, 558 (2010) (basic tenet of statutory construction is that legislature did not intend meaningless or redundant provisions.) A “goal” is “something worked toward or aspired to” whereas “policy” is “[a] plan or course of action, as of a government . . . designed to influence and determine decisions and actions.” Webster’s II New College Dictionary (Riverside Publishing 1988); *see also Connecticut State Employees Assn. v. Board of Trustees*, 165 Conn. 757, 762 (1974) (“‘policy’ is defined as ‘a definite course or method of action selected (as by a government . . .) from among alternatives . . .’”). Since the conjunctive “and” is used to state the elements of the second enumerated function, all must be present. *Afkari-Ahmadi v. Fotovat-Ahmadi*, 294 Conn. 384, 393 (2009); *Penn v. Irizarry*, 220 Conn. 682, 687 (1991).

State of Connecticut Dept. of Transportation, supra, p. 8. Mindful of these principles and given the record before us, we find that the principal functions of the positions held by Petow, Beaudoin, Ladas, Polzella, Colbourn, and Bartley do not include the “development, implementation and evaluation of goals and objectives...” or “participation in the formulation of agency policy” within the meaning of Sections 5-270(g)(2) and (3).

Directors, Agency Security and Performance & Accountability Units

Although the written job classification description for DOL Unit Director states that the position “formulates . . . goals and objectives and develops policies...” the Act calls upon us to apply the standards articulated by the legislature and we do so on the basis of the record before us. *See N.L.R.B. v. Bell Aerospace Co. Div. of Textron, Inc.*, 416 U.S. 267, 290 n.19 (1974) (“[T]he question of whether particular employees are ‘managerial’ [under the federal act] must be answered in terms of the employees’ actual job responsibilities, authority, and relationship to management”). As with “major personnel decisions”, since the conjunctive “and” is used to state the elements of the second enumerated function, all three must be present. *State of Connecticut, OLR*, Decision No. 4249-A p.13 (2011) (“The statute requires that all three elements of criterion #2 must be met”). In this case, Beaudoin testified that the bulk of her responsibility is to audit DOL units to ensure that they meet federal standards for safeguarding sensitive data. Since, however, compliance is dictated by existing parameters developed by federal agencies, and since the directors of noncompliant units bear the burden of implementing remedial plans to correct the deficiencies in their security procedures, Beaudoin’s function is limited to *evaluating* whether compliance goals and objectives have been met. As the terms “performance and accountability” suggest, Colbourn compiles data to ensure that units administering federally funded programs and services meet applicable performance and reporting standards. Like Beaudoin, Colbourn

testified that she spends a small fraction of her time developing goals and objectives and that her memoranda are largely driven by federal regulations and Training and Employment Guidance Letters (TEGLS). Based on this record, we find that regulatory compliance and data collection/analysis are pre-existing goals and as such, Beaudoin and Colbourn implement or evaluate rather than develop goals and objectives. Lastly, for the same reasons, we find that issuing directives promoting compliance with largely predetermined policies does not warrant a finding that Beaudoin and Colbourn perform the third enumerated function as a primary function of their positions since by their own admission they do not participate in the *formulation* of any such policies.

Unit Directors, WIOA Administration, ESO, and JFES Units

With regard to Polzella, Colbourn, and Ladas, the State primarily relies on memoranda they created and/or issued to prove that each performs the second and third enumerated criteria. State's brief, p. 10. We think such reliance misplaced because the WIOA and ESO units also administer programs and services requiring compliance with an extensive federal regulatory framework. For example, the State relies on a memorandum coauthored by Ladas which provided AJCs and others with "guidance on the requirements of the [UI RESEA] program... [a]s designed by United States Department of Labor..." (Emphasis added.) (Ex. 46). Similarly, Colbourn's and Polzella's memoranda largely provide guidance on existing or updated requirements for financial accounting and reporting; determining eligibility for WIOA programs; tracking performance waivers; skills testing procedures; registering for WIOA programs; and applying for admission to the Eligible Training Provider List (ETPL).¹⁶ Furthermore, notwithstanding the importance of this extensive regulatory framework, in our view the record also does not support a conclusion that the issuance of these memoranda constitutes the "most important, consequential or influential functions" of the positions.¹⁷

With regard to Bartley, the State relies on the testimony of his former supervisor, Ram Aberasturia (Aberasturia),¹⁸ to argue that Bartley works with the regional WDBs to "develop initiatives that advance the JFES mission." State's brief, p. 8. Specifically, the State contends that Bartley evaluates existing funding allocations, repurposes those allocations when advisable, reviews contracts between WDBs and service providers, and is working with an outside vendor to finalize changes to the CTHires case management system. We believe that the State's reliance is again misplaced since Aberasturia also testified that allocations under the JFES program are determined by state statute. Furthermore, in our view reviewing and finalizing contracts at best amounts to *evaluating* goals and objectives which are *developed and implemented* by the WDBs. Similarly, to the extent that overseeing final adjustments to the CTHires system is a goal or

¹⁶ (See e.g., Exs. 24, 25, 26, 27, 34, 35, 36, 37, 39, 40, 41).

¹⁷ For example, Polzella testified that he delegates that responsibility to his subordinates since creating these memoranda largely consists of "transposing" federal requirements. Colbourn testified that, during her tenure as director of the WIOA Administration Unit, drafting these memoranda comprised only 2 percent of her working time.

¹⁸ Bartley reported to Ram Aberasturia during Aberasturia's tenure as Director of Labor Operations. (Ex. 8).

objective within the meaning of the Act, the record reveals that Bartley had little to no involvement in *developing* that goal. With regard to the third function, the State has not identified and we have not been able to determine which of Bartley's duties allegedly constitute participation in the formulation of agency policy and, as such, we find that it is not a principal function of his position.

Team Leader, UI Modernization Project

With regard to second enumerated function, we credit Gilly's testimony that the project manager and the Steering Committee set the goals and objectives of the UI modernization project. As such, as both team leader and as a member of the Operational Control Board, Gilly's principal functions are limited to *implementing and evaluating* goals and objectives consistent with DOL's modernization policy and do not include *developing* those goals and objectives. In addition, since we also credit Gilly's testimony that the policy decision to convert to a fully automated system was made at "executive levels" of the agency we likewise find that he does not perform the third enumerated function.

Unit Director, EOD

With regard to the second enumerated function, the record establishes that Dumbrowski implements and evaluates the goal and objective of providing training to enhance DOL's ability to effectively carry out its mission. As noted above, however, use of the conjunctive "and" in the second criterion indicates that all conditions must be fulfilled and since the record establishes that training objectives are primarily set by the cost center manager who requests it, or required by law, we find that like Gilly, Dumbrowski does not *develop* goals and objectives. Dumbrowski's other functions, on the other hand, arguably do meet all three conditions since, collectively, he is helping to *develop* the agency's succession plan, *implement* workforce development seminars, and *evaluate* possible "lean process improvements". The record, however, does not support a finding that these activities are among the principal functions of his position. Specifically, Dumbrowski testified that the relative time he devotes to these functions is minimal, inconsistent, or both, and the record is devoid of evidence that his ability to perform duties unrelated to training were a prerequisite to being hired. Finally, although we do not doubt the importance of his non-training related functions such as succession planning, we are not persuaded that the agency would suffer important consequences if an employee *in Dumbrowski's position* failed to perform them. Since we do not find that these activities are among the most important, consequential, or influential functions of Dumbrowski's position, neither are they sufficient to satisfy the third enumerated criteria.

Unit Director, Adjudications

The State contends that Petow's involvement in SIDES, decommissioning call centers, and streamlining the adjudications hearing process constitutes developing, implementing, and evaluating goals and objectives. We disagree. First, although the State acknowledges that Petow is also the head of the UI Benefits Divisions, it fails to clearly distinguish in which capacity he is performing those functions and Director of the UI Benefits Division is not a petitioned-for position. In addition, the State produced deputy commissioner Dudzinski to testify about

Petow's functions. While Petow's functions are undoubtedly important, Dudzinski repeatedly testified that Petow was tasked with *implementing* SIDES and other projects and there is insufficient other evidence to support the inference that his role extends to *developing* new systems or procedures. With regard to the third enumerated function, the State relies on three memoranda¹⁹ drafted and issued by Petow, among others, as well as his service on NASWA and the UI Integrity Committee to prove that he participates in the formulation of policy. We think such reliance is misplaced since the memoranda at issue largely involve compliance with RESEA and state unemployment insurance statutes. As with Polzella, Colbourn, and Ladas, promoting compliance with pre-established policies does not in itself constitute participating in their formulation. With regard to NASWA and the UI Integrity Advisory Committee, Dudzinski's testimony supports a finding that Petow is serving in his capacity as the director of the Benefits Divisions²⁰ rather than as Adjudications Director. Even if this were not the case, given the large volume of decisions that Adjudications issues, we do not believe that such service is among the most important, consequential, or influential functions of Petow's position.

Unit Director, AJC

The State contends that AJC Unit Directors perform the first, second, and fourth enumerated functions of Section 5-270(g). Specifically, the State emphasizes that Fuda runs the day-to-day operations of the Southwest Regional AJC and, as a voting member of the WDB for that region, he can award contracts to employment-related service providers. We disagree. Although Fuda "manages" business operations in the ordinary sense, we credit his testimony that the WDB sets the goals and objectives of the AJC. While Fuda is a voting member of the WDB, we find that it is not a principal function of his position since Fuda devotes less than 2 hours per calendar quarter to the WDB and there is no evidence that membership was a prerequisite to being hired as Unit Director. Further, if Fuda ceased to sit on the board, we believe the impact to the agency would be minimal since he is only one of 20-50 members, does not sit on the executive board, and since the WDB administers a number of highly regulated federal and state programs. As such, even without Fuda's presence, the WDB is subject to the oversight of several other agency units. Based on the entire record before us, we find that Fuda's principal function is managing day-to-day operations of a busy job center and not developing, implementing, and evaluating goals and objectives consistent with DOL mission and policy, and reach the same conclusion for Arends, Mello, Rivera, and Romano.

Director, Office of Workplace Competitiveness

The State contends that Marioni satisfies the first and third criteria of Section 5-270(g). To support the proposition that Marioni participates in the formulation of policy, the State partially relies on a passage on DOL's website, which in relevant part, describes the OWC as "one of the governor's workforce development policy advisors." State's brief, p. 12 n. 69. The

¹⁹ Policy 230.01 (RESEA); Policy 230.03 (Work Search Efforts – Opportunity to Comply Policy and Procedure); Policy (Revised Effective Date of Claim Procedure). (Exs. 46, 47, 48).

²⁰ With regard to the Integrity Advisory Committee, deputy commissioner Dudzinski testified that Petow serves in his capacity as "the UI Director ... from the *Benefits Division*." Similarly, Dudzinski testified that Petow serves on NASWA because of "[his] position. He's the UI Director." (Emphasis added.) (TR 6/3/19, pp. 35-36).

record, however, supports a finding that, in her capacity as director of the OWC and as a CETC member, Marioni implements and promotes DOL policies rather than formulating them. At all relevant times prior to February 2019, Marioni reported to Dudzinski, who testified that Marioni's function is *supporting and coordinating* the governor's and DOL's initiatives by ensuring that regional AJCs carry out their functions, that the CETC remains on task, and by seeking funding sources. Similarly, with regard to Marioni's work with the Occupational Licensing Policy Learning Consortium, the National Governors Association State Collaborative Consortium to Understand and Support the On-Demand Workforce, and the CWBLA, we believe her primary functions involve advocating for and implementing policies formulated by others.

ORDER

By virtue of and pursuant to the powers vested in the Connecticut State Board of Labor Relations by the State Employee Relations Act, it is hereby

ORDERED, that the objections filed herein be and the same hereby are **DISMISSED**, and it is

CERTIFIED, that the bargaining unit here in question be and the same hereby is, **MODIFIED** to include the Labor Department Unit Director positions identified herein and the position of Director of Unemployment Insurance Field Services and Adjudications.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Wendella Ault Battey
Wendella Ault Battey
Acting Chairman

Barbara J. Collins
Barbara J. Collins
Board Member

Ann F. Bird
Ann F. Bird
Alternate Board Member

