DECISION AND DISMISSAL OF COMPLAINT

On January 21, 1999, the Connecticut State University American Association of University Professors (the Union) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Connecticut State University (CSU) violated the State Employee Relations Act (SERA or the Act) by denying a part time assignment to Flo Hatcher because of her Union activities.

After the preliminary administrative steps had been taken, the matter came before the Labor Board for a hearing on May 15, 2000 and July 5, 2000. Both parties appeared, were represented and allowed to present evidence, to examine and cross examine witnesses and to make argument. Both parties filed post-hearing briefs which were received on September 8, 2000. Based on the entire record before us, we make the following findings of fact and conclusion of law and we dismiss the complaint.
FINDINGS OF FACT

1. The CSU 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 material times represented a bargaining unit which includes full-time and part-time faculty members employed by CSU.

3. At all material times, the Union and CSU have been parties to a collective bargaining agreement effective by its terms from August 27, 1997 through August 23, 2001. (Ex. 2). The collective bargaining agreement contains the following relevant provisions:

   1.6.2 Part-Time Teaching Members or Part-Time Teaching Faculty. Those employees of Connecticut State University who are employed for at least six (6) days in a semester and who earn six (6) or fewer load credits or who teach no more than two (2) courses for a total of eight (8) or fewer load credits and whose function consists primarily of (but shall not be limited to) teaching, research or other scholarly activity.

   4.6 Assignment of Courses to Part-Time Members. 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.

   The parties recognize that part-time members have no guarantee of continuing employment. Part-time members shall be assigned to available courses depending upon the department chairperson’s determination of credentials, experience, and teaching merit. When the chair determines that part-time members have similar credentials, experience and teaching merit, the chair shall recommend for appointment the person with the greatest length of service in the department. Following the chair’s determination based upon the above criteria, appointment shall be recommended to the dean for approval. (Ex. 2).

4. Prior to January, 1999, Flo Hatcher (Hatcher) was a part-time faculty member of CSU in the Art Department at the Southern campus. Hatcher had taught at CSU for 27 years. Hatcher does not hold a college degree. During the fall semester, 1998, Hatcher taught a printmaking course (Art 260) as well as coordinated the graphic design internship program (Art 497). Hatcher had coordinated the internship program since 1983.
5. Hatcher was an active member of the Union. In 1998, she served as grievance chair. She also served on numerous committees for the Union and was the first part-time faculty member of the negotiating team for the current contract. The current contract contains certain benefits for part-time faculty members that were not previously contained in the contract. Hatcher was a vocal advocate for the rights of part-time faculty members throughout her involvement with the Union.

6. Hatcher is married to Keith Hatcher, a full-time faculty member of the Art Department at Southern. Keith Hatcher served as the Chair of the Art Department for six years prior to August 1998.

7. Department Chairs are chosen by a process which includes the full-time faculty of a department submitting a preference poll indicating their choice for the Chair position. The results of the preference poll are forwarded to the Dean who makes the final selection and submits that selection back to the faculty for approval.

8. In early 1998, a faculty preference poll for the Art Department was submitted to Interim Dean of Arts and Sciences, DonnaJean Fredeen (Fredeen). The results of the poll indicated a close vote between faculty members Keith Hatcher, Cort Sierpinski (Sierpinski) and Mitchell Bills. After speaking with certain faculty members, Fredeen chose Sierpinski as the new Department Chair. Sierpinski was selected as the new Department Chair in April, 1998, and assumed that role in August, 1998.

9. During the process to select a new Chair of the Art Department, Sierpinski spoke to Fredeen and to the Vice President for Academic Affairs about his concern that faculty members have appropriate credentials, indicating his desire to staff the department with faculty who possess “terminal degrees”. A terminal degree is one which is usually a degree above that pursued by the students. Sierpinski spoke about several specific faculty members, including Hatcher. Sierpinski was concerned that Hatcher did not have a bachelor’s degree.

10. Hatcher was the only faculty member of the Art Department who did not have at least a bachelor’s degree.

11. There is no requirement in the collective bargaining agreement or elsewhere for faculty to possess terminal degrees in order to teach at CSU. Regulations from the State of Connecticut Board of Governors require faculty to have “appropriate degrees from regionally accredited institutions, at least one level above the degree being offered, or they shall have demonstrate [sic] an equivalent level of competence in the specific subject areas they are assigned to teach.” (Ex. 20).

12. In the fall of 1998, Hatcher spoke with Fredeen regarding a concern about part-time faculty listings in the course catalog. This issue was never formalized as a grievance.
13. Shortly after assuming the Chair position, Sierpinski ordered a new election for committee members of the Department Evaluation Committee. Sierpinski ordered the new election after becoming aware of allegations of irregularities in the initial election which had taken place in the spring, 1998, and resulted in Keith Hatcher being elected to the Committee. Sierpinski recounted the ballots of the original election and determined that Keith Hatcher had not been elected to the Committee. Keith Hatcher filed a grievance regarding Sierpinski’s actions (Ex. 30) but the grievance was withdrawn after Sierpinski established the discrepancy in the balloting. Hatcher was not elected to the Committee as a result of the second election.

14. In early fall, 1998, Sierpinski reallocated office space, moving certain part-time faculty members to a different area. Hatcher was not personally affected by this action.

15. On or about October 6, 1998, Hatcher drafted a grievance (Exs. 10 and 29) concerning the allocation of office space to part-time faculty members. The grievance was signed by Union President Larry Glenn (Glenn) because Union policy prohibited Hatcher from serving as the grievance officer concerning a grievance in her own department. The grievance was presented at the second step of the process because Fredeen was on maternity leave at the time. Hatcher remained involved with the grievance and participated in the presentation at the third step of the process.

16. The grievance referred to in Finding of Fact # 15 contained the following statement: “This punitive action reflects poor judgment and inexperience on the part of the new chairperson. As a result of this disheartening gesture the art department violated the collective bargaining agreement…” (Ex. 29).

17. Although Sierpinski had made the decision regarding part-time faculty office space which precipitated the grievance, he did not participate in the proceedings concerning the grievance and did not meet with or speak to Hatcher concerning that grievance. Sierpinski received a copy of the grievance as well as copies of other notices concerning the grievance. (Ex. 11).

18. In early November, 1998, Hatcher and another part-time faculty member, Sally Hill, told full-time faculty member William Phelan (Phelan) that they had heard a rumor that they would not be reappointed to their positions. Phelan asked Sierpinski if there was any truth to the rumors. Sierpinski told Phelan that he should not listen to rumors and that, since there were no complaints about their teaching, Hatcher and Hill would be reappointed.

19. By memo dated December 22, 1998, Union Membership Services Coordinator, Linda Cunningham, requested Interim Vice President for Academic Affairs Philip Smith to assign six load credits of release time for Union activities to Hatcher and the Union President. Hatcher never received any further information about the request.
20. On or about January 6, 1999, Hatcher received a letter from Sierpinski which stated:

I regret to inform you that the Art Department will be unable to offer you employment for the Spring 1999 semester. I know that there has been a long standing employment history with you being the Internship Coordinator. The reason that you will not be offered the position for the Spring semester is because a full-time faculty member desires to take over as Internship Coordinator.

I wanted to inform you of this as soon as possible because I understand that you often will begin working on placing students before the semester begins. I wish you luck in your future endeavors and thank you for your service to the Art Department.

(Ex. 5).

21. On or about January 6, 1999, Keith Hatcher received a letter from Sierpinski which stated:

This letter is to inform you of who will be teaching ART 260 for the Spring 1999 semester. After careful consideration and review of credentials I have decided to hire Martin Kruck to teach the course. Martin has an impressive resume and I am sure he will be an exciting addition to our staff.

I know that you had expressed a desire to have Flo teach the course. I decided that it would not be in the best interest of the Department. I think that it is very important to hire people with the appropriate terminal degrees whenever possible, and Martin has an M.F.A. in Printmaking. I know that you may not be completely happy with this decision but the CSU-AAUP Collective Bargaining Agreement (Article 4.6) allows me to make this determination.

I am sure you will make every effort to make Martin feel welcome and give him access to the appropriate areas in the Print shop. If you have any questions please do not hesitate to contact me.

(Ex. 6).

22. There are no requirements concerning the amount of notice which must be given to an adjunct faculty member who is not reappointed to a position.

23. Martin Kruck holds a Masters degree in Fine Arts and taught the Art 260 course in the spring, 1999. Wiley Carr is a full time faculty member who holds a Masters degree in Fine Arts. Carr is a painter. Carr coordinated the graphic design internship in the spring, 1999.
24. Due to tension in the department caused by the change in the Chairmanship and Sierpinski’s decision not to reappoint Hatcher, several faculty members wrote letters of support for Sierpinski to the Dean. (Ex. 19).

25. In January, 1999, Sierpinski met with several Union officers who had protested his decision not to reappoint Hatcher. At that meeting, Sierpinski said that he was personally offended by the use of certain phrases in the office space grievance which he considered to be a personal attack on him. Specifically, Sierpinski objected to the statement quoted in Finding of Fact # 16.

26. In January, 1999, several outside organizations wrote letters of support for Hatcher for the work she had performed in the graphic design internship program. (Exs. 13-17).

27. Historically, there has existed some tension within the bargaining unit between part-time and full-time faculty members. During negotiations for the current collective bargaining agreement, Sierpinski and others vocalized concerns regarding part-time faculty being awarded travel funds because some faculty members felt that this benefit decreased the funds available to full-time faculty members.

**CONCLUSION OF LAW**

1. The Union did not prove that Hatcher was not reappointed due to her Union activities.

**DISCUSSION**

In this case, the Union claims that Flo Hatcher was not reappointed to teach courses as a part-time faculty member because of her activities on behalf of the Union, particularly her advocacy of the rights of part-time faculty members. Although the Union acknowledges that Sierpinski is a member of the bargaining unit, it argues that his recommendation to not reappoint Hatcher was tainted by his animus toward her Union activities on behalf of the part-time faculty. The State claims that the Union has failed to establish anti-union animus on the part of the employer and that sound business and academic reasons justified the action in this case.

It is well established that §5-272(a) of the Act prohibits an employer from discriminating against or threatening an employee because the employee has engaged in union or other protected activities. We have previously summarized the proper method of analysis applied to such cases in *Torrington Board of Education*, Decision No. 3204 (1994):

Where a complaint alleges that employees were discriminated against in their employment because of activity on behalf of a Union, the
complainant has the initial burden of proving that the discriminatory action was taken because of these protected activities, or at least that the protected activities were a substantial factor in bringing about the adverse actions. Connecticut Yankee Catering Co., Inc., Decision No. 1601 (1977). Using an analytical framework such as is found in Wright Line, 251 NLRB 1083, 105 LRRM 1169 (1980), enforced 622 F.2d 899 (1st Cir. 1981); cert. denied 455 U.S. 989, 102 S. Ct. 1612, we determine first whether a complainant has established a prima facie case of discrimination. Once the prima facie case is established, we then determine whether the employer has established an affirmative defense thereto. Town of Greenwich, Decision No. 2257 (1983), aff'd O'Brien v. State Board of Labor Relations, 8 Conn. App. 57 (1986); and Town of Windsor Locks v. Connecticut State Board of Labor Relations, et. al., 225 Conn. 297 (1993); Sheriff's Department Fairfield County, Decision No. 3106-B (1993).

A prima facie case includes proof that 1) the employee engaged in protected, concerted activities, 2) the employer had knowledge of those activities, and 3) the employer harbored anti-union animus.

In this case, there is no dispute that Hatcher engaged in protected, concerted activities. Additionally, there can be no question that CSU and Sierpinski were aware of those activities. Hatcher was the only part-time faculty member on a negotiating team that bargained for new benefits for part-timers. She held various positions on Union committees and was the grievance chair. We also find that both CSU and Sierpinski were aware that Hatcher had at least some involvement with the office space grievance that was filed in October, 1998. Sierpinski was copied on notices concerning the grievance which included Hatcher’s name. Sierpinski was aware that Hatcher was the grievance chair and that the issue in that particular grievance concerned the part-time faculty, her area of greatest concern. We find it impossible to believe that Sierpinski did not know that Hatcher was involved, at least indirectly, with that grievance.

We do not find, however, that CSU or Sierpinski harbored anti-union animus either generally or specifically directed at Hatcher’s activities. There is simply no evidence that CSU has demonstrated general anti-union animus. However, as the Union points out in its brief, it could demonstrate this element by showing that CSU had animosity towards Hatcher’s specific Union activities, particularly on behalf of the part-time faculty. We do not believe the evidence supports such a finding.

The Union argues that Sierpinski’s attitude toward the part-time faculty, the timing of the office space grievance and Sierpinski's remarks about the content of the grievance support a conclusion that his decision concerning Hatcher was illegally motivated. The Union also points out that Hatcher had successfully taught for a long period of time and that her replacements, while academically well-credentialed, were no more qualified than she. We disagree with the Union for several reasons.
First, it is clear from the record that Sierpinski, whether justified or not, was very concerned with the academic credentials of the faculty. He had made a point of talking to the Dean and the Vice President about his concerns before he was even appointed to the Chair position. He specifically mentioned Hatcher during those conversations because he was greatly concerned that she did not possess even a bachelor’s degree. There is nothing in the record to indicate that Sierpinski harbored any animus toward Hatcher as a Union activist at the time he made those comments. The only record evidence to even suggest animosity at that time was Sierpinski’s disagreement with the Union’s position concerning travel money for part-time faculty. There is no reason to transform a bargaining unit member’s rational disagreement with his union’s bargaining position into anti-union animus against a particular union representative. Additionally, although there is no requirement that faculty members hold terminal degrees, it is also clear that degrees are a prime indicator of competence and credibility in the field of higher education. Even if Hatcher was fully qualified to teach the courses she had been teaching, there is nothing illegal in Sierpinski’s focus on academic credentials. The fact that others may believe Sierpinski’s focus to be ill advised does not support a conclusion that it was caused by illegal animus. Thus, we find that Sierpinski’s desire to replace faculty members without terminal degrees was a primary factor in his decision to not reappoint Hatcher.

We are also convinced that personal animosity, rather than union animus, likely played a role in Sierpinski’s decision. In this regard, we note that Sierpinski took over as Department Head from Hatcher’s husband as the result of a close vote. The change in the Chair appointment created tension within the department. Sierpinski had at least one professional disagreement with Keith Hatcher regarding the Department Evaluation Committee to which Keith Hatcher had appointed himself at the end of his tenure as Department Chair. It is clear that Keith Hatcher had not voluntarily ended his reign as Chair and equally clear that Sierpinski was intent on making his mark as the new Chair.

Additionally, we do not see Sierpinski’s remarks about the office space grievance in the same light as the Union does. Sierpinski was clearly angry about one particular aspect of the grievance, the seemingly gratuitous remark regarding his lack of experience as a Department Chair. As we have found it unlikely that Sierpinski did not know that Hatcher was involved with that grievance, it is equally unlikely that Sierpinski did not realize that Hatcher had contributed to that statement. However, we do not believe that his reaction was due to the filing of the grievance itself. Rather, it was due to his perception that Hatcher had made an unnecessary and very personal comment in the narrative of the grievance. All of the above indicates that Sierpinski’s actions concerning Hatcher were, at least in part, motivated by his personal animus toward the Hatchers who he perceived as attacking him because he had successfully taken away the chairmanship. However inappropriate that motive may be, it does not establish the requisite anti-union animus needed to prove a violation of the Act. As such, we dismiss the complaint.
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 complaint filed herein be, and the same hereby is, DISMISSED.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

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John W. Moore, Jr.
Chairman

Patricia V. Low
Patricia V. Low
Board Member

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CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 19th day March, 2001 to the following:

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