

STATE OF CONNECTICUT  
LABOR DEPARTMENT  
CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF  
UNIVERSITY OF CONNECTICUT

DECISION NO. 5322

-and-

MAY 20, 2024

THE UNIVERSITY OF CONNECTICUT  
CHAPTER OF THE AMERICAN ASSOCIATION  
OF UNIVERSITY PROFESSORS

Case No. SDR-34,927

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

Attorney Kelly L. Bannister  
for the University

Attorney Eric W. Chester  
for the Union

**DECISION AND DECLARATORY RULING**

On February 1, 2023, the University of Connecticut Chapter of the American Association of University Professors (the Union) filed a petition with the Connecticut State Board of Labor Relations (the Labor Board) concerning the scope of bargaining required by the State Employee Relations Act (SERA or the Act). Specifically, the Union seeks a declaratory ruling that course enrollment is a mandatory subject of bargaining.

After the preliminary administrative steps had been taken, the matter came before the Labor Board for a formal hearing on July 12 and July 21, 2023. The Union and the University of Connecticut (the University or the State) appeared, were represented by counsel, and allowed to present evidence, examine and cross-examine witnesses, and make argument. Both parties filed post-hearing briefs, which were received on October 6, 2023 and reply briefs, which were received on October 27, 2023. Based on the entire record before us, we make the following findings of fact and issue the following decision and declaratory ruling.

## FINDINGS OF FACT

1. The University 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 a bargaining unit of certain full-time and part-time faculty employed at the colleges, schools, departments, and campuses of the University.
3. The University and the Union were parties to a collective bargaining agreement, effective through June 30, 2021, which stated, in relevant part:

### ARTICLE 30 FACULTY PARTICIPATION IN DEPARTMENT GOVERNANCE

\*\*\*

#### 30.1 Statement of Principle

A. By virtue of their command of their disciplines, University faculty shall participate in the governance of the departments in which they will exercise their judgments...

#### 30.2 Contractual Governance

... Each department or school/college faculty shall develop Department/School governance documents for the governance of their units. The following department governance documents shall be required for each department/school:

\*\*\*

#### E. Workload Policies

\*\*\*

These documents shall be drafted by faculty elected-department committees and shall require approval by a majority of eligible Department voters. The documents will be forwarded by the department to the appropriate Dean and [the Union] ... Subsequent revisions will be forwarded by the department to the appropriate Dean and to [the Union], as those revisions become available.

\*\*\*

30.5 Departments shall adhere to these practices when drafting or updating the aforementioned documents.

\*\*\*

D. Workload Policies - Workload policies shall be consistent with other articles contained in the Collective Bargaining Agreement. Each department shall develop criteria for measuring workload and shall develop baseline workload expectations that bargaining unit members must perform each academic year (e.g., through teaching, research, service, outreach, clinical work and/or extension).

1. The criteria should permit both individual bargaining unit members and department heads and equivalent officials to reasonably determine if a member has satisfied the criteria.

2. For members of the bargaining unit, any significant departure from documented effort allocation or expectation shall be made only after discussion with the member.

3. The department will publish its workload policies, including the criteria for measuring workload, at least 120 calendar days prior to the effective date of the policy or any change thereto, and in a location accessible to members of the bargaining unit in the department.<sup>[1]</sup>

\*\*\*

(Ex. C3)(Footnote added).

4. University faculty generally have 3 areas of responsibility: teaching; conducting research; and serving on department or University committees. Responsibilities vary depending upon position. The time that faculty members devote to those areas varies among and within departments.

5. Sometime prior to September 9, 2021, the Union and the University began negotiations for a new collective bargaining agreement.

6. On September 9, 2021, in response to members' concerns that increased course enrollments were impacting their workload and interfering with their ability to meet their non-teaching responsibilities, the Union's executive director and chief negotiator, Michael Bailey, submitted proposals to modify Article 30 by requiring departments to develop policies to address the distribution of teaching, research and service work; concerning criteria and deadlines for calculating teaching load and enrollment capacity in individual courses; establishing a process

---

<sup>1</sup>The University maintains Guidelines for the Development of Faculty Workload Assignment Policies, to guide "academic units (e.g., schools/colleges, departments/ divisions/units (e.g., centers/institutes), regional campuses) to develop, review, or revise their faculty workload assignment policies consistent with the applicable collective bargaining agreement." (Ex. R2).

for exceeding designated enrollment capacity where necessary; and creating transition and appeal processes where teaching load is increased. (Ex. C6).

7. On February 9, 2022, the Union submitted a proposal, which, among other things, would reduce enrollment caps in certain courses to pre-pandemic levels and prohibit increasing enrollment in any such course by more than 10% without bargaining. The University objected on the ground that course enrollment is not a mandatory subject of bargaining. (Ex. C7).

8. On February 28, 2022, the parties entered into a side letter (the Side Letter), which stated, in relevant part:

The [Union] has raised to the University concerns regarding increased course enrollments. The [Union] contends that course enrollments constitute a mandatory subject of bargaining, and the University disagrees with that position.

Without waiving or conceding either party's position on whether it is a permissive or mandatory subject of bargaining, the parties have agreed to discuss issues pertaining to course enrollments at a time, place and manner mutually agreeable to the parties and to convene not later than July 1, 2022. The discussions regarding course enrollments shall not constitute negotiations on this topic in accordance with the above.

If the discussions do not resolve the issue to either party's satisfaction by ~~August 1~~ October 15, 2022, the [Union] may demand to bargain. Neither party waives, and expressly reserves, its right to seek a ruling from the State Board of Labor Relations as to whether the issue is a permissive or mandatory subject of bargaining. If the Board rules that the issue presented is a mandatory subject of bargaining, the parties will begin negotiations under the State Employee Relations Act. Any prior discussions shall not be part of the bargaining history unless the parties mutually agree otherwise.

\*\*\*

(Ex. C4) (Emphasis and strikethrough in original). The parties thereafter executed a new collective bargaining agreement effective through June 30, 2025. The new agreement did not modify Article 30 to incorporate the Union's proposals regarding course enrollment.

9. Prior to October 24, 2022, the parties held discussions on course enrollments, but again failed to agree on whether it was a mandatory subject of bargaining.

10. On October 24, 2022, the Union demanded to bargain course enrollment and the University refused to bargain that issue.

11. On December 9, 2022, the Department of Animal Science issued a Workload Expectations policy which assigns a predetermined number of "credit hour equivalences" (CHE)

to various teaching functions, and which provides one additional CHE for teaching large classes of more than 75 students. (Ex. R5).

12. On December 31, 2022, the School of Business issued a Faculty Workload Policy based on standard “faculty workload allocations” (e.g., “40% research, 40% teaching, 20% services) in which a 3-credit course is credited as 10% of workload, classes with over 80 students are credited as 15% of workload, and classes of over 120 students are credited as 20% of workload. (Ex. R6).

13. Sometime in December of 2022, the University’s Computer Science and Engineering Department revised its Teaching Load Policy to reduce “long-term imbalances by using a strategy of differential teaching load allocation” and utilizing formulas to determine the teaching units to be assigned per academic year to non-tenure track, pre-tenure, and tenured faculty. (Exs. R3, R4).

14. On February 1, 2023, the Union filed this petition.

### DISCUSSION

The University argues that the Union is seeking to bargain over class size, which it contends is a matter of academic policy and not a mandatory subject of bargaining. Moreover, the University argues that to the extent that class size impacts workload, the parties already negotiated that topic in Article 30.5.D of the collective bargaining agreement. According to the University, bargaining on that subject is therefore complete until negotiations begin for a new collective bargaining agreement. Finally, the University argues that the cases cited by the Union are distinguishable because the instant petition was not filed during the course of negotiations, and, in the alternative, the Union abandoned its proposals in favor of the language in the new contract.

The Union responds that the University misstates the question presented in the petition and that “course enrollment” does not include restricting class size. Rather, the Union argues that the question presented is limited to workload and that steadily increasing course enrollment has had a substantial effect on members’ ability to perform the research and service components of their positions. Lastly, the Union contends that, as evidenced by the language of the Side Letter, the parties never completed negotiations on course enrollment, and the Union reserved its right to begin bargaining that issue upon a declaration by this Board in its favor.

At the outset, we must address the dispute over whether the term “course enrollment” in this instance is the same as “class size.” Since the Union’s chief negotiator, Michael Bailey, testified that “course enrollment” means “the number of students enrolled in a course,” and since at least one of the Union’s contract proposals pertained to returning the numbers of enrolled students to pre-pandemic levels, we answer that question in the affirmative. As such, we use the terms “course enrollment” and “class size” interchangeably.

“Mandatory subjects of bargaining are those about which the Act requires both parties to negotiate in good faith.” *Board of Trustees for Community Technical Colleges*, Decision No. 2901-A (1992), appeal granted in part, *State Bd. of Trustees for Community/Technical Colleges v. Connecticut Bd. of Labor Relations*, Superior Court, judicial district of Hartford at Hartford, Docket No. CV91-0394862-S (1993); see also *West Hartford Education Association v. DeCourcy*, 162 Conn. 566 (1972). In the case of higher education, the General Assembly reserved matters of academic policy for the employer by removing them from the collective bargaining impasse procedures (i.e., interest arbitration) under Section 5-276a of the Act.<sup>2</sup> Conn. Gen. Stat. § 5-278(g)(1). We have previously considered the negotiability of class size in post-secondary education in *Board of Trustees for Community Technical Colleges*, supra. In that case, the petitioner-colleges asked the Labor Board to rule on a proposal which would prohibit the department chair from taking actions which would increase class size. The Board declared, without explanation, that “[t]his provision relates to the question of course offerings *and class size, which are questions of academic policy reserved to the Petitioner [colleges].*” Id., p. 26. (Emphasis added). For the reasons that follow, we reach the same conclusion here and explain our rationale.

In determining whether an issue is a mandatory subject of bargaining, i.e., one concerning hours, wages, or other conditions of employment, this Board has long employed a balancing test derived from *West Hartford Education Association v. DeCourcy*, supra. *Town of East Haven*, Decision No. 1279 (1975).

As *DeCourcy* recognizes, there is an area of overlap between what have traditionally been thought managerial functions and what concerns conditions of employment for the employees. In drawing the line within that area between those items that must be bargained over and those which the employer may act on without bargaining, a balance must be struck. And in striking it the tribunal should consider, we believe, the directness and the depth of the item’s impingement on conditions of employment, on the one hand, and, on the other hand, the extent of the employer’s need for unilateral action *without negotiation* in order to serve or preserve an important policy decision committed by law to the employer’s discretion.

\*\*\*

---

<sup>2</sup> “Under Section 5-278(g)(1) of the Act, a proposal which concerns a non-mandatory subject of bargaining may not be submitted to interest arbitration for a decision by the arbitrator.” *State of Connecticut Department of Correction*, Decision No. 5212 p. 2 (2022). Section 5-278(g)(1) states, in relevant part:

In the case of higher education teaching faculty, the arbitrator shall not make a decision involving academic policy unless it affects the wages, hours or conditions of employment of such faculty. Any arbitration award issued on such matters shall be unenforceable.

\*\*\*

*Town of East Haven*, supra, p. 6; see also *State of Connecticut OPM/OLR*, Decision No. 4096 (2005).

In this case, we find that the balance tips in favor of the University's need for unilateral action to serve or preserve an important policy decision committed to its Board of Trustees; namely, advancing the goals of higher education in the state, including increasing enrollment opportunities in colleges and universities.<sup>3</sup> Conn. Gen. Stat. § 10a-104. Specifically, the record reveals that the University offers degree programs in various majors which each have unique curriculum requirements and we credit the testimony of Mansour Ndiaye, assistant dean in the College of Liberal Arts and Sciences, that it is difficult for students to progress toward their degrees and graduate on time if they do not have access to certain key courses. In our view, the ability to unilaterally determine the number of seats offered in a course is essential to maximizing "access to key courses," which, consistent with the goals articulated by the Legislature, permits the greatest number of students to progress towards their degrees in a timely manner.<sup>4</sup>

Regarding impingement on working conditions, the Labor Board has long recognized the general proposition that if the number of students increases so does the amount of time faculty members will have to spend on directing and supervising students at the expense of other responsibilities. *Board of Trustees for Connecticut State University System*, Decision No. 3859 p. 11 (2002) ("such an increase, logically, may negatively impact on the amount of time faculty

---

<sup>3</sup> Conn. Gen. Stat. § 10a-104 states, in relevant part:

(a) The Board of Trustees of The University of Connecticut shall: (1) Make rules for the government of the university and shall determine the general policies of the university, including those concerning the admission of students and the establishment of schools, colleges, divisions and departments, which policies shall be consistent with the goals identified in section 10a-11c...

\*\*\*

Conn. Gen. Stat. § 10a-11c states, in relevant part:

(a) The policies of higher education in the state shall be consistent with the following goals...: (1) Increase the education levels of the adult population of the state... [and] ... (3) ... increasing ... the number of recent high school graduates in the state who enroll in institutions of higher education in the state.

\*\*\*

<sup>4</sup> The need for access to key courses also distinguishes state universities and colleges from local and regional boards of education for which class size *is* a mandatory subject of bargaining. *West Hartford Education Association v. DeCourcy*, 162 Conn. 566, 585-586 (1972)) see also *Vernon Board of Education*, Decision No. 4552 (2011). We are also aware that in *State, Bd. of Trustees for Community/Technical Colleges v. Connecticut Bd. of Labor Relations*, Superior Court, judicial district of Hartford at Hartford, Docket No. CV91-0394862-S (1993), the superior court cited *DeCourcy* for the proposition that class size is not a matter of academic policy excluded from binding impasse arbitration. *Id.* However, since the issue in that instance was the distribution of students among sections of a particular course (i.e., workload distribution), we consider the court's statement regarding class size to be dicta. See *Rosenthal L. Firm, LLC v. Cohen*, 190 Conn. App. 284, 291-92 (2019) ("[s]tatements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case ... are obiter dicta, and lack the force of an adjudication...").

members have for other professional activities which are expected and sometimes required in an institute of higher learning”). However, the evidence of impact submitted in this case, leads us to conclude that the University’s need for unilateral action outweighs the directness and the depth of course enrollment’s impingement on faculty workload.

Most significantly, the Union produced associate professor Swapna Gokhale of the Computer Science and Engineering Department, who testified that since the pandemic students expect immediate responses to email inquiries and access to faculty via multiple social media platforms. According to Gokhale, in light of these heightened expectations, increased enrollment has required her in recent years to spend more time interacting with students at the expense of her research and service duties. In addition, Gokhale testified that more students mean more student requests for accommodations which take up more of her time. However, upon further examination, Gokhale testified that she has the authority to limit the social media platforms that students may use to communicate with her and that the Center for Students with Disabilities administers accommodations. Her role is largely limited to ensuring that students contact the Center in time, which task she can delegate to her teaching assistants. In our view, the alleged impacts on workload appear to be more of a consequence of Gokhale’s inability to manage student expectations and effectively delegate work. Specifically, Gokhale testified that she restricted her students to using only the University-sponsored social media platform for course-related communications, but they did not comply. Gokhale similarly testified that her teaching assistants do not consistently follow her instructions and often forget to remind students to timely apply for accommodations. Lastly, the University produced credible evidence that the impact of larger classes on workload can be reduced by course design and new grading technologies and we credit the testimony of Peter Diplock, the associate vice president of the Center for Excellence in Teaching & Learning, that the Center allocates additional resources to faculty to meet the demands of higher course enrollment.

We find that course enrollments’ impingement on workload is outweighed by the University’s need for unilateral action on this topic. In striking this balance, we are also cognizant of the fact that since “[w]orkload issues are mandatory subjects of bargaining,” *Board of Trustees for the Connecticut State University System*, supra, p. 11, the Union may bargain workload directly without delving into enrollment figures, like it did during negotiations for the 2021-2025 collective bargaining agreement. Article 30, Sections 30.2 and 30.5.D include procedures by which departments create their own workload policies, which faculty vote on, and Bailey testified that certain departments have since used Article 30 to create or revise workload policies, of which some or all take course enrollment into consideration. Moreover, we think that the language of the Side Letter undermines any argument that such bargaining was not completed. “[A] contract is to be given effect according to its terms where the language is clear and unambiguous. *Honulik v. Town of Greenwich*, 293 Conn. 698, 719 n. 33 (2009). In the Side Letter, the parties suspended negotiations on course enrollment while the Union sought a declaratory ruling and preserved the right to recommence bargaining if this Board declared course enrollment to be a mandatory subject of bargaining. However, nothing in the language of the Side Letter extends the parties’ agreement to workload issues. (Ex. C4). As such, we find that the Union bargained workload during negotiations for the 2021-2025 collective bargaining agreement and retains all of its rights to bargain workload in the next round of contract negotiations in 2025.



Lastly, although arguably beyond the scope of the question presented,<sup>5</sup> we emphasize that nothing herein diminishes the Union’s rights, upon a proper showing, to bargain substantial impacts of managerial decisions on conditions of employment. While an employer has no statutory obligation to negotiate with the employees’ representative about managerial decisions that lie at the core of entrepreneurial control, an employer is “nevertheless required to bargain over the effects of its managerial decision on employee working conditions.” *Local 1186, AFSCME v. State Board of Labor Relations*, 224 Conn. 666, 671 (1993) (emphasis in original); see *First National Maintenance Corporation v. NLRB*, 452 U.S. 666 (1993). As with any condition of employment subject to the duty to bargain, the impact at issue must be substantial. *Id.* 224 Conn. at 672; 452 U.S. at 679. “[T]he Union bears the burden, through the production of competent evidence, of identifying the secondary impacts and we will not presume that they are substantial.” *State of Connecticut, Department of Correction*, Decision No. 3229 (1994); *Town of Hamden*, Decision No. 2145 (1982). The requirement that the record support the existence of secondary impacts is well established and we continue to hold that presumption of substantial impact is improper absent competent evidence. *Town of Darien*, Decision No. 5051 (2019).

With that being said, we issue the following declaratory ruling.

### DECLARATORY RULING

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the State Employee Relations Act and the Regulations of Connecticut State Agencies, it is hereby **DECLARED** that course enrollment, standing alone, is not a mandatory subject of bargaining.

### CONNECTICUT STATE BOARD OF LABOR RELATIONS

Ann F. Bird  
Ann F. Bird  
Alternate Member

Thomas P. Clifford III  
Thomas P. Clifford III  
Alternate Member

Ellen Carter  
Ellen Carter  
Alternate Member

---

<sup>5</sup> *State of Connecticut*, Decision No. 3155 (1993) (“when presented with a scope of bargaining petition, we determine only whether the particular proposal ... is appropriately labeled as mandatory, permissive or illegal”); see also *State of Connecticut Department of Correction*, Decision No. 5215 (2022); *State Employee Bargaining Agent Coalition and State of Connecticut OPM*, Decision No. 4184 (2006).

**CERTIFICATION**

I hereby certify that a copy of the foregoing was mailed postage prepaid this 20<sup>th</sup> day of May, 2024 to the following:

Attorney Kelly L. Bannister  
University of Connecticut  
9 Walters Avenue, Unit 5075  
Storrs, Connecticut 06269-5075 RRR

Attorney Eric W. Chester  
Ferguson, Doyle & Chester, P.C.  
35 Marshall Road  
Rocky Hill, CT 06067-1400 RRR



---

Frank N. Cassetta, General Counsel  
CONNECTICUT STATE BOARD OF LABOR RELATIONS