

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the matter of

BOARD OF TRUSTEES FOR
CONNECTICUT STATE UNIVERSITY

-and-

CONNECTICUT STATE UNIVERSITY
AAUP

Case No. SPP-11,478

Decision No. 2939

September 6, 1991.

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

David C. Newton
for the Board of Trustees

William S. Zeman, Esq.
for the AAUP

Barbara J. Collins, Attorney
for Council 4, AFSCME

DECISION AND DISMISSAL OF COMPLAINT

On July 21, 1988, the Connecticut State University American Association of University Professors (the AAUP) filed with the Connecticut State Board of Labor Relations (the Labor Board) a complaint alleging that the Board of Trustees for the Connecticut State University (the Respondent) had engaged in and was engaging in practices prohibited by the Act Concerning Collective Bargaining for State Employees (the Act) in that:

On or about June 17, 1988 the Respondent unilaterally removed the position of Counselor at Eastern Connecticut State University from the Complainant's certified and contractually recognized bargaining unit in violation of the Act.

After the requisite preliminary steps had been taken, the matter was brought before the Labor Board for hearings on May 31, 1989, and August 22, 1989, at which time the parties appeared and were represented by counsel. Full opportunity was provided to present evidence, examine and cross-examine witnesses and make argument. The parties filed post-hearing briefs, the last of which was received on December 1, 1989.

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

FINDINGS OF FACT

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

2. The Complainant (AAUP) is an employee organization within the meaning of the Act and was certified by the Labor Board in Decision No. 1399 (1976) as ". . . the representative for the purposes of collective bargaining by the majority of all instructional faculty including Department Chairpersons and Academic Division Directors, excluding all other employees, employed by the Board of Trustees for State **Colleges...**"

3. The Intervenor, Local 2386, Council 4, AFSCME, AFL-CIO, is an employee organization within the meaning of the Act and was certified by the Labor Board in Decision No. 1398 (1976) as the exclusive bargaining representative ". . . by the majority of all administrative non-instructional faculty including Administrators 1 through 5; **excluding Presidents, Vice Presidents, Deans and statutory exclusions,** employed by the Board of Trustees for State **Colleges...**"

4. Prior to election and certification of both the AAUP and the AFSCME bargaining units, the parties signed a consent election agreement which allowed the counselors and librarians to vote a separate ballot to determine whether they desired to be represented by either the AAUP or AFSCME. They voted to be included in the AAUP unit.

5. The CSU and the **AAUP's** most recent collective bargaining agreement, effective from August 28, 1987 through August 23, 1990. defines the unit in Article 2.1 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, 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 Sec. 5-270 - 5-280 CGS. 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 - 5-280C.G.S., and all other employees.

(Exh.2)

6. There are no separate written job descriptions for the AAUP position of counselor. However, there are several contractual references:

1.6.3 "FULL-TIME COUNSELORS" or "FULL-TIME COUNSELING **FACULTY**"--Those employees of the Connecticut State university who are employed for at least six (6) days during a half work year and who are employed for at least twenty (20) hours a week and for at least a 198 work day work year, and whose function consists primarily of (but shall not be limited to) service as counselors.

1.6.4 "PART-TIME COUNSELORS" or "PART-TIME COUNSELING **FACULTY**"--those employees of the Connecticut State University who are employed for at least six (6) days during a half work year and who are employed for less than twenty (20) hours a week and whose function consists primarily of (but shall not be limited to) service as counselors.

XXX

6.1 The duties of counseling faculty shall include counseling in all areas essential to the student and academic community, consultation with teachers, administrators and parents; completing the necessary reports and other supporting paperwork.

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9.6.3 No full-time teaching member of the bargaining unit shall teach fewer than three (3) load credits per academic year.

7. The CSU and **AFSCME's** most recent contract by agreement effective July 1, 1989 to June 30, 1990, defines the unit in Article 2 as follows:

The Board recognizes SUOAF/AFSCME as the sole and exclusive bargaining agent with respect to wages, hours, and conditions of employment for all administrative faculty members employed by the State of Connecticut at the State Universities and all job classifications placed in the bargaining unit by the Connecticut State Labor Relations Board in Case Nos. SE-3354, SE-3373, SE-3372, and SE-3334 dated May 25, 1976. Specifically excluded from the unit are those in the position of State University President, Vice President, Dean, statutory exclusions pursuant to CGS 5-270 to 5-280, other employees of the Board, and the following positions: Executive Assistant to the President (each campus), Director of Research (each campus), Director of Institutional Safety (each campus), Directors of Plant Planning and Maintenance (Eastern Connecticut State University only), Director of Development (Eastern Connecticut State University only).

Other positions in the bargaining unit may be substituted for any of the exemptions named above by agreement between the Board and SUOAF/AFSCME.

While Management retains the right to meet with individuals to hear views on any matters, it is agreed that Management will not negotiate individually with any administrative faculty member or with any other organization pertaining to matters of wages, hours, and conditions of employment of a bargaining unit member. The Board will not employ a member on terms less favorable than those stated herein.

(Exh.3)

8. Article 1.6 of the collective bargaining agreement between the CSU and AFSCME defines the administrative faculty as follows:

1.6 **"ADMINISTRATIVE FACULTY MEMBERS"** (also called **"MEMBERS"** and **"MEMBERS OF THE BARGAINING UNIT"** - Unless expressly specified otherwise, these terms are interchangeable and shall refer to the following employees of the Connecticut State University: those members of the bargaining unit who are regularly assigned **twenty** or more hours **per** week in an administrative **capacity**.

(Emphasis added)

9. Article 16 of the agreement referenced in paragraph 8 supra recognizes that AFSCME bargaining unit members may be assigned to instructional duties under certain circumstances:

16.4 Outside of normal job responsibilities, when a member is assigned by Management to teach in an academic department, his administrative workload shall be adjusted according to the following ratio: the number of credit hours taught per week divided by the length of the semester in weeks. Instructional activities shall be coordinated with the department and/or division members involved.

16.5 When the President or his designee assigns a member to perform services outside of this department which are unrelated to his normal duties but within the scope of the bargaining unit and when Management determines compensatory time arrangements are not possible, the following shall occur when the individual accepts such assignment. Members shall be compensated at a rate to be negotiated with the Management Official administering the assignment. Such extra assignments shall not exceed six (6) hours per week or four and one-half (4.5) load credits per semester (pro-rated for shorter sessions). The provisions of this Article are not grievable.

16.6 The primary responsibility of full-time administrative faculty members is to the University. A member may undertake outside employment, including teaching at any of the Connecticut State Universities, provided that such employment does not interfere with his professional responsibilities.

10. On June 17, 1988, the Board of Trustees for Eastern Connecticut State University voted to reclassify the vacant position of Counselor, an AAUP bargaining unit position, to Director of Counseling Services/Administrator V, a position within the AFSCME bargaining unit. (Exh.7, Tr.22)

11. There were no negotiations that took place between the CSU and AAUP in regard to this reclassification.

12. Testimony revealed that AAUP counselors do perform some administrative and supervisory work (Tr.p.25) and that AFSCME members perform instructional and counseling sessions. (Tr.p.p.94, 121-122, 127)

DISCUSSION

The essence of AAUP's argument can be summarized as follows: By statute, there can be only one faculty unit at CSU; counseling is a faculty function reserved by contract to AAUP members; therefore, the removal of a counseling' position from AAUP's bargaining unit and reassignment of their duties to AFSCME members constitutes a violation of the Act.

The cornerstone of AAUP's argument is Section 5-275(b)(4) C.G.S. which provides:

. . .In determining the appropriateness of the unit, the board shall: (4) permit the faculties of (i) The University of Connecticut, (ii) the Connecticut State University, (iii) the regional community colleges, (iv) the regional technical colleges; and (v) the state regional vocational-technical schools to each comprise a separate unit, which in each case shall have the right to bargain collectively with its respective board of trustees or its designated representative. Nonfaculty professional staff of the above institutions may by mutual agreement be included in such bargaining units, or they may form a separate bargaining unit of their own. This section shall not be deemed to, prohibit multiunit bargaining.

We note from the outset that there is no statutory language which defines the term faculty unit nor any legislative history on the subject. Additionally, complainant presented no evidence whatsoever as to its meaning in academic circles. However., the Random House Dictionary of the English Language (2nd Ed, unabridged) defines the term as "the entire teaching and administrative force of a university college or school." We also note that both bargaining units are considered to be faculty as evidenced by the recognition clauses in their contracts; one instructional, the other administrative. While we acknowledge that neither the dictionary definition nor the labels attached to the bargaining units harmonize squarely with the statutory language, we do not believe that these factors are dispositive of what comprises a faculty unit. More importantly, such a determination is not central to the issue in this case.

¹ In this regard, complainant is specifically referring to personal psychological counseling acknowledging that other types of counseling duties have historically been performed by the AFSCME bargaining unit.

The central question is whether counseling is exclusively a function within the AAUP unit by statute. In reviewing Section 5-275(b)(4) C.G.S., we note that there is no language in this section which mandates that certain job duties (specifically counseling) are to be considered within the faculty unit. Nor does this language preclude members of one bargaining unit from performing job duties which may overlap to one degree or another with responsibilities of another bargaining unit. In fact, AAUP hasn't disputed the fact that some counseling functions have historically been performed by AFSCME members without objection. However, they argue that personal psychological counseling is within the sole jurisdiction of their bargaining unit because the contract so provides. They refer us to several sections of the contract, specifically, Sections 1.6.3 and 1.6.4 of Article 1 and 6.1 of Article 6.

This is a question we have no jurisdiction to decide. The jurisdiction of the Board is limited to whether the Act has been violated. A mere breach of a collective bargaining agreement does not constitute such a violation *Town of Plainville*, Decision No. 1790 (1979); *Southington Board of Education*, Decision No. 1717 (1979). In *State of Connecticut*, Decision No. 2871 (1980), we stated:

This does not mean that the Board lacks jurisdiction to construe a contract. If construction or interpretation of a contract is necessary to determine whether there has been a breach of the Act we have the power to make that construction although we may in our discretion defer that question to the process of arbitration. See, e.g., *Bolton Board of Education*, Decision No. 1618 (1978).

Where, however, the process of construing the contract can lead only to determining whether there has been a simple breach of contract - and to nothing else - then the matter is not one for deferral. We have no jurisdiction to make that determination because it is not a step toward a finding of statutory violation; it is a step in a process committed by law to the grievance-arbitration machinery or to the courts. *Southington Board of Education*, supra; *Town of Plainville*, supra.

In the present case, the AAUP's complaint is in essence a claim of breach of contract. Thus, without statutory language which mandates counseling to be within the exclusive province of the faculty unit, we fail to see how the performance of some counseling functions by AFSCME bargaining unit members violates the statutory requirement that there be one faculty and one non-faculty unit.

Finally, complainant suggests that the AFSCME certification should be changed from a unit of all administrative non-instructional faculty to all non-faculty professional staff. This argument is just a different way of asking us to rule on whether the bargaining units conform to the statutory requirement for a faculty and non-faculty unit. We decline to do so for several reasons. First, the complaint, although it alleged unilateral change, was based upon the argument that counseling is a faculty function reserved by contract to the AAUP. Thus, we have no jurisdiction to decide the claim. Second, we do not believe that what the parties have labeled their respective bargaining units is dispositive of whether these units conform to the statutory language. Third, we note that the initial election for representation was made by agreement for consent election by the parties. In those agreements, the parties allowed the counselors and librarians to vote by separate ballot as to which bargaining unit they preferred. These employees voted for inclusion into the AAUP unit. At that time, there was a recognition by all parties that counseling functions could be placed in either the faculty or non faculty unit. In certifying the unit, we made no determination as to the appropriateness of this placement; there we stated "the Board's approval of the action herein is not to be taken as a precedent as to what unit it would find appropriate in the absence of such an agreement." Moreover, we note that the evidence reveals that AAUP members perform some administrative and supervisory duties and that AFSCME members perform some instructional duties. Given this longstanding bargaining practice and our preference for voluntary agreements, we are reluctant to delve into the meaning of Section 5-275(b)(4) without fuller exposition of the practice not only between the parties, but amongst all of our higher educational institutions. The record here is too insubstantial to make such a far reaching determination. Accordingly, we dismiss.

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/Susan R. Meredith
Susan R. Meredith

s/Ann McCormack
Ann McCormack

(Craig Shea, although on the panel for this complaint, was not available for deliberations.)

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