

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES**

**ARTCENTER COLLEGE OF DESIGN**

**Cases 31-CA-325485**

**and**

**CALIFORNIA FEDERATION OF TEACHERS,  
AFL-CIO**

*Jacob A. Yocham, Esq.,*  
for the General Counsel.<sup>1</sup>  
*Megann McManus and Mary-Ann Czak, Esqs.,*  
for the Respondent.  
*Julia Harumi Mass, Esq.,*  
for the Union.

**DECISION**

**STATEMENT OF THE CASE<sup>2</sup>**

ANDREW S. GOLLIN, ADMINISTRATIVE LAW JUDGE. This hearing was held on July 22-23, 2025, in Los Angeles, California, over allegations that ArtCenter College of Design (the Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing to provide the California Federation of Teachers, AFL-CIO (the Union) with adequate notice and a meaningful opportunity to bargain over the effects of the creation of two non-unit positions.

The Union represents the Respondent's nearly 800 teaching faculty. On June 5, 2023, the Respondent informed the Union that it planned to implement a multi-phased "realignment" of the managerial structure within its academic departments. The second phase of the realignment plan would include the creation of two new rotating positions within the managerial hierarchy---assistant chair and associate chair. These two new managerial/supervisory positions would assume the administrative and oversight duties previously performed by the faculty directors. The Respondent informed the Union that existing faculty directors may be offered the inaugural chair positions. Those who were not offered, or did not accept, one of the chair positions would lose their title and the additional compensation and benefits they received; those who accepted one of the chair positions would be excluded from the bargaining unit.

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<sup>1</sup> On February 3, 2025, President Donald J. Trump appointed William B. Cowen to be Acting General Counsel, replacing former General Counsel Jennifer Abruzzo. For ease and consistency, I will refer to the Acting General Counsel, the former General Counsel, and counsel for the General Counsel collectively as the General Counsel.

<sup>2</sup> Abbreviations in this decision are as follows: Transcript citations are "Tr. \_\_\_\_"; Joint Exhibits are "Jt. Exh. \_\_\_\_"; General Counsel Exhibits are "G.C. Exh. \_\_\_\_"; the Union's Exhibits are "U. Exh. \_\_\_\_"; and Respondent's Exhibits are "R. Exh. \_\_\_\_". Although I have included citations to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific citations but rather on my review and consideration of the entire record.

The Union requested that the Respondent delay implementation of its realignment plan to allow the parties an opportunity to bargain over its impact. The Respondent declined to delay implementation, but it agreed to bargain over any effects to unit employees. The parties exchanged correspondence and met for effects bargaining on August 1, 2023. The Union made proposals, which the Respondent largely rejected. The Respondent stated, repeatedly, that it remained willing to continue effects bargaining, particularly over the impact on the faculty directors. The parties did meet on October 2, 2023, without any resolution. Thereafter, the Union stopped pursuing effects bargaining.

On September 7, 2023, the Union filed the charge in this case, alleging, in relevant part, that the Respondent violated Section 8(a)(5) and (1) of the Act by implementing its realignment plan without engaging in decisional bargaining with the Union. (G.C. Exh. 1(d)). The Union amended the charge on November 18, 2024, alleging that the Respondent also violated Section 8(a)(5) and (1) by failing to bargain with the Union over the effects of the decision to create the assistant and associate chair positions. (G.C. Exhs. 1(g)). On December 23, 2024, the Regional Director, on behalf of the General Counsel, issued the complaint.<sup>3</sup> As amended, the complaint narrowly alleges the Respondent violated Section 8(a)(5) and (1) since June 5, 2023, by failing to provide the Union with adequate notice and an opportunity to bargain over the effects of the creation of these two new chair positions. (G.C. Exh. 1(j)). On January 6, 2024, the Respondent filed its answer denying the allegations and raising various defenses, including that the Union waived its right to bargain over the effects. (G.C. Exh. 1(l)).

All the parties appeared at the hearing and had the opportunity to introduce evidence and examine witnesses. The parties also filed post-hearing briefs, which I have carefully considered.

For the reasons discussed below, I conclude the General Counsel has failed to establish the Respondent committed the alleged violations. I, therefore, recommend dismissing the complaint.

#### FINDINGS OF FACT<sup>4</sup>

##### A. Jurisdiction

The Respondent is a California non-profit corporation engaged in the business of providing higher education. In conducting its operations during the period ending April 29, 2022, the Respondent derived gross revenues available for operating expenses in excess of \$1 million, and it purchased and received products, goods, and materials valued in excess of \$5,000 directly from points outside the State of California. The Respondent admits, and I find, that it has been an employer engaged in

<sup>3</sup> The complaint originally included allegations from Case 31-CA-311351, concerning wage increases. Prior to the start of the hearing, the Respondent settled those allegations, and the Regional Director issued an order severing that case and withdrawing those allegations from the complaint. (G.C. Exh. 33). It also resulted in a change to the remaining allegation. (Tr. 254; 279-280).

<sup>4</sup> Although most of the critical facts are undisputed, there are certain facts that rest on witness credibility. My credibility assessments rely upon a variety of factors, including the witness's demeanor, the context of the testimony, the quality of the recollection, testimonial consistency, the presence or absence of corroboration, bias, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996), *enfd. sub nom.* 56 Fed.Appx. 516 (D.C. Cir. 2003).

commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent also admits, and I find, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

## B. Background

The Respondent offers undergraduate and graduate degrees in several art and design disciplines. The Respondent's model of academic organization historically has been that one degree equaled one department. Each department had a chair and an administrative team. Initially, all chairs answered to the college president. Later, they reported to the provost. (Jt. Exh. 1(c)). The Respondent's president is Karen Hofmann, and its provost is Dr. Anne Burdick.

Within each of the academic departments, the Respondent had faculty directors. These were teaching faculty selected (usually for a term) to perform certain administrative and oversight duties within their department. These duties, which were in addition to teaching courses, included: attending director meetings, meeting with the department chair about ongoing initiatives and issues, participating in curriculum planning, supporting the chair in the faculty review process, and leading program review activities. (R. Exh. 2).

In exchange for performing these duties, the faculty directors received an additional stipend and a reduced course load, which is also referred to as a "course release."<sup>5</sup> The amount of the stipend paid to the faculty directors ranged from \$10,000 to \$45,000 per academic year. The course release was usually one course per term, for a total of three fewer courses per academic year.

On June 22, 2022, the Union was certified as the bargaining representative for all full-time and part-time faculty who taught/teach in degree-earning and non-degree earning programs at the Respondent's four instructional facilities in Pasadena, California; excluding all other employees, department chairs, non-faculty employees, confidential employees, managerial employees, guards, and supervisors as defined by the Act. The name of the local union representing the employees is the ArtCenter Faculty Federation (ACFF). The ACFF president is Allison Dalton. Dalton is a former faculty director who lost that position as part of the realignment plan.

Shortly after the Union's certification, the parties began negotiations over an initial collective-bargaining agreement. The Respondent's chief spokesperson was attorney Jon McNutt. The Union's chief spokesperson was field representative Daniel Martin.

## C. Alleged Unfair Labor Practices

### *1. Respondent Notifies the Union of the Realignment Plan*

On June 5, 2023,<sup>6</sup> McNutt emailed Martin a memo announcing the Respondent's planned realignment within its academic departments. (Jt. Exh. 1(c)). The memo explained that the new managerial hierarchy would begin with the appointment of deans, each of whom would oversee a division of up to four academic departments. Those departments, led by a chair, would continue to be the center for domain expertise. But instead of focusing on a single degree, the chair would be

<sup>5</sup> The Respondent has three terms (fall, spring, and summer) per academic year. Faculty typically teach three-to-four courses per term, for a total of nine-to-12 courses per year.

<sup>6</sup> All dates hereinafter refer to 2023, unless otherwise stated.

responsible for the full span of educational offerings in a discipline. Under the chair, each degree would be overseen by a new “associate chair” who would be responsible for the curriculum, accreditation, admissions processes, and students. The larger departments that organize their curricula into tracks, minors, or other emphases would be overseen by a new “assistant chair.” These new chair positions would have terms and be offered on a three-year rotating cycle.

Beginning in the 2023-2024 academic year, the faculty in a department would be permitted to apply for one of the rotating chair positions. At the conclusion of their rotation, they would have “retreat rights” to return to their faculty position. The memo explained that the procedure for determining eligibility and rotation would be developed in the upcoming year and through conversations between the administration and the Union.

The memo further explained that “[s]ome faculty may see changes in their current responsibilities, compensation, and titles starting Fall 2023. To ensure coverage for the upcoming academic year, inaugural chair positions may be offered as appointments to faculty who have been doing administrative and/or faculty director work in 2022-23.” (Jt. Exh. 1(c)).

The memo concluded with the expected timeline for the plan’s phased implementation. The first phase, involving the search for the inaugural set of deans, would begin in about mid-June. The second phase, involving the creation and selection of the associate chairs and assistant chairs, would begin in about mid-July. The goal was to complete that process before the start of the upcoming 2023-2024 academic year. The memo went on to state that the Union would be notified once the Respondent had a complete list of the faculty members who may be affected by the realignment.

## *2. Communication with Faculty and Realignment Plan*

The following day, on June 6, the Respondent began holding group meetings with the faculty to announce the realignment plan and the expected timeline for its phased implementation. (U. Exhs. 1 and 2). The Respondent notified the faculty that, as part of phase two, it would be creating and selecting the associate and assistant chair positions beginning in about mid-July (U. Exh. 2, pgs. 34-35), and that the impact of the plan on the faculty’s terms and conditions of employment would be discussed with the Union. (U. Exh. 2, pgs. 64, 75).<sup>7</sup> The Respondent later reiterated these points in emails and website posts to faculty. (G.C. Exhs. 25-27) (U. Exh. 8).

## *3. Correspondence About Bargaining*

On June 8, Union representative Martin emailed Respondent’s attorney McNutt, stating that because the parties were currently in negotiations, and because the realignment plan has not been fully developed, and because it is unclear the impact that the plan will have on the faculty’s terms and conditions of employment, the Union was requesting that the Respondent not move forward with implementation at that time. He added it was important that the negotiations over “the impact” take

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<sup>7</sup> The information management shared with the faculty largely tracked the information in the June 5 memo to the Union. One aspect not included in that memo was that the new chairs would be expected to teach a reduced course load. The faculty were advised that the associate chairs would teach a 1/3 course load, and the assistant chairs would teach a 2/3 course load. (U. Exhs. 1 and 2). As discussed below, the Respondent later shared this information with the Union in correspondence prior to the initial effects bargaining session.

place prior to implementation so that faculty know what to expect and can make informed decisions affecting their lives and careers. (Jt. Exh. 1(f)).

On June 10, McNutt emailed Martin. He wrote, in relevant part, that while the Respondent respected the Union's request, it would be moving forward with implementing the plan, which was its right. He noted the college would seek ongoing input from "our community" as it rolled out the changes and looked forward to working with the faculty, where appropriate, in furtherance of the shared governance structure. McNutt, however, acknowledged "the need to bargain over any effects that may result from the realignment on bargaining unit employees." He noted that although those effects were not clear at that time, he expected they would be known in the next four-to-six weeks. He wrote: "In anticipation of that, we would like to schedule a time to meet with the Union [for effects bargaining] sometime during the weeks of July 24 or 31. Please reply with your availability." (Jt. Exh. 1(d)).<sup>8</sup>

Martin emailed McNutt on June 29.<sup>9</sup> (Jt. Exh. 1(g)). He wrote that after meeting with its legal counsel that week, the Union was requesting to bargain over the proposed realignment plan prior to its implementation, and he proposed they meet on July 20. (Jt. Exh. 1(g)). On July 5, McNutt emailed Martin. He referenced his June 10 email--to which he noted Martin had not yet replied--in which he acknowledged the need to bargain with the Union over any effects, and that he had proposed the weeks of July 24 or 31 for that purpose. He stated the Respondent was not available to bargain on July 20. (Jt. Exh. 1(h)). A week later, on July 12, Martin proposed the parties meet on July 24 for "[r]ealignment [p]lan negotiations." (Jt. Exh. 1(i)). The following day, McNutt responded that July 24 was no longer possible for the realignment meeting.<sup>10</sup> He proposed that they meet on July 31, August 1, 2, or 3. On July 18, Martin emailed McNutt that the Union could meet on August 1, from 10 a.m. to noon. (Jt. Exh. 1(j)).

The following day, Martin emailed McNutt requesting the job descriptions for the assistant and associate chief positions. (Jt. Exh. 1(k)). On July 24, the Respondent provided the requested information. (Jt. Exh. 1(k)). The job descriptions stated the associate and assistant chairs would be considered managerial/supervisory because they had the authority, in the interest of the college, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, direct, reward, discipline, and adjust grievances for other employees, or effectively recommend such action, using independent judgement. The descriptions also stated the assistant chairs would be expected to teach seven courses per academic year, and the associate chairs would be expected to teach five courses per year.

On July 25, McNutt emailed Martin a supplemental memo in advance of the parties' August 1 bargaining session. (Jt. Exh. 1(l)). It stated the new positions and titles would be effective August 20. It also included tables listing the 47 faculty members who would be affected by the realignment plan. Table 3 identified 19 members whose assessment liaison assignments (and course release) would be reduced while their compensation remained the same; Table 4 identified 21 members whose current

<sup>8</sup> On June 27, Dr. Burdick emailed the faculty stating that she and President Hofmann would be meeting with the Faculty Council on June 29, to discuss faculty inclusion in how the realignment plan might be shaped to meet the specific realities of each of the programs. (G.C. Exh. 24). The record does not reflect whether this meeting occurred and, if so, what was discussed. In July and August, Dr. Burdick emailed faculty providing periodic updates on the realignment and the expected timeline for its phased implementation. (G.C. Exhs. 25-32).

<sup>9</sup> Martin, in his testimony, did not explain why it took 19 days to respond to McNutt's offer to bargain.

<sup>10</sup> McNutt, in his testimony, did not explain why the Respondent was no longer available on July 24.

assignments (and their course release) would be eliminated and replaced with offers for either a new chair opportunity or teaching assignments; Table 5 identified four members whose assignments (and course release) would be eliminated and replaced by a new teaching assignment; and Table 6 identified three members whose assignments (and course release) would be eliminated and replaced by a new teaching assignment, but with a loss of their current stipend.<sup>11</sup>

On July 26, Martin asked the Respondent for the total number of chairs, associate chairs, and assistant chairs by department under the realignment plan, as well as the current number of chairs. (Jt. Exh. 1(m)). Two days later, McNutt emailed Martin the requested information, plus two corrections to the supplemental memo. (Jt. Exh. 1(n)). He wrote the Respondent expected there to be 12 assistant chairs and 24 associate chairs.

#### *4. August 1 Bargaining Session and Union Proposals*

On August 1, the Respondent and the Union met for effects bargaining.<sup>12</sup> The focus of the session was on the status and work of the newly created chairs and the eventual elimination of the faculty directors. The Union asserted the administrative and oversight duties performed by the faculty directors constituted unit work, and if those duties were being reassigned to the new chairs, the chairs should be part of the bargaining unit. If not, the Respondent should backfill the positions being lost. The Union also asserted that anybody who was negatively impacted financially by these changes, including the loss of stipends, be made whole. According to Martin, the Respondent rejected each of these proposals and offered no counterproposals. (Tr. 30-32).

#### *5. Correspondence Following August 1 Bargaining Session*

On August 7, Martin emailed McNutt reiterating the Union's positions and proposals regarding the effects of the planned changes. (Jt. Exh. 1(o)). First, the Union proposed that the new chairs be included in the bargaining unit because they were going to be teaching and performing administrative and oversight duties. Second, the Union proposed that if management rejected this proposal, management should backfill those unit positions being displaced by the new chairs. Third, the Union proposed that the Respondent not force the faculty members to choose between "at-will" employment (as an assistant or associate chair) and a significant loss of compensation if they decline a chair position and remain in the unit. Finally, the Union proposed that no faculty member suffer any loss of compensation because of the realignment.

On August 11, McNutt emailed Martin responding to the proposals. (Jt. Exh. 1(p)). He began by disagreeing with the contention that the new chair positions should be part of the bargaining unit.

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<sup>11</sup> In late July, management began notifying the faculty directors that they would be losing their title, administrative and oversight duties, stipend, and course release. (G.C. Exhs. 16 and 34) (U. Exh. 3). Certain of the faculty directors were offered one of the new chair positions, and several accepted. The timing of this was not entirely clear from the record. Allison Dalton was one of the faculty directors who was offered a chair position. She rejected the offer in early August, and she was eventually relieved of her faculty director responsibilities by September. (Tr. 116-118).

<sup>12</sup> McNutt and Martin were the only witnesses to testify about the August 1 session, and each struggled to confidently and specifically recall what was said. (Tr. 28-31; 221-225). As such, I primarily rely upon their subsequent written correspondence (discussed below) as setting forth the bargaining proposals and responses.

He explained that while the chairs have teaching duties, they also have substantial supervisory and managerial functions. He went on to explain, in detail, what those functions would be.

McNutt acknowledged that the resulting elimination of some faculty director positions would impact certain unit employees, and that the Respondent will continue to negotiate with the Union over the impact on those positions. He noted that faculty who previously held a director assignment with a reduced course load would see their teaching assignments reinstated, allowing them to maintain their compensation level. In addition, all but three of those who had their assignments superseded by the new chair positions were offered the opportunity to join the college's leadership team (as chairs, associate chairs, or assistant chairs). Those who accept would have their compensation increased. The three faculty members identified (in Table 6) were not losing compensation because of realignment, but rather because their closed-end assignments were ending.

McNutt next expressed confusion over the Union's demand to "backfill" the unit positions affected by the realignment. He advised that no unit positions were being displaced by the newly created chair positions, and that the Respondent was not changing the total number of course offerings or sections because of the realignment.

He also noted that positions outside the unit, including department chairs and executive directors, have historically taught courses. Moreover, the newly created chair positions would be teaching fewer courses than they had in their faculty role. He noted that, in total, no more than 3.33 percent of the courses offered each semester will be taught by associate and assistant chairs, and the courses they would have taught had they remained in the unit will be taught by other faculty members, including newly hired faculty who will be part of the bargaining unit.

Finally, in response to the Union's concern about "at-will" employment for those that accept a chair position, McNutt emphasized the Respondent offered retreat rights to those that accept and later return to a faculty position at the end of their term. He added the Respondent was willing to expand the retreat rights for those who take a chair position and later change their mind. He stated the college will allow them to resign and retreat to a faculty position at the start of the semester prior to the end of their contract, so long as they provide at least six weeks' notice prior to the end of the then-current semester. McNutt concluded by stating he looked forward to the Union's response on these issues.

On August 28, Martin responded. (R. Exh. 5).<sup>13</sup> He wrote that up to that point the Respondent had refused to bargain concerning the "many decisions" reflected in its July 25 supplemental memo, and that the Respondent's "willingness to bargain effects alone is unacceptable." Martin noted that, despite the Respondent's protestations to the contrary, the realignment plan removes significant duties, i.e., teaching work and work that has been performed by unit employees serving as faculty directors who, in addition to teaching, performed administrative duties. The July 25 supplemental memo also underscores the Respondent's unilateral actions to (1) diminish the work of unit employees by detailing significant compensation losses for those affected, and (2) change the character of work performed by unit employees who have until now performed some degree of administrative responsibilities but will now have increased teaching loads.

Martin went on to state that the Respondent's realignment and refusal to bargain could not have been more poorly timed. The parties have been negotiating for almost a year. "Had we made better

<sup>13</sup> Martin, in his testimony, again did not explain why it took him 17 days to respond to McNutt.

progress earlier and achieved a contract, this realignment would have been discussed without carrying the implicit, and we believe intended, message to the faculty that their choice of unionization was misguided and their hopes for a bilateral approach to decision-making were illusory.”

Martin concluded by stating the Union was available to bargain the realignment decisions reflected in the July 25 memo, not just the effects of those decisions, and the bargaining committee members will make themselves available at the earliest opportunity. Martin then asked for the Respondent’s availability during the week of September 1.

Later that same day, McNutt responded to Martin. In his email, McNutt wrote:

It's disappointing that you have sent a communication that is so rife with misstatements and wild accusations. Months ago, the College notified the Union of its planned realignment and subsequently issued several detailed memos. We offered to meet with the Union to provide additional information and address any questions and concerns that the [U]nion had.

After waiting weeks for the [U]nion to set a meeting time, finally, on August 1, 2023, the Union met with the College in what you subsequently described as “Realignment negotiations.” You then wrote to me on August 7, addressing several of the Union’s “positions” as to the realignment. In an effort to further communicate with the Union and explain the College’s responses on the Union’s positions, I sent a lengthy email to you on August 11, 2023. Attempting to continue the conversation, I concluded my email with “I look forward to your response on these issues.”

Your implication that the College’s realignment is somehow related to our ongoing collective bargaining is equally false. The realignment discussion began well before the union was certified as the representative for [the faculty.] And, as you have confirmed, the realignment is purely a management right – for the College to determine how its management and administration are structured.

...

As for the next meeting that you have proposed concerning the realignment, the College can be available on the morning of September 1 ....

(R Exh. 5).

The parties did not meet on September 1. McNutt and Martin exchanged emails trying to schedule a bargaining session for that week. (R Exh. 6). On September 8, McNutt sent Martin an email to confirm the Union’s availability to meet on September 12, between 2-3 p.m. Martin responded that the Union was not available at that time because the bargaining committee would be teaching their courses. McNutt proposed meeting later in the day, between 5:30-6:30 p.m. (R. Exh. 6). The record does not reflect whether Martin responded. The parties did not meet on September 12, or at any other time in September, to bargain over the effects.<sup>14</sup>

<sup>14</sup> The record does not reflect the dates the parties met for their negotiations over their initial agreement.

## 6. *October 2 Meeting and Subsequent Communications*

The parties next met on October 2, where they discussed effects.<sup>15</sup> According to McNutt, Martin asked which faculty members had been offered the new chair positions, and whether they had accepted. The two sides then discussed each of those individuals and their status. (Tr. 229-230).  
5 Neither side made any proposals. (Tr. 233-234).

In the months following the October 2 meeting, McNutt informed Martin that the Respondent remained willing to bargain over the effects. He made those offers through January 2024. (Tr. 234). The Union did not request or otherwise pursue effects bargaining.<sup>16</sup>

## 7. *Parties' Reach Initial Collective Bargaining Agreement*

10 The parties continued to meet and bargain over their initial agreement. They eventually reached an agreement, which is dated May 1, 2024, to April 30, 2027. (R Exh. 4).<sup>17</sup>

### LEGAL DISCUSSION

#### A. Overview

##### 15 *1. Allegation and Applicable Framework*

The complaint narrowly alleges that the Respondent has violated Section 8(a)(5) and (1) of the Act since June 5, 2023, by failing to provide the Union with adequate notice and an opportunity to bargain over the effects of the creation of the assistant and associate chair positions.<sup>18</sup>

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<sup>15</sup> Martin testified he could not recall whether the parties had a second meeting over effects. (Tr. 29-30). The first reference to this October 2 meeting occurred during McNutt's testimony, during which the Respondent presented him with his meeting notes. The General Counsel objected, noting their subpoena to the Respondent requested any bargaining notes, and McNutt's notes were not produced. (Tr. 230-232). As a sanction, the General Counsel requested that the Respondent be precluded from questioning McNutt about the October 2 meeting. I did not grant that request, but I barred the Respondent from offering the notes or otherwise relying upon them as evidence. I determined that to be more appropriate because the Respondent's failure to produce the notes was inadvertent, and the General Counsel could have recalled Martin, or presented another witness, to rebut McNutt's testimony. (Tr. 231-232). That being said, I make no findings based on the General Counsel's decision not to recall Martin or present another witness on this topic.

<sup>16</sup> Dalton, who was on the Union's bargaining committee for the parties' initial collective-bargaining agreement, testified that when the Union brought up the realignment plan, the Respondent stated that it was not part of those negotiations, and they would schedule a separate meeting to discuss that topic. (Tr. 101-102). Dalton did not provide any further specifics, including when and by whom the statements were made. Martin, in contrast, testified the Union was never precluded from making proposals regarding realignment. (Tr. 46-47). I credit Martin over Dalton on this matter. Martin was the Union's chief spokesperson throughout all the negotiations, and his testimony on this topic was clearer and more definitive.

<sup>17</sup> McNutt testified that effects bargaining was later subsumed and made part of the parties' negotiations over an initial agreement. I give no weight to this testimony. Much of what McNutt said on this topic was in response to leading or highly suggestive questions from the Respondent's counsel, and his responses were vague and lacked the details and context necessary to fully understand what was proposed, discussed, and agreed to (or waived) as part of their negotiations over the parties' initial agreement. (Tr. 242-254).

<sup>18</sup> There is no allegation that the Respondent had a duty to bargain over the creation of these chair positions. The Board has held the creation of non-unit positions and the selection of individuals to fill those positions are

It is well established that an employer has a duty to give a union notice and opportunity to bargain about the effects of a managerial decision even if it has no obligation to bargain about the decision itself. See *Comau, Inc.*, 364 NLRB 523, 524-525 (2016). See also *Good Samaritan Hospital*, 335 NLRB 901, 902 (2001); *Allison Corp.*, 330 NLRB 1363, 1365 (2000). Bargaining over the effects of a decision “must be conducted in a meaningful manner and at a meaningful time.” *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681-682 (1981). In determining if this has occurred, a relevant consideration is “whether the union is afforded an opportunity to bargain ‘at a time when it still represented employees upon whom the [employer] relied for service.’” *Komatsu America Corp.*, 342 NLRB 649, 649 (2004) (quoting *Metropolitan Teletronics Corp.*, 279 NLRB 957, 959 (1986), *enfd. mem.* 819 F.2d 1130 (2d Cir. 1987)). Once the employer has provided timely notice, the onus is on the union to both request and pursue effects bargaining. See *Frontier Communications*, 370 NLRB No. 131, slip op. at 10 (2021). See also *Berklee College of Music*, 362 NLRB 1517, 1518 (2015)).

## 2. Positions of the General Counsel and the Union

The General Counsel and the Union argue the Respondent, by its course of conduct, failed to provide the Union with adequate notice and a meaningful opportunity to bargain over the effects. They contend the notice was given shortly before the Respondent began implementing the plan and notifying the unit employees. It took these steps despite the Union’s request that it delay implementation to allow the parties an opportunity to bargain over the impact on unit employees.

The General Counsel and the Union also argue that while the Respondent later offered to engage in effects bargaining, that offer was illusory. They contend the Respondent refused or delayed bargaining over the effects until the end of July, two months after it had begun implementation. They point out that by the time the parties met on August 1, the Respondent had begun notifying faculty directors about the changes to their terms and conditions of employment. Collectively, the General Counsel and the Union argue the Respondent’s conduct foreclosed a meaningful opportunity to bargain over the effects.

Next, the General Counsel and the Union argue that when the parties met on August 1, the Respondent did not engage in actual bargaining. Despite the Union’s attempts to follow up the meeting

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managerial decisions, over which the employer has no duty to bargain. See *St. Louis Telephone Employees Credit Union*, 273 NLRB 625, 627-628 (1984). Cf. *Glades Electric Cooperative, Inc.*, 366 NLRB No. 112 (2018).

The Union, however, contends in its post-hearing brief that the Respondent had a duty to bargain over the creation of these chair positions because they involved transferring or reassigning unit work to non-unit employees, which is a mandatory subject of bargaining. Specifically, the Union focuses on the transfer or reassignment of the faculty directors’ administrative and oversight duties. I decline to address the Union’s contention for two reasons. First, the complaint does not allege this as a violation, and the General Counsel did not seek to include it as part of their case. It is well established that the General Counsel controls the complaint, and the charging party cannot change or expand it or the General Counsel’s theory of the case. See e.g., *Coastal Marine Services, Inc.*, 367 NLRB No. 58, slip op. at 1 fn. 2 (2019); *Smoke House Restaurant*, 347 NLRB 192, 195 (2006), *enfd.* 325 Fed. Appx. 577 (9th Cir. 2009). Second, the record does not reflect whether the duties at issue constituted unit work. Although the faculty directors existed at the time of the petition, the election, and the Union’s certification, they are not referenced in the unit description. There was no determination as to whether their administrative and oversight duties constituted (included) teaching work or (excluded) managerial work, see *NLRB v. Yeshiva University*, 444 U.S. 672 (1980), and these issues were not raised or fully litigated during the hearing in this case.

with clarification and requests for information, the Respondent shut every topic of discussion down. Rather than bargain in good faith, the Respondent's approach to effects bargaining was to deny that the effects cited by the Union existed at all. Although the parties were regularly meeting to negotiate an initial collective-bargaining agreement, the Respondent refused to engage in any effects bargaining during those meetings. And there is no evidence the Respondent engaged in meaningful bargaining when the parties met on about October 2.

### 3. *Position of the Respondent*

The Respondent denies these allegations and asserts it bargained in good faith over the effects of the creation of the chair positions. It points out that it proactively informed the Union about its realignment plan and then offered to bargain over the impact on the unit employees. It also contends it responded to the Union's information requests and made proposals designed to reduce the impact on unit employees. The Respondent asserts the Union did nothing in response, and after a two-month delay demanded that the Respondent refrain from implementing the plan and sought a "make whole" remedy for affected faculty.

The Respondent further contends that when the parties met on August 1, the Union focused on everything but effects, and it made no proposals specific to any affected faculty member. Then, on August 28, the Union stated that it would not engage in effects bargaining without decisional bargaining, writing, "[y]our willingness to bargain effects alone is unacceptable." The Union also made unfounded accusations that the Respondent had nefariously timed the implementation of its realignment plan to undermine the faculty's faith in the Union, and it falsely claimed that the Respondent refused to bargain over "the many decisions reflected in the July 25 memo." Later, when the Respondent agreed to meet on September 1 for effects bargaining, the Union never responded. Instead, on September 7, it filed a charge alleging the Respondent violated the Act by failing to engage in decisional bargaining over the realignment plan.

The Respondent argues that following the charge it again met with the Union on October 2 to bargain over effects. At that meeting, the Union did not raise any specific proposals regarding the affected unit employees outlined in the tables in the supplemental memo. And following that session, the Union did not request further bargaining, despite the Respondent's expressed willingness to continue meeting. Based on this conduct, as well as the negotiated terms of the parties' initial agreement, the Respondent contends the Union has waived its right to further effects bargaining.

### B. *Adequacy of the Notice*

The first issue is whether the Respondent provided the Union with adequate notice of the creation of these assistant and associate chair positions. An employer has a duty to give pre-implementation notice to the union to allow for meaningful effects bargaining. See *Allison Corp.*, supra at 1366. That notice must be given "sufficiently before . . . actual implementation so that the union is not confronted at the bargaining table with . . . a fait accompli." *Comau, Inc.*, 364 NLRB 523, 525 (2016) (quoting *Willamette Tug & Barge Co.*, 300 NLRB 282, 283 (1990)). See also *Komatsu America Corp.*, 342 NLRB 649, 649 (2004); *Penntech Papers v. NLRB*, 706 F.2d 18, 26 (1st Cir. 1983), cert. denied 464 U.S. 892 (1983).<sup>19</sup> The reasoning for pre-implementation notice is that in most situations

<sup>19</sup> Whether an employer provided notice of a fait accompli depends on whether it had a duty to bargain over the decision or its effects. When a case involves decisional bargaining, it is unlawful for the employer to unilaterally

there are alternatives that the parties can explore to avoid or reduce the scope of the effects without calling into question the employer's underlying decision. *Frontier Communications*, supra slip op. at 11 (citing *Good Samaritan Hospital*, supra at 903-904 and *Allison Corp.*, supra at 1366). Whether the employer has provided adequate notice is a question of fact that depends on all the surrounding circumstances. *Los Angeles Soap Co.*, 300 NLRB 289, 295 (1990) (citing *NLRB v. Emsing's Supermarket*, 872 F.2d 1279, 1286-1287 (7th Cir. 1989)); *Emhart Industries*, 297 NLRB 215 (1987).

To resolve this first issue, I turn to the record. The Respondent first notified the Union about the planned creation of these chair positions on June 5, when McNutt sent Martin the memo outlining the Respondent's realignment plan and the expected timeline for implementation. In that memo, McNutt advised Martin that phase one, which involved the creation and selection for the new dean positions, would begin in about mid-June, and phase two, which involved the creation and selection of these chair positions, would begin in about mid-July. The memo mentioned that as a result of the realignment some faculty may see changes to their current responsibilities, compensation, and titles starting in the fall. It also stated that the inaugural chair positions may be offered to faculty who performed administrative and/or faculty director work during the prior academic year. Based on this evidence, I conclude the Respondent provided the Union with notice of the creation of these chair positions and the potential effects on unit employees six weeks in advance of the planned implementation (June 5 to mid-July).

The Board has consistently held six weeks (or less) is adequate notice to allow for meaningful effects bargaining. See e.g., *Haddon Craftsmen*, 300 NLRB 789, 790 (1990) (five-week notice of proposed reclassification change held adequate), rev. denied mem. sub. nom. 937 F.2d 597 (3d Cir. 1991); *Gibbs & Cox, Inc.*, 292 NLRB 757, 757 (1989) (two-week notice of discontinuance of payments to mutual fund held adequate), dismissed as moot 904 F.2d 214 (4th Cir. 1990); *Jim Walter Resources, Inc.*, 289 NLRB 1441, 1442 (1988) (10-day notice of change to payment of premiums held adequate); *Salem College*, 261 NLRB 327 (1982) (one-month notice before subcontracting agreement became final held adequate); *Citizens Nat'l Bank*, 245 NLRB 389, 389-90 (1979) (less than one week notice of scheduling change held adequate); *Kentron of Hawaii Ltd.*, 214 NLRB 834, 834-35 (1974) (three-week notice of change to benefits was timely); *American Oil Co.*, 164 NLRB 36 (1967) (nine-day notice of closure held adequate); *Hartmann Luggage Co.*, 173 NLRB 1254 (1968) (4.5-day notice of layoffs held adequate); and *Cumberland Shoe Corp.*, 156 NLRB 1130 (1966) (20-day notice of closure held adequate).

The General Counsel and the Union contend the notice in this case was inadequate because the Respondent immediately began implementing its realignment plan and providing the faculty with details about the process it would use for identifying and selecting the associate and assistant chairs, all while failing or refusing to meet with the Union for another two months. Under the circumstances,

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formulate and announce a final decision, because it forecloses negotiations over potential alternatives to that decision. When a case involves effects bargaining, it is lawful for the employer to unilaterally formulate and announce a final decision. However, it must provide the union with an opportunity to bargain over how the implementation will impact unit employees. It is unlawful when the employer fails to provide reasonable notice and the opportunity to bargain before implementation when its failure forecloses negotiations over the potential alternatives to those effects. Ultimately, the issue is whether notice was given when the opportunity to bargain was ongoing or foreclosed.

they contend the Respondent announced the changes at issue as a *fait accompli*, which effectively precluded meaningful effects bargaining. I reject these contentions.

First, as stated, the only aspect of the realignment plan that is at issue is the creation of the assistant and associate chair positions. The June 5 memo announced the Respondent planned to begin creating the new chair positions in mid-July, as part of phase two. The record shows the Respondent began creating those positions in late July or early August.<sup>20</sup> Although the Respondent began implementing phase one of the plan in late June and early July, which involved the creation and selection of the four new dean positions, there is no contention that the Respondent had any obligation to bargain over those matters.

Second, the Respondent did not fail or refuse to meet with the Union for two months following the June 5 memo. McNutt's June 10 email to Martin offering to bargain explained that the effects were not yet clear, and more information would be known in the next four-to-six weeks. He stated, "In anticipation of that, *we would like to schedule* a time to meet with the Union [for effects bargaining] sometime during the weeks of July 24 or 31. Please reply with your availability." (emphasis added). The Respondent was not insisting on those weeks, it was stating a preference for when it believed that effects bargaining should begin and the reasons why. If the Union wanted to test the Respondent's position, Martin could have promptly responded to McNutt's email and requested earlier dates, stating the reasons why. He did not.

Instead, Martin waited 19 days to respond to McNutt, and he stated, for the first time, that the Union wanted to bargain over the "proposed" realignment plan itself before it was implemented.<sup>21</sup> In doing so, the Union changed the focus from effects bargaining to decisional bargaining, even though the Respondent had no duty to bargain with the Union over its managerial decision to implement the plan. McNutt stated as much in his July 5 response, but he reiterated the Respondent remained willing to bargain over the effects, and he again proposed the weeks of July 24 or 31. The parties eventually settled on August 1.

Based on the evidence presented, I conclude the Respondent provided the Union with timely notice so that the Union was not presented with a *fait accompli* when seeking to bargain over effects.

### C. Meaningful Opportunity to Bargain

The second issue is whether the Respondent provided the Union with a meaningful opportunity to bargain over the effects. Section 8(d) of the Act requires that the employer and the union "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . but such obligation does not compel either party to agree to a proposal or require the making of a concession." Good-faith bargaining "presupposes a desire to reach ultimate

<sup>20</sup> The Union contends the Respondent's communications with faculty about the realignment plan differed from those with the Union. The record shows the Respondent provided the Union much of the same information about the creation and selection of these new chair positions, as well as the potential effects on the faculty directors, that it provided to the faculty. The only difference was the Respondent did not initially notify the Union that the new chairs would also be expected to maintain a reduced teaching load. That information was provided to the Union in late July, prior to the August 1 bargaining session.

<sup>21</sup> The Union contends that Martin first requested decisional bargaining in his June 8 email, and he "again" requested it in his June 29 email. Martin's June 8 email only requested to bargain over "the impact" of the plan -- which is synonymous with the effects. As such, the June 29 email was the first time the Union requested to bargain about the realignment plan itself.

agreement.” *NLRB v. Insurance Agents' Union*, 361 U.S. 477, 485 (1960). In determining whether a party has violated its duty to bargain in good faith, the Board examines the totality of the party’s conduct, both at and away from the bargaining table. See, e.g., *Overnite Transportation Co.*, 296 NLRB 669, 671 (1989), *enfd.* 938 F.2d 815 (7th Cir. 1991); *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984). It must be decided whether the employer is engaging in hard but lawful bargaining to achieve a desirable resolution or is delaying or unlawfully endeavoring to frustrate the possibility of arriving at any resolution. Although the Board generally does not evaluate whether proposals are acceptable, it will consider whether, objectively, a party’s bargaining positions or demands constitute evidence of bad-faith bargaining. *Reichhold Chemicals*, 288 NLRB 69 (1988), *affd.* in relevant part 906 F.2d 719 (D.C. Cir. 1990), *cert. denied* 498 U.S. 1053 (1991).

The General Counsel and the Union contend the Respondent had no intention of bargaining in good faith or in reaching a resolution regarding the effects of its creation of these new chair positions. They contend that by the time the parties finally met on August 1, bargaining was futile because the Respondent had begun notifying the faculty directors about the elimination of their positions and offering these new chair positions, which would have taken them out of the bargaining unit. Additionally, they contend that during the August 1 bargaining session, and in the communications that followed, the Respondent exhibited bad faith when it rejected each of the Union’s proposals, failed to offer any counterproposals, and denied each of the effects the Union stated would result from the creation of these chair positions.<sup>22</sup> I reject these contentions as well.

As discussed above, the Respondent provided timely notice and an offer to bargain over the effects. The Union, in its delayed response to that offer, attempted to change the focus from effects to decisional bargaining. The Respondent declined to bargain over its managerial decision to create the positions, but it advised the Union that it remained willing to bargain over the effects. To that end, prior to the August 1 bargaining session, the Respondent provided the Union with the supplemental memo containing relevant information about affected employees. The Respondent then met with the Union on August 1 and later responded to each of the Union’s proposals. It rejected including the chairs in the unit because of their supervisory functions, and it challenged the need to “backfill” because no unit positions were being displaced by the chairs, and the total number of course offerings was not changing. It, however, acknowledged the elimination of the faculty director positions would impact certain unit employees, and it stated it would continue to negotiate with the Union over the impact on those positions.<sup>23</sup> In response to the Union’s concerns about faculty having to choose between at-will employment or higher compensation, the Respondent stated it was open to expanding the retreat rights for faculty who changed their mind about accepting a chair position. The Respondent concluded by stating that it looked forward to the Union’s response on these issues. The Union waited another 17 days to respond, and it again insisted that the parties also bargain over the plan itself.

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<sup>22</sup> The General Counsel argues that despite the Union’s attempts to follow-up the meeting with clarification and requests for information, the Respondent shut every topic of discussion down. The General Counsel fails to identify what clarification or requests for information the Union made, and what the Respondent did that shut down further discussion. I, therefore, need not address these vague arguments.

<sup>23</sup> The Union asserts the course-load requirement for the new chairs would necessarily reduce the number of courses available for the unit employees to teach. It argues that its proposal for “backfilling” *could have* meant guaranteeing that those course reductions would be absorbed by the new chair positions rather than unit employees or creating additional courses to protect unit work. The record does not reflect that the Union ever raised that, or that it was precluded from raising that, as proposal.

Additionally, the timing of the August 1 session did not foreclose meaningful effects bargaining. Even though the Respondent had begun implementing the second phase of its plan by the time of this meeting, that process was ongoing. The Board held that meaningful effects bargaining is not foreclosed simply because the employer has begun implementing the change(s) at issue, and that having been furnished the opportunity to bargain over the effects, it is incumbent on the union to test the employer's intent to bargain, by engaging in negotiations. See *Berklee College of Music*, 362 NLRB at 1518 (quoting *Richmond Times-Dispatch*, 345 NLRB 195, 199 (2005)). In *Berklee College*, the employer announced and later began implementing a policy of a five-student minimum before a course would be held, which would reduce the number of classes available for faculty to teach. The union demanded the college cease further implementation of the policy until the parties negotiated over its effects. When the parties met, the union stated its objections to the policy, and the college later addressed those objections. It also provided the union with information about the number of courses cancelled to date under the policy. Thereafter, the union took no further action. The judge found the college violated Section 8(a)(5) and (1) of the Act by presenting the union with a *fait accompli* at that meeting because it refused to rescind the policy. The Board reversed, holding the college provided the union with notice and an opportunity to bargain over the effects because the policy had not been fully implemented, and the primary effects of the change had not yet been felt and would be felt in future semesters. Under these circumstances, the Board concluded the college provided the union with a meaningful opportunity to bargain at a meaningful time, and, therefore, the union "was not privileged to discontinue effects bargaining." 362 NLRB at 1518.

The same holds true here. Although the Union took additional steps beyond those of the union in *Berklee College*, it essentially abandoned its pursuit of effects bargaining. The Union's two stated concerns were the loss of the stipend and/or course release for the faculty directors whose positions were eliminated, and the potential loss or reduction of courses available for the unit employees to teach due to the requirement that chairs also maintain a teaching course load. When the parties met on August 1, and exchanged correspondence thereafter, the changes at issue had not been fully implemented, and these topics remained open for negotiation and possible resolution for months thereafter, if the Union had continued to pursue them.

Finally, following the August 1 session, the Respondent stated its willingness to continue effects bargaining, and it proposed dates in early September (September 1 and 12). When the Union responded that it was not available during the afternoon of September 12, the Respondent proposed meeting in the evening. The parties did not meet on either of those dates, or at any other time in September, to bargain over effects. When the parties met on October 2, the Respondent provided information regarding those faculty who were offered and accepted the chair positions. The Union made no proposals or requests for additional information to formulate proposals. And while the Respondent stated it remained willing to continue effects bargaining, and reiterated that willingness over the next several months, the Union took no further action to pursue effects bargaining.

Although unit employees were offered and had accepted these new chair positions beginning in late July and early August, there is no indication the Union was foreclosed from further bargaining and reaching a possible resolution over its stated concerns. The parties could have continued to meet and bargain over proposals to address the former faculty directors who suffered the loss of their stipend and/or course release, and they could have continued to meet and bargain over proposals to ensure there would be adequate courses available for unit employees to teach.

Under these circumstances, I conclude the Union was obligated to test the Respondent's intent to continue negotiations over the effects, and it was not otherwise privileged--as it did--to discontinue those negotiations.

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### CONCLUSION OF LAW

Based on the foregoing, I conclude the General Counsel has failed to establish the Respondent committed the alleged violations.<sup>24</sup> On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended<sup>25</sup>

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### ORDER

The complaint is dismissed in its entirety.

15 Dated, Washington, D.C. November 26, 2025



Andrew S. Gollin  
Administrative Law Judge

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<sup>24</sup> Based on my conclusions, it is unnecessary for me to address the Respondent's affirmative defenses, including that the Union waived its right to bargain over effects by agreeing to the terms of the parties' initial agreement.

<sup>25</sup> If no exceptions are filed, as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be waived for all purposes.