



BOARD OF LABOR RELATIONS

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January 22, 2025

(CERTIFIED RRR)

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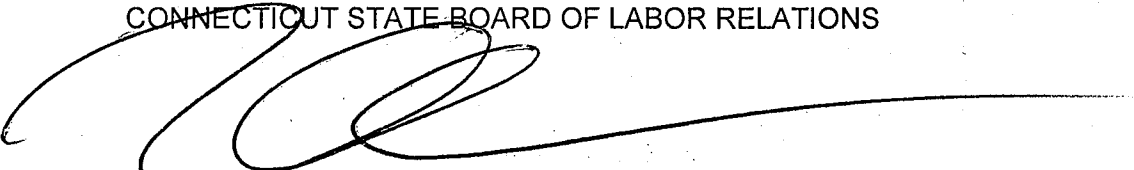
**RE: State of Connecticut- Board of Regents for Higher Education
-and-
The Federation of Technical College Teachers,
Local 1942, AFT, AFL-CIO
Case No. SPP-34882
Decision No. 5345**

Dear Counsel:

Enclosed please find the Decision and Order rendered by the Connecticut State Board of Labor Relations in the above-captioned matter.

Sincerely,

CONNECTICUT STATE BOARD OF LABOR RELATIONS


Frank N. Cassetta, General Counsel
FNC: mc
Enclosure

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF

STATE OF CONNECTICUT
BOARD OF REGENTS FOR HIGHER EDUCATION

DECISION NO. 5345

JANUARY 22, 2025

-and-

THE FEDERATION OF TECHNICAL
COLLEGE TEACHERS, LOCAL 1942, AFT, AFL-CIO

Case No. SPP-34,882

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

Attorney Sarah R. Skubas
for BORHE

Attorney Eric W. Chester
for the Union

DECISION AND ORDER

On December 13, 2022, the Federation of Technical College Teachers, Local 1942, AFT, AFL-CIO (the Union), filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board), alleging that the Board of Regents for Higher Education (the State or BORHE) violated the State Employee Relations Act (the Act) by failing to comply with an arbitration award.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on January 24, 2024, and February 21, 2024. All parties appeared, were represented by counsel, and were allowed to present evidence, examine and cross-examine witnesses, and make argument. The parties filed post-hearing briefs which were received on May 22, 2024. Based on the entire record before us, we make the following findings of fact and conclusions of law and issue the following order.

FINDINGS OF FACT

1. BORHE 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 all faculty members at five State community college campuses: Naugatuck Valley Community College; Norwalk Community College; Gateway Community College; Capital Community College; and Three Rivers Community College.
3. BORHE and the Union were parties to a collective bargaining agreement, with effective dates of July 1, 2016 through June 30, 2021, which provided, in relevant part:

ARTICLE VIII. PROFESSIONAL WORKING CONDITIONS

8.3. ANNUAL WORKLOAD

8.3.1 Teaching Faculty

During each academic year, full-time teaching faculty shall:

8.3.1 Teach twenty-four contract/credit hours and perform related duties as provided in Section 8.3.5 below.

8.3.1.2 Perform additional responsibilities equivalent to the preparation and teaching of an additional three contact/credit course or an average of nine hours per week for each semester within the appointment year or teach an additional three contact/credit hours as provided in Section 8.3.6 below. While the final decision of whether an individual faculty member shall teach an additional three (3) contact/credit hour course or perform additional responsibilities rests with management, the managerial decision shall be based on the merits of each individual faculty member's application for additional responsibilities in accordance with the procedures in Appendix D.

8.3.1.3 The parties agree to the following changes regarding workload for teaching faculty:

- a. Full time faculty hired on or after July 1, 2017, shall be required to teach a course in lieu of Additional Responsibilities (AR);

- c. Faculty hired on or after July 1, 2017, shall be released as appropriate with approval from the colleges so that they may work on professional obligations toward the goals of attaining tenure and/or promotion;
- d. All faculty employed on or before June 30, 2017 shall elect to complete AR or teach a 3-credit course for \$2,500 compensation . . . Said election shall be made by the faculty member no later than May 15th of the preceding academic year. AR approval decisions shall be made no later than June 1st of the preceding academic year. The existing practices and rules regarding AR proposals/approvals shall remain in place;

8.3.6 Additional Responsibilities/Teaching

8.3.6.1 The additional responsibilities as specified in Section 8.3.1 may include, but shall not be limited to the following, and shall be for the purpose of fulfilling the mission, goals, and priorities of the college and the System as determined by the employer:

- (c) development of new instructional techniques, course offerings or programs, or major revisions of courses or programs;

APPENDIX D ADDITIONAL RESPONSIBILITIES

In the course of negotiations, the parties have identified shared concerns regarding the professional responsibilities of teaching beyond those associated with classroom instruction and related duties. The

parties recognize that, as professionals, teaching faculty are expected to extend their services to meet other institutional needs related to the mission, goals and priorities of the college and System . . .

To this end, each college shall publish and distribute to all members of the teaching faculty a comprehensive statement of its institutional mission, goals and priorities. During the spring semester, each faculty member will submit a report indicating the specific activities that were undertaken to meet the obligation of section 8.3.1.2. The report shall recommend additional responsibilities for the following year...

Should it be determined that the statement does not satisfy this intent or that there are other priorities, the employer will so notify the faculty member on or before May 1st. The faculty member will be encouraged to file an amended statement within 15 days of receiving this notice...

APPENDIX X

SIDE LETTER Re: PROTOCOLS FOR DISTANCE LEARNING

Course Development

For purposes of this Agreement re: Protocols for Distance Learning, course development is defined as either (1) creating a new distance learning course, or (2) converting or adapting an existing on-ground course to an online format. New courses shall follow existing college course offerings, development and approval processes.¹

¹ Appendix X arises from a 2008 interest arbitration award, which stated, in relevant part:

Award the Board's LBO [last best offer] to maintain current contract language, noting the Board's express acknowledgment that in the discretion of the Academic Dean, credit towards additional responsibilities, in increments of one hour for a week to nine hours per week, may be given for developing a distance learning course.

(Ex. C3, R1).

4. On March 12, 2020, BOR suspended "on-ground" (in-person) classroom instruction and closed all college campuses due to the onset of the coronavirus pandemic in Connecticut.

5. In March 2020, faculty at the five community colleges were required to "pivot" to online instruction, i.e., convert their on-ground courses to remote learning (online) courses. Remote learning courses resumed on March 23, 2020. (Ex. R10).

6. On June 24, 2020, the Union filed a grievance at Step IV of the grievance procedure in the collective bargaining agreement, alleging that BORHE violated the collective bargaining agreement by failing to compensate teaching faculty for developing and teaching online courses during the spring 2020 and fall 2020 semesters. (Ex. R4)

7. On July 14, 2020, director of labor relations Christopher Henderson denied the grievance and the Union thereafter filed for grievance arbitration. The parties agreed upon the following three issues:

1. Did [BORHE] violate Appendix X of its collective bargaining agreement (CBA) with [the Union] when it did not compensate bargaining unit members for the development of online courses that went from on-ground to online in spring 2020?
 - a. If so, what shall the remedy be pursuant to the CBA?
2. Did [BORHE] violate its Appendix X of its CBA with the Union when it did not pay the contracted for rate of pay for online courses that went from on-ground to online in spring 2020?
 - a. If so, what shall the remedy be pursuant to the CBA?
3. Did [BORHE] violate Appendix X of its CBA with the Union when it did not apply the contracted for rate of pay for courses developed and taught online in the fall 2020 semester?
 - a. If so, what shall the remedy be pursuant to the CBA?

(Exs. C4, R5).

8. In an award dated June 14, 2021, arbitrator Douglas Cho (Cho or the Arbitrator) sustained part of the grievance, stating, in relevant part:

SUMMARY OF AWARD

ISSUE #1:

Yes, [BORHE] violated Appendix X, since all professors who were required to pivot from teaching on-ground courses to online classes in Spring 2020 should have received AR credit for their time spent developing online classes during the Spring 2020, as is allowed under Appendix X, and consistent with the 2008 Award. The proper remedy is for the affected faculty members to receive appropriate AR credit in the academic year 2021-2022, or if that is not feasible, then in the following academic year, 2022-2023.

(Exs. C4, R5). The Arbitrator answered “no” to the second and third issues.

9. On July 1, 2021, the Union filed a motion to modify or correct the award and BORHE filed an objection to the Union’s motion on July 12, 2021. (Exs. R6, R7).
10. On July 13, 2021, the Union filed a motion to vacate the award with the Superior Court for the judicial district of Hartford. (Ex. R9).
11. On August 7, 2021, the Arbitrator denied the Union’s motion to modify or correct the award. (Ex. R8).
12. In a decision dated March 8, 2022, the Superior Court denied the Union’s motion to vacate the award. (Ex. R10).
13. Sometime in the fall of 2022, BORHE created a PowerPoint to educate campus CEOs or campus presidents on the outcome of the arbitration and stating, in relevant part:

Spring 2020

ARBITRATOR'S AWARD

- Faculty Members who were not credited with AR for pivoting to on line learning during Spring 2020, receive the appropriate AR credit during the 2022-2023 academic year.
- Recommendation 1 hr/wk/class

Applicable to those hired prior to July 1 2017 only

(Exs. C5, R11).

14. In an email to bargaining unit members, the Dean's Office at Naugatuck Valley Community College identified the number of AR credits that each would receive in accordance with the award.

15. At all times relevant hereto, faculty at most campuses utilized an online form to apply for AR credit. Naugatuck Valley Community College's online form for the 2022-2023 academic year gave faculty the option of AR credits under the "AFT arbitration award for Spring 2020 Pivot..." (Ex. R. 14).

16. The Union steward at Naugatuck Community College, Daniel Picard, polled each of the faculty and obtained information from the Dean's Office regarding the AR credits provided under the arbitration award. Thirty faculty members at Naugatuck Valley Community College hired before July 1, 2017 received AR credits under the award. Two faculty hired after June 30, 2017 and seven faculty who converted cases but in 2020, but who had since retired, did not receive AR credits under the award. (Ex. C11).

17. At Norwalk Community College, Union steward Peter Daupern polled all members of the bargaining unit and determined that neither faculty hired prior to July 1, 2017, faculty hired after June 30, 2017, nor faculty who had since retired received AR credits for converting on-ground courses to remote learning courses in the spring 2020 semester. Norwalk Community College did not notify bargaining unit members of the availability of such credits and did not use an online AR form during the relevant time period. (Ex. C7).

18. In fall 2022, the Union also polled faculty at the other campuses and determined that no colleges other than Naugatuck Valley Community College awarded AR credit to faculty members under the award. (Exs. C7, C8, C9, C10, C11).

19. Sometime prior to November 1, 2022, Union president Dennis Bogusky posed a series of questions to Connecticut State Community College manager of labor relations Marilyn Albrecht regarding AR credit. In an email dated November 1, 2022, Albrecht responded, in relevant part:

1. The amount of AR hours assigned for the course conversion (course development) were not discussed and agreed to by the faculty member and the Dean as required by contract and practice.
 - The amount of AR in the PowerPoint is a suggestion, which is why we utilized the "up to language" each individual faculty member eligible would have discussed the specifics with their academic deans as outline in the contract since they need to address the remainder of their AR.
2. Post July 1, 2017 hires are not included.
 - Post July 1, 2017, faculty members are not eligible for AR and the award does not provide an alternative means of compensation for that pivot outside of what is articulated in the CBA, Appendix X.
3. Faculty who teach in lieu of AR are not included.
 - If a faculty member is opting to teach a fifth class they are opting to forgo AR.
4. Faculty who taught spring of 2020 and are no longer employed are not included.
 - The award does [sic] provide for any form of compensation for this work outside what is currently recognized in the agreement (i.e. AR). AR credit is not available to folks who have retired.

(Ex. C6).

CONCLUSIONS OF LAW

1. A state employer's failure or refusal to comply with a valid arbitration award is a prohibited practice under the Act.

2. The Board of Regents for Higher Education violated the Act when it failed to award AR credit to all actively employed faculty who were required to pivot from teaching on-ground courses to online classes in Spring 2020.

DISCUSSION

The Union contends that BORHE violated § 5-272 of the Act² by failing to award AR credits to faculty hired prior to July 1, 2017 at four community college campuses; refusing to award AR credits to faculty hired after June 30, 2017; and refusing to compensate faculty who were eligible for the AR credits but who retired or otherwise separated from their employment prior to implementation of the award.

BORHE responds that the complaint should be dismissed under the doctrine of laches. Regarding the merits of the Union's claim, BORHE argues that the award of AR credits applies only to faculty hired prior to July 1, 2017 and that the Union failed to prove that any eligible faculty who applied were denied AR credits. According to BORHE, the collective bargaining agreement does not provide for AR credit to faculty hired after June 30, 2017, and that, by seeking compensation for retirees, the Union is pursuing a remedy which was expressly rejected by the arbitrator and the superior court. Based on the entire record before us, we find that the complaint is timely and that BORHE violated the Act by failing to award AR credits to all actively employed faculty who converted on-ground courses to remote learning courses in the spring 2020 semester.

Regarding timeliness of the complaint, "the omission of a statute of limitations by the Legislature evinces a public policy disfavoring waiver of a complainant's rights in a prohibited practice dispute." *State of Connecticut, Department of Public Safety*, Decision No. 2664 p. 5 (1983); see also *City of Danbury*, Decision No. 5013 (2018); *City of Meriden*, Decision No. 4553 (2011). As such, "the doctrine of laches requires a showing that a party engaged in a delay which was without excuse and that the delay has prejudiced the other party." *Waterbury Hospital*, Decision No. 964 p. 3 (1970); see also *Fay v. Merrill*, 338 Conn. 1, 23 (2021) ("The mere lapse of time does not constitute laches ... unless it results in prejudice to the [opposing party] ... as where,

² Conn. Gen. Stat. § 5-272 states, in relevant part:

- (a) Employers or their representatives or agents are prohibited from: ... (4) refusing to bargain collectively in good faith with an employee organization which has been designated in accordance with the provisions of said sections as the exclusive representative of employees in an appropriate unit; including but not limited to refusing to discuss grievances with such exclusive representative...

for example, the [opposing party] is led to change his position with respect to the matter in question”) (Internal citations and footnote omitted.)

In this case, BORHE contends that the Union’s failure to file the instant complaint for almost 29 months after it filed its grievance on June 24, 2020, or, in the alternative, for almost 18 months after the arbitration award was issued, constituted inexcusable delay and is prejudicial because of the number of faculty who have retired. Specifically, BORHE argues the Union is seeking financial compensation for former faculty in lieu of AR credit, and that compelling BORHE to deliver cash payments to what may be a substantial number of faculty who have separated from their employment in the intervening period creates an unfair financial burden. Respondent’s brief, pp. 27-30. We disagree for the following reasons. First, we find that BORHE’s claim of inexcusable delay fails to account for the fact that, during that time, the Union pursued contractual and administrative remedies, which, if successful, may have obviated the need for this complaint. In addition, we find that BORHE’s claim of prejudice is largely moot given our finding, for the reasons discussed below, that the award is limited to a prospective grant of AR credit to actively employed faculty. Accordingly, we decline to dismiss the complaint on laches grounds and turn to the issue of compliance with the award.

When a party claims that there has been a refusal to comply with an arbitration award we will interpret the award to ascertain what it requires and then determine whether the respondent has complied with those requirements. *State of Connecticut, Office of Policy and Management*, Decision No. 4610 (2012); *Town of Middlebury*, Decision No. 4603 (2012); *City of Bridgeport*, Decision No. 4602 (2012); *Town of Enfield*, Decision No. 4461 (2010); *City of Willimantic*, Decision No. 1795 (1979). We use an objective standard and we do not consider whether the respondent acted in good faith or whether its interpretation of the award is a plausible one as valid defenses. *Town of Wallingford*, Decision No. 3807 (2001); *Town of Stratford*, Decision No. 3277 (1995); *City of New Haven*, Decision No. 3060 (1992); *Town of Newington*, Decision No. 2957 (1991); *Weston Board of Education*, Decision No. 2678 (1988); *Hartford Board of Education*, Decision No. 2683 (1988). Nor is it our function to relitigate or second guess the merits of grievance decisions. Our role is limited to meeting our statutory responsibility to insure that the outcome of the grievance procedure is respected. *Connecticut Employees Union Independent (NP-2 Unit)*, Decision No. 3446 (1996); *City of Waterbury*, Decision No. 2195 (1983). As such, our analysis “ ‘only looks to the language of the settlement’ or in this case, the arbitration award.” *Town of Enfield*, supra at p. 11 (quoting *City of Waterbury*, Decision No. 3593 (1998)). If we find there has not been compliance, we will find a violation of the Act. *Town of Westbrook*, Decision No. 4687 pp. 5-6 (2013); *State of Connecticut, Department of Correction*, Decision No. 4475 (2010).

Town of East Hartford, Decision No. 4907, p. 10 (2016), see also *State of Connecticut, Department of Children and Families*, Decision No. 5020 (2018); *City of Waterbury*, Decision No. 5009 (2018); *Hartford Board of Education*, Decision No. 4924 (2016).

Arbitration awards, like judgments, “are to be construed in the same fashion as other written instruments ... [and] should admit of a consistent construction as a whole ... [and] we ... ascertain ... intent ... from the language used and, if necessary, the surrounding circumstances.” *Wheelabrator Bridgeport, L.P. v. City of Bridgeport*, 320 Conn. 332, 355 (2016) (quoting *Ottiano v. Shetucket Plumbing Supply Co.*, 61 Conn. App. 648, 652 (2001)).

State of Connecticut, Department of Children and Families, Decision No. 5062 p. 9 (2019); see also *Tannenbaum v. Tannenbaum*, 208 Conn. App. 16, 27 (2021).

In this case, we find that the award required BORHE to provide AR credits to “affected faculty members” and, although the parties dispute the scope of that term, we ascertain its meaning from the immediately preceding sentence, which states that “all professors who were required to pivot from teaching on-ground courses to online classes in Spring 2020 should have received AR credit...” (Exs. C4, R5) (Emphasis added). Construed as a whole, we find that “affected faculty members” includes both pre-July 1, 2017 and post-June 30, 2017 faculty who converted courses to remote learning as part of the Spring 2020 response to the pandemic. However, because the award also limits the appropriate remedy to AR credits, we find that the award does not extend to affected faculty who have since separated from their employment and therefore can no longer benefit from such credits. *Id.*

BORHE relies on two references to “affected faculty members” elsewhere in the award to argue that that term should apply only to “faculty members *hired before July 1, 2017*.” Respondent’s brief, p. 14 (Emphasis added). The first passage upon which BORHE relies, states, in relevant part:

Another argument offered by [BORHE] is that *the affected faculty could have sought an AR modification in the Spring of 2020 as allowed under the AR provisions in the Agreement*. This is not a convincing, or fundamentally fair argument. The Union witnesses testified that they had already fulfilled their allotted AR by mid-March 2020, thus an AR modification was of no use to them. *Moreover, under the Agreement, newer faculty hired*

beginning in 2017 must teach an additional course rather than get AR, so those faculty could not benefit from an AR modification...

(Exs. C4, R5, p. 14)(Emphasis added). According to BORHE, writing that faculty hired after June 30, 2017 are excluded from AR credit in the same paragraph as “affected faculty [who] could have sought an AR modification,” signals an intention to exclude the former from the award. In the second cited passage, the arbitrator stated, in relevant part:

all determinations of the appropriate amount of AR credit granted to each affected faculty member can be awarded consistent with the past standards for how AR credit has been determined.

Id. BORHE argues that this passage “again rules out post-2017 hires receiving AR, as *past practice ... evidences that only pre-2017 hires are eligible for AR.*” Respondent’s brief, p. 14 (Emphasis added).

We find BORHE’s reliance on the first excerpt to be misplaced since, as it concedes in its brief, the arbitrator is summarizing its position that the Union failed to use available means to seek redress in 2020. In our view, that passage merely represents the arbitrator’s acknowledgement that each faculty group has a distinct reason why it did not seek an AR modification. Moreover, contrary to BORHE’s assertion, we find that the arbitrator’s blanket rejection of that argument further evidences that members of either group can fall within the term “affected faculty members.”³ Similarly, we read the arbitrator’s reference to “past practice” as nothing more than an acknowledgement that each dean has a certain amount of discretion to determine the number of AR credits to be awarded, which is subordinate to the directive that “all professors” who were required to pivot during the relevant period are entitled to AR credit. (Ex. C4, R5). As such, the question now becomes whether BORHE complied with the award.

³ BORHE also relies on an excerpt from the Superior Court decision, denying the motion to vacate, which stated, in relevant part:

[R]egarding teachers hired after July 2017, the award noted that under the agreement, newer faculty hired beginning in 2017 must teach an additional course rather than get AR, so those faculty members also could not benefit from an AR modification....

(Ex. R. 10). However, we think that BORHE’s reliance on this language is misplaced for the same reasons.

BORHE contends that it met its obligation to provide AR credit by educating the academic deans regarding how to comply with the award, who then delivered a digital form to certain faculty which provided for AR credit consistent with the award. Respondent's brief, p. 18. We are not persuaded. Although BORHE provided guidance to the administrations of the five colleges, the record reveals that only Naugatuck Valley Community College acted upon that guidance. The Union produced un rebutted testimony that Capital Community College, Gateway Community College, Norwalk Community College and Three Rivers Community College did not award any AR credits⁴ and BORHE cannot in our view insulate itself from the failure of those college administrations to see the matter through to its completion. In sum, we find that the plain language of the award requires BORHE to afford AR credit to all actively employed faculty who were required to pivot from teaching on-ground courses to online classes in Spring 2020 and that, except for faculty hired before July 1, 2017 at Naugatuck Valley Community College, BORHE did not comply with the award.

Accordingly, we issue the following order.

ORDER

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

ORDERED that the State of Connecticut Board of Regents for Higher Education shall:

- I. Cease and desist from failing to comply with the arbitration award dated June 14, 2021.
- II. Take the following affirmative actions that we find would effectuate the purposes of the Act.
 - A. Provide the Union with a list of all faculty, regardless of date of hire, currently employed at Naugatuck Valley Community College, Capital Community College, Gateway Community College, Norwalk Community College and Three Rivers Community College: who were required to pivot from teaching on-ground courses to online classes in Spring 2020; the number of AR credits, if any, awarded to each for

⁴ CSCU manager of labor relations Marilyn Albrecht testified that a PowerPoint presentation was distributed to campus CEOs but fell short of saying whether a system of awarding AR to faculty members was implemented or if any faculty member had received AR credits.

time spent developing online classes during the Spring 2020 semester; and the semester in which such credits were awarded.

- B. Any faculty members identified in paragraph A, above, who did not receive AR credits for time spent developing online classes during the Spring 2020 semester, may elect such credit. BORHE shall award an appropriate number of said credits to each faculty member in the Spring 2025 semester.
- C. Post immediately and leave posted for a period of sixty (60) consecutive days from the date of the posting, in a conspicuous place where the members of the bargaining unit customarily assemble. A copy of this Decision and Order in its entirety.
- D. Notify the Connecticut State Board of Labor Relations at its offices at 38 Wolcott Hill Road, Wethersfield, Connecticut, within thirty (30) days of the receipt of this Decision and Order of the steps taken by the Board of Regents for Higher Education to comply herewith.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Barbara J. Collins
Barbara J. Collins
Board Member

Katherine C. Foley
Katherine C. Foley
Board Member

Thomas P. Clifford, III
Thomas P. Clifford, III
Alternate Board Member

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed, postage prepaid, this 22ND day of January 2025 to the following:

Attorney Sarah Skubas
Jackson Lewis PC
90 State House Square 8th Floor
Hartford, CT 06103-3708

RRR

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

RRR

A handwritten signature in black ink, appearing to read 'Frank N. Cassetta', with a long horizontal flourish extending to the right.

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