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Steve Hicks
Lock Haven University of Pennsylvania, shicks@lockhaven.edu

Amy L. Rosenberger
Willig, Williams & Davidson, arosenberger@wwdlaw.com

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Cover Page Footnote

We would not have this work without the help of our negotiations team: Drs. Kenneth Mash, Elizabeth McDaniel, & Marc Sylvester, Ms. Mary Rita Duvall, and Stuart Davidson, Esq.

This practitioner perspective is available in Journal of Collective Bargaining in the Academy: https://thekeep.eiu.edu/jcba/vol5/iss1/6

Negotiating For Curriculum and Class Size, 2011-13: One Faculty Union's Perspective

Steve Hicks[1] and Amy Rosenberger[2]

In the negotiations between the Association of Pennsylvania State College and University Faculties (APSCUF) and the Pennsylvania State System of Higher Education (PASSHE) that stretched from August 2010 to February 2013, one issue that made its way into the final agreement was faculty input on class size. Although the topic had been discussed only briefly at preceding negotiations between the parties, by February 2013 it was central to settling the overall contract dispute during the thirty-plus hours of talks that occurred over the final two days of negotiating. After reading this article, one should understand the core issues but also the negotiating strategies used by the union to come to the final language.

A bit of relevant background: PASSHE is comprised of fourteen comprehensive universities (one Carnegie doctoral institution, the rest Carnegie Master's institutions) spread geographically across Pennsylvania from Cheyney University, in the far southeast corner in the Philadelphia suburbs, to Edinboro University, a few miles from Lake Erie in the northwest. The union represents approximately 6,000 faculty. The collective bargaining agreement is mature, having been first negotiated in 1971, soon after Pennsylvania's Public Employee Relations Act (PERA), also known as Act 195, became state law (1970).

Over four decades of bargaining, however, times have changed. In recent years, PASSHE and APSCUF have faced pressures similar to those confronted across public higher education. Cuts in state funding and decreasing enrollments, coupled with increased overhead strained already limited resources. When the parties began negotiations for a successor agreement in 2010, faculty were seeing their ranks reduced through attrition, and in some cases retrenchment, while class size at some universities ballooned in an effort to balance the bottom line. Curricular decisions were driven, to a greater extent than in the past, by concerns such as whether a given course would attract large numbers of students.

In this context, in the summer of 2010, the union conducted a pre-negotiations survey using internet software in an attempt to get a "pulse" of the membership's priorities.[3] Not surprisingly

[1] Steve Hicks is President of the Pennsylvania State College and University Faculties and Professor of English at Lock Haven University of Pennsylvania.
[2] Amy Rosenberger is a partner in Willig, Williams & Davidson and represents labor unions and individual employees before state and federal courts and in arbitrations, negotiations and administrative proceedings.

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under the circumstances, the most important issue in an open selection of thirty-two possible topics was class size.[4]

The then existing collective bargaining agreement contained no mention of class size. The only mention of curriculum was the long-standing language in Article 31.E, that read "There shall be a curriculum committee at each University, which shall be selected as determined by the FACULTY, but which may include at least one (1) administrator if designated by the President." The vagueness and ambiguity of this language had allowed it to be applied differently at each of PASSHE's fourteen universities. On some campuses, faculty on the curriculum committee had input into not only the substance of a course, program or degree, but the optimum class size for specific courses. On others, much less opportunity for formal input was available. APSCUF leadership was aware of instances in which University administrators initiated and approved curriculum without any faculty input.

A change in contract language was necessary. In the mind of APSCUF leadership, the language needed to be strengthened to authorize the curriculum committee to have a certain and precise authority, and to ensure faculty input into class size. The challenge was how and when (and even what) to present to PASSHE.

After much internal discussion, the "curriculum and class size proposal" (as it became known) was part of APSCUF's comprehensive proposal in response to a lengthy set of 38 bargaining objectives put forward by PASSHE on April 8, 2011. APSCUF presented this proposal on May 11, 2011.[5]

To understand one aspect of the proposal, it is important to note that case law under PERA suggests that class size is not a mandatory subject of bargaining, as PASSHE was quick to point out (Joint Bargaining Committee v. Pa. Labor Relations Bd., 1983).[6] However, that same case

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[3] Practitioners reading this will be familiar with the talk among leadership about what the priorities should be; there was much anecdote in the summer of 2010 and the electronic survey was an attempt to substantiate the anecdotal.

[4] Internal research. "Class size" received 503 votes (1st, 2nd, 3rd) out of 3,947; second was "Temporary, part-time faculty" with 490, then a huge drop to 396 for "Salary, compensation" and fourth, at little more than half those for class size, was "Tenure."

[5] As the following narrative will show, it is hard to pull one issue out of context of the whole, because the proposals did not work often in a vacuum.

[6] Whether class size is a mandatory subject of bargaining for public college or university faculty varies from state to state. For example, California's Educational Employment Relations Act, which applies to community college faculty, explicitly lists "class size" as a term and condition of employment over which bargaining is required. Cal. Gov. Code § 3543.2(a). The Washington Public Employment Relations Commission has held that faculty/student ratio is a working condition over which the public employer must bargain because it impacts employee workload. See AFT Edmonds v. Community College District 23 (Edmonds Community College), 2008 WA PERC LEXIS 28 (2008). On the other hand, Florida's Public Employees Relations Commission has held that class size is not "wages, hours or terms and conditions of employment" and so is not a mandatory subject of bargaining under Florida's

law suggests that the *impact* of class size is a mandatory subject of bargaining. In other words, APSCUF could not be given control over determining class size, but could be compensated for the extra work created by increasing class size. This notion of bargaining impact, requiring extra compensation for the extra work of larger classes, drove APSCUF's early proposal.

A reading of that proposal (Appendix 1) shows an attempt to (a) empower the curriculum committee with the authority on specified issues (sections B & C) and (b) cap class size through a penalty system for larger classes in the form of tiered compensation for faculty (the bargainable "impact" of class size). The first response from PASSHE's negotiating team focused on "b", with no mention of "a." One comment was about enriching faculty; clearly the compensation model could earn some faculty member a large cash increment. But that was not the goal. The goal was to give universities a disincentive to increasing class size beyond educationally sound levels. Essentially, APSCUF sought to provide a counter-balance to the financial pressures that were causing class size to increase.

For over two years, PASSHE declined to provide a counterproposal on curriculum or class size. Without being privy to discussions in the their caucus room, it seemed they thought the issue would go away under the pressure of achieving an agreement and their strategy seemed to be to communicate that by simply not discussing the issue seriously at the table. In the end, that strategy failed as APSCUF leadership understood the current weakness of Article 31.E and the desire on the part of faculty to gain influence over class size.

An additional reason why the issue did not simply recede into the background, as PASSHE apparently hoped it would, was activity on two campuses in particular, both of which had undergone what faculty perceived as major changes in the class-size culture (although APSCUF was unable to obtain reliable data confirming or refuting this anecdotal information). Both had been through major turmoil over class size around budgetary concerns in the fall of 2010 and 2011. With two campuses bemoaning the trend toward larger classes, to the detriment of student education, the issue was ripe for a system-wide solution.

Despite attempts by APSCUF to engage in an exchange on these issues, the two sides' proposals remained virtually stagnant on the question of curriculum and class size until then-Chancellor John Cavanaugh paid an impromptu visit to the parties' monthly State Meet & Discuss session[7] in December 2012. At that meeting, the Chancellor initiated discussions about

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Public Employment Relations Act. Hillsborough CTA v. School Bd of Hillsborough County, 7 FPER ¶ 12411 (1981), reconsideration denied 8 FPER ¶ 13074.

[7] "Meet and discuss" is a defined term under Act 195 that refers to a forum for union input on matters that impact working conditions but that are not mandatory subjects of bargaining, where the final decision rests with the public employer. See 43 P.S. § 1101.301(17). However, in common labor relations parlance, the term is also used more

seemingly unrelated issues concerning innovative teaching methods and student assessment. At the parties' next bargaining session, in early January 2013, those issues made their way into a PASSHE proposal entitled "Curriculum Committee and Class Size (in response to APSCUF's proposals)," and that proposal concluded with a statement of PASSHE's position that "[t]he proper place for these discussions is at Meet and Discuss and not at CBA bargaining."

PASSHE's presentation of the Chancellor's suggestions as a response to APSCUF's curriculum and class size proposal provided an opportunity to approach those proposals from a new perspective. APSCUF began work on strategies to use the curriculum process and meet & discuss process to deal with the new issues emanating from the Chancellor's office, as well as class size.

In the exchanges that followed, APSCUF incorporated into its "curriculum and class size" proposal terms addressing professional development, a new joint learning outcomes committee, and curricular development—all outgrowths of the December discussion with the Chancellor. PASSHE, in turn, proposed incorporating substantive elements into the existing curriculum committee language.

By the afternoon of February 1, 2013 (the penultimate day of negotiations), APSCUF had moved its curriculum and class size proposals to Article 9, the Meet & Discuss article, along with the other items proposed in concept by Dr. Cavanaugh. (Appendix 2) The change from the original May 2011 language to the construct found in the February 1, 2013, proposal shows an evolution from the mandatory, impact-bargaining based proposal to one that did not make a monetary difference to PASSHE, but made a big conceptual difference to APSCUF. In this proposal, the elements were simply to define the curriculum committee. In section A.4.d, the proposed language made it the curriculum committee's responsibility to provide a "maximum enrollment…the maximum number of students pedagogically acceptable for a section of the course." Notably, this proposal also provided protection for the current documents governing the curriculum process on campus—It did not void them, but allowed the new language to work as a revision to local rules in place. This aspect emerged at the suggestion of both APSCUF local leaders and the PASSHE negotiating team's campus representatives. No one wanted to start from scratch.

PASSHE's campus representatives also noted that the concepts contained in the curricular elements of APSCUF's proposal were not far from what was practice at their respective universities (although it was noted that those campuses did not necessarily represent the norm). At last PASSHE was displaying a willingness to discuss the topic, although not without repeated

generally to refer to labor-management meetings. The PASSHE-APSCUF collective bargaining agreement, at Article XX, mandates monthly labor-management meetings at the statewide level.

reminders that "it's not a mandatory subject of bargaining." So APSCUF adjusted its proposal in an effort to distill the language to the essence of what each side wanted: APSCUF's desire for specified input on curricular issues, including class size, and PASSHE's desire to retain control over the ultimate decisions on those issues. During that process, which stretched over the course of those last two 15-hour days of bargaining,[8] Chancellor Cavanaugh's proposals fell by the wayside, as the two sides could not agree on basic concepts or the language to memorialize them.

By 10:00 p.m. on February 1, APSCUF presented a slimmed-down version of its curriculum and class size proposal. In this version (Appendix 3), APSCUF returned the proposal to its original home in Article 31 ("Miscellaneous") and shortened it to two long paragraphs. These paragraphs kept the long-standing committee composition language, but added elements to their authority. The parenthetical list included "class size" language that responds to the 2010 survey of members yet was "soft" enough to be palatable to PASSHE. The acceptability of the language was strengthened as the second paragraph of the new language reiterated that the committee's determination is only a recommendation to the university president. The proposal also incorporated a process that echoed other, older parts of the CBA, mandating that the president (or designee) respond in writing within 30 days, explaining any rejection of the committee's recommendations. This added a sense of familiarity to what would otherwise be a new process at a number of campuses.

The final curriculum and class size provision that ended up in the 2011-2015 PASSHE-APSCUF collective bargaining agreement was only slightly changed from APSCUF's February 1, 10:00 a.m. proposal. It was developed over almost two years of work and derived from several strategic shifts on the part of both the union and management. As such, it serves as an example of how negotiation positions evolve over time and how parties can substantially achieve their goals if they are flexible and creative.

[8] Notably, several professionals have indicated this "old style," long-at-it, grind-it-out negotiations session coming to an agreement rarely happens anymore. Negotiations Workshop I, National Center for Collective Bargaining in Higher Education and the Professions Conference, 2009 & 2010.

Appendix 1

CURRICULUM COMMITTEE AND CLASS SIZE – Article 31 and New Article 46

ARTICLE 31 (Miscellaneous Conditions)

~~E. Curriculum Committee~~

~~There shall be a curriculum committee at each University, which shall be selected as determined by the FACULTY, but which may include at least one (1) administrator if designated by the President.~~

NEW ARTICLE 46 (Curriculum Committee)

A. There shall be a University-wide Curriculum Committee at each University, which shall be selected as determined by the FACULTY, but which may include at least one (1) administrator if designated by the President.

B. Procedures for the University-wide Curriculum Committee shall be defined by local agreement. Current University-wide Curriculum Committee agreements shall remain in effect unless renegotiated consistent with this Article.

C. All curriculum changes must be initiated by an individual faculty member. New curricula or changes to existing curricula shall be subject to approval by the appropriate department, through procedures adopted by the department, before submission to the University-wide Curriculum Committee.

D. Maximum enrollment: Beginning in the first Academic semester after ratification of this Agreement, every University-wide Curriculum Committee-approved syllabus or course outline will identify the maximum number of students (MNS) pedagogically acceptable for a section of the course. The University may exceed the maximum number of students only in the following circumstances:

1. The University may exceed the maximum number of students by up to 5% with the expressed written permission of both the University-wide Curriculum Committee and local APSCUF. This permission must be requested and granted 6 weeks before the beginning of the affected academic term. Failure to meet this deadline will automatically incur the next clause.

2. If the University does not obtain written permission in accordance with the preceding subsection, the faculty member teaching the course with enrollment above the maximum number of students shall be paid an over-enrollment fee in accordance with the following schedule:

Enrollment	Fee

Up to 5% but less than 20 students over MNS	$50 per student above MNS
More than 5% up to 39 students over MNS	$2500
40-59 students over MNS	$5000
60-79 students over MNS	$7500
80-99 students over MNS	$10,000
100 or more students over MNS	$12,500

3. In the event that the University-wide Curriculum Committee has not approved the maximum number of students for any course by May 1 of the year after ratification of this Agreement, the maximum number of students for such course shall be the median section enrollment for the last five semesters in which the course has been offered.

4. In order to establish the maximum number of students for a given course in accordance with the preceding subsection, by December 1 of the year following ratification of this Agreement, the University shall provide local and state APSCUF with a list of all courses offered, along with student enrollment records for those courses, and the calculated median section enrollment for those courses in the last five semesters in which the course has been offered. In the event that the University fails to meet this deadline, it will deposit into the University professional development fund $500 for every faculty member at the University (as determined by the official faculty list provided to APSCUF by the STATE SYSTEM in October of the previous year).

E. The decision to place any course(s) or program(s) on moratorium shall be subject to the same approval process required for initiation of a new course or program.

Appendix 2

APSCUF'S PROPOSAL REGARDING CURRICULUM COMMITTEE AND CLASS SIZE and PROFESSIONAL DEVELOPMENT
Submitted to the Pennsylvania State System of Higher Education February 1, 2013[9]

ARTICLE 31 (Miscellaneous Conditions)

~~E. Curriculum Committee~~

~~There shall be a curriculum committee at each University, which shall be selected as determined by the FACULTY, but which may include at least one (1) administrator if designated by the President.~~

ARTICLE 9 (Rights and Privileges of APSCUF)

A. "Meet and Discuss"

1. a. The Chancellor of the STATE SYSTEM or his/her designee shall meet monthly with a committee appointed by APSCUF for the purpose of discussing matters related to the implementation of this Agreement.

b. The University President or his/her designee shall meet monthly with a committee appointed by the University chapter of APSCUF for the purpose of discussing matters related to the implementation of this Agreement.

c. The STATE SYSTEM/UNIVERSITIES and APSCUF agree that the issue of early retirement alternatives is an appropriate subject for Meet and Discuss at the state level in accordance with Article 9, RIGHTS AND PRIVILEGES OF APSCUF, Section A.1.a. of this Agreement.

2. Meetings shall be scheduled in such manner and at such times as the parties may mutually determine.

3. A record of the proceedings of such meetings, which accurately reflects the substance of the discussion, shall be maintained if the parties at such meetings mutually agree.

4. Meet and discuss over curriculum and class size:

[9] 10 A.M., Friday, February 1.

a. There shall be a University-wide curriculum committee at each University, which shall be selected as determined by the FACULTY, but which may include at least one (1) administrator if designated by the President.

b. Procedures for the curriculum committee shall be defined by local agreement. Current curriculum committee agreements shall remain in effect unless renegotiated consistent with this Article. Nothing in this Article shall be interpreted as invalidating or limiting any existing or future local curriculum committee agreement, with regard to matters not specifically addressed herein. Local APSCUF Chapters and Universities retain the authority to establish by local agreement the procedures and authority of the curriculum committee, so long as the agreement does not violate a specific provision of this Article.

c. New curricula or changes to existing curricula shall be subject to approval by the appropriate department, through procedures adopted by the department, before submission to the curriculum committee.

(1) Decisions of the curriculum committee shall be transmitted to the President or his/her designee for approval or disapproval. The President's (or designee's) failure to act upon any determination of the committee within 30 days shall be deemed approval of the determination. The President's (or designee's) disapproval of a committee determination will be accompanied by a written explanation to the committee chair of the reasons for the disapproval.

(2) The decision to initiate a program review is at the discretion of the President or his/her designee with review at local Meet and Discuss.

d. Maximum enrollment: It is the responsibility of the curriculum committee to determine the maximum number of students pedagogically acceptable for a section of the course. This determination is an integral part of the curriculum approval process. In the event that the President or his/her designee decides to reject or amend the maximum number of students determined by the curriculum committee, the reasons therefore shall be given to the curriculum committee and local APSCUF in writing. Should the President (or designee) decide to change an existing maximum enrollment, written notice and explanation for the change shall be given to the curriculum committee and local APSCUF.

e. The decision to place any course(s) or program(s) on moratorium shall be subject to the same approval process required for initiation of a new course or program.

f. The decision of the President (or his/her designee) to reject the recommendation(s) of the curriculum committee pursuant to this Section shall be final and not subject to challenge through the grievance procedure except as follows: In the event that the President implements a class size that is higher than

that recommended by the Curriculum Committee without complying with the notice provisions, APSCUF shall have the right to pursue a grievance contesting such implementation under Article 5, GRIEVANCE PROCEDURE AND ARBITRATION.

g. A state-wide Joint Learning Outcomes Assessment Committee shall be established

(1) The committee shall be composed as follows:

(a) One faculty and one management member of State Meet & Discuss;

(b) One faculty and one management representative currently serving on a University curriculum committee;

(c) One faculty and one management representative currently serving on the state Faculty Professional Development Council;

(d) One faculty member, jointly appointed by APSCUF and PASSHE, who has served as the Middle States accreditation chair or co-chair for the most recent University review.

(2) The mission of the Joint Learning Outcomes Assessment Committee is as follows:

(a) To explore what other Universities and University Systems are doing to improve student learning assessment;

(b) To understand and evaluate Middle States Accreditation Commission principles and disseminate information to Universities on how to comply with said principles and/or the changes or potential changes to those principles.

* * *

Appendix 3

APSCUF'S PROPOSAL REGARDING CURRICULUM COMMITTEE and PROFESSIONAL DEVELOPMENT
Submitted to the Pennsylvania State System of Higher Education
February 1, 2013[10]

ARTICLE 31 (Miscellaneous Conditions)

E. Curriculum Committee

1. There shall be a curriculum committee at each University, which shall be selected as determined by the FACULTY, but which may include at least one (1) administrator if designated by the President. Each campus shall establish processes and procedures for recommending curricular action, including but not limited to guidelines on program review, program and course initiation, and class size, which shall be developed and approved at local meet and discuss. Said processes and procedures will be reviewed by state meet and discuss to insure each university is in compliance with this provision. Current curriculum committee agreements shall remain in effect unless renegotiated consistent with this Section. Nothing in this Section shall be interpreted as invalidating or limiting any existing or future local curriculum committee agreement, with regard to matters not specifically addressed herein. Local APSCUF Chapters and Universities retain the authority to establish by local agreement the procedures and authority of the curriculum committee, so long as the agreement does not violate a specific provision of this Section.

2. Decisions of the curriculum committee shall be transmitted to the president or his/her designee for approval or disapproval. The president or his/her designee shall respond within 30 days. The president's or designee's disapproval of a committee determination will be accompanied by a written explanation to the committee chair of the reasons for the disapproval. The decision of the President (or his/her designee) to reject the recommendation(s) of the curriculum committee pursuant to this Section shall be final and not subject to challenge through the grievance procedure.

Article 44 (Faculty Professional Development Program)

C. Professional Development Fund

[10] 12:05 A.M., Friday [actually Saturday, February 2]. Although the combination of Article 31 and Article 44 in the final exchange suggests a linkage between the two, there was never any discussion of a trade of elements of Art. 31 for elements of Art. 44. The cross-outs indicated in Art. 44 here are reflections of changes from the previous contract language and the increases a reflection of the lack funding in the AYs 2011-12, 2012-13; thus, the $150,000 and $50,000 per year of previous contracts become $300,000 and $100,000 – thus the $800,000 for four years, becomes $800,000 for two.

1. For the ~~2007-2008, 2008-2009, 2009-2010,~~ 2013-14 and ~~2010-2011~~ 2014-15 fiscal years, the STATE SYSTEM shall provide the Professional Development Council $300,000~~150,000~~ per fiscal year to support a Professional Development Fund that shall be utilized for FACULTY professional development programs and activities approved by the Council.

2. For the ~~2007-2008, 2008-2009, 2009-2010,~~ 2013-14 and ~~2010-2011~~ 2014-15 fiscal years, the STATE SYSTEM shall provide the Professional Development Council with an additional $100,000~~50,000~~ per fiscal year to be utilized for professional development programs and activities approved by the Council solely for probationary FACULTY MEMBERS.

3. Any unexpended funds shall be carried into the next fiscal year for utilization by the Council.

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References

Pennsylvania Public Employee Relations Act, P.L. 563, No. 195, codified at 43 P.S. § 1101.101, et seq. (1970).

Joint Bargaining Committee v. Pa. Labor Relations Bd., 503 Pa. 236, 244, 469 A.2d 150, 154 (1983).