

I.R. NO. 2019-2

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
KEAN UNIVERSITY,

Respondent,

-and-

Docket No. CO-2018-260

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, AFT,

Charging Party.

SYNOPSIS

A Commission Designee grants interim relief and orders that the University not unilaterally impose an increase in faculty office hours before negotiating in good faith to impasse. The Designee found that the Council demonstrated a substantial likelihood of success on the merits that the employer made a unilateral change in an existing work rule/condition of employment concerning workload by announcing that minimum faculty office hours would be increased from eight to twelve per week, and failed to negotiate in good faith over the change or its impact. The unilateral change occurred mid-contract, but the Designee found irreparable harm to the negotiations process under these circumstances where the University had previously unilaterally increased office hours without negotiations over the increase or compensation for the increase, and had been found by the Commission to have committed an unfair practice by doing so. Balancing the public interest and the relative hardship to the parties, the Designee found that the public interest was furthered by adhering to the tenets of the Act, requiring good faith negotiations prior to changing a term and condition of employment, and respect for the negotiations process.

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Appearances:

For the Respondent, Gurbir Grewal, Attorney General
(Jana R. DiCosmo, Deputy Attorney General)

For the Charging Party, Mets, Schiro, and McGovern,
LLP, attorneys (Kevin P. McGovern, of counsel)

INTERLOCUTORY DECISION

Procedural History

On May 9, 2018, the Council of New Jersey State College
Locals, AFT (Council) filed an unfair practice charge alleging
that the State of New Jersey, Kean University (University)
violated the New Jersey Employer-Employee Relations Act, N.J.S.A.
34:13A-1 et seq. (Act), specifically subsections 5.4(a)(1), (3),
and (5)^{1/} by proposing a unilateral increase in faculty office

^{1/} These provisions prohibit public employers, their
representatives or agents from: "(1) Interfering with,
restraining or coercing employees in the exercise of the
rights guaranteed to them by this act; (3) Discriminating in
regard to hire or tenure of employment to encourage or
(continued...)

hours from 8 to 12 starting in September 2018, and refusing to negotiate in good faith with the Council over the increase in office hours or additional compensation for increased office hours. On July 5, 2018, the Council filed an application for interim relief pursuant to N.J.A.C. 19:14-9.1 et seq., accompanied by certifications and exhibits. The Council requests that, pending the final disposition of the unfair practice charge, the University be restrained from implementing an increase to faculty office hours from 8 hours per week to 12 hours per week absent a negotiated increase for additional compensation for performing those additional hours. The Council also requests that the University be enjoined from making any changes to the terms and conditions of employment of Council unit members in retaliation for engaging in lawful protected activity.

On July 6, 2018, I signed an Order to Show Cause directing the Council to file a brief by July 11, the University to file answering papers by July 16, and establishing a return date for oral argument on July 18. Subsequently, at the University's request with consent of the Council, the University's answering

1/ (...continued)
discourage employees in the exercise of the rights guaranteed to them by this act; and, (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

papers were due by July 18 and the return date was rescheduled to July 20. On that date, I conducted a hearing via telephone conference, having been delegated the authority to act upon such requests for interim relief on behalf of the full Commission. The parties submitted briefs, certifications and exhibits in support of their respective positions and argued orally on the return date.^{2/}

The Council submitted the certifications of James Castiglione, President of the Council's local Kean Federation of Teachers (KFT), and Bennett Muraskin, a Council Staff Representative. The University submitted the certification of Kenneth Green, the University's Chief Labor Counsel.

Facts

The Council represents all teaching faculty, as well as several other titles, employed by nine state colleges/universities including Kean University. The State and the Council are parties to a collective negotiations agreement effective July 1, 2015 through June 30, 2019.

^{2/} On July 23, counsel for the University wrote to the Commission regarding its intention to file a motion to correct the record and to stay issuance of an interim relief decision until that motion could be decided. Counsel for the Council opposed the University's request to file a motion and for a stay. On July 24, I wrote to the parties indicating that the interim relief rules do not provide for a procedure to file motions or supplement the record following the return date and oral argument. I advised that the record was closed and that I would not accept additional facts or legal arguments from either party.

Prior to May 2008, faculty at Kean University were required to provide a minimum of five (5) office hours per week during which they would be in their offices and available to students. In May 2008, the University announced an increase in office hours from five (5) to eight (8) per week. The announcement was made without any prior negotiations with the KFT or the Council over additional compensation for working the additional hours. In June 2008, the KFT filed an unfair practice charge with the Commission alleging that the increased office hours were based on a retaliatory motive and that the University violated the Act by failing to negotiate over the increased office hours before implementation. The KFT's application for interim relief was denied (I.R. No. 2009-5), and the office hour increase took effect in the Fall 2008 semester. On May 12, 2012, a Hearing Examiner's report issued that dismissed the KFT's retaliation charge, but found that the University was obligated to negotiate over the increase to faculty office hours and directed the University to do so. H.E. No. 2012-10, 39 NJPER 5 (¶2 2012). The Hearing Examiner did not direct that the status quo be restored, finding that "on balance, to do so would create more harm to the process." On March 21, 2013, the Commission issued a decision affirming the Hearing Examiner's decision. P.E.R.C. No. 2013-64, 39 NJPER 449 (¶143 2013). The Commission also upheld the decision not to restore the status quo, but to leave the 8

office hour requirement in place, noting that "the parties have lived with the new requirement for almost five years." As a result of the Commission's decision, KFT faculty were required to continue working 8 hour office hours per week without an agreement for additional compensation.

Castiglione certifies that after the Commission decision, P.E.R.C. No. 2013-64, the KFT placed the issue of additional compensation for additional office hours on the agenda of local negotiations meetings with the University. The University rejected any proposal that included additional compensation, and did not provide the KFT with a counterproposal other than to say that faculty would not be paid for working the additional hours. The parties failed to reach agreement. The KFT placed the issue on the agenda in spring 2014 and into 2015. The University failed to provide a counterproposal and maintained its position that no additional compensation would be paid for the 3 additional office hours. On June 14, 2016, the KFT made a written proposal to the University over additional compensation for additional office hours. The University did not make a written counteroffer and no agreement was reached.

On October 9, 2017, the KFT tried again to negotiate over the increase in office hours from 5 to 8, via a letter from Castiglione to the University President formally demanding a return to negotiations in order to comply with the Commission's

2013 order. The letter included a proposal from KFT for 3 teaching credit hours of compensation per semester for faculty whose office hours had been unilaterally increased from 5 to 8. By e-mail of November 13, 2017, at 11:46 a.m., University Labor Counsel Ken Green responded to Castiglione's October 9 letter and proposal. Green's e-mail rejected the demand for negotiations, stating, in pertinent part:

Please be advised that it is my understanding that prior to my arrival the parties had initiated negotiations regarding this matter with the Union demanding additional compensation for increased office hours and the University rejecting any proposal that included additional compensation for management redirecting the work priorities of faculty. . . . Based upon the foregoing, the University takes, but will not be limited to, the following positions:

- 1) The impact of the increase in office hours has been negotiated and as such the demand for negotiation is rejected;
- 2) The Union has waived its rights to negotiation due to its inactivity on this matter for in excess of two years;
- 3) The Union has presented no evidence of any impact due to management reprioritizing the workload of its employees and as such has pursued negotiations in bad faith and as such the demand for negotiations is rejected;
- 4) The matter is moot and/or the Union will be permitted to address concerns regarding management's reprioritizing of faculty workload in response to the University reprioritizing faculty workload in a communication that will be forthcoming.

Then, at 11:50 a.m. on November 13, 2017, four minutes after his e-mail rejecting the KFT's demand for negotiations over the

unilateral increase in office hours from 5 to 8, Green sent the following e-mail to the KFT announcing another unilateral increase in faculty office hours from 8 to 12:

Subject: Fall 2018: Office Hours

Colleagues,
Please be advised that consistent with the University's mission to provide the best possible opportunities for success for its student[s], the reasoning set forth in our previous positions on office hours and their critical link to student success and after careful review, the University will be requiring all faculty to post and hold twelve office hours per week starting in the Fall 2018 semester.
Please feel free to contact me if you have any questions or concerns.

Castiglione certifies that prior to Green's November 13, 2017 e-mail, the KFT was completely unaware that the University intended to increase office hours from 8 to 12, and the issue of increasing office hours again had not been discussed at any meeting between the parties prior to November 13, 2017. Council Staff Representative Muraskin certifies that the Council had never received any notification prior to November 13, 2017 that Kean was considering increasing office hours again. Green certifies that, prior to his November 13, 2017 e-mail announcement, the union was aware that an increase in advisement hours was being contemplated. Green certifies that the union had previously questioned the proposed change with University Vice-President Vazquez, as evidenced by an e-mail attached as

Exhibit B; however, the University's exhibits did not contain any e-mails from prior to November 13, 2017 and did not contain any e-mails involving Vazquez. Green certifies that on November 14, 2017, the issue of increased office hours was part of the local negotiations session between the University and the KFT for the first time.

On November 16, 2017, Muraskin responded to Green's November 13 e-mail announcing the change from 8 to 12 office hours with the following:

Dear Ken,
Where is this coming from? Is there any objective evidence to show that the current system of eight office hours per week is not adequate? Has the administration conducted a study? Is there data that you can share with me?
Please advise,
Bennett

On November 16, Green responded to Muraskin's e-mail with the following:

Sir,
While we are very proud of what we do and what we achieve, we (everyone) can always develop further. Our graduation rates are improved but we will not rest on our achievements merely because we did better. So, it is coming from, among other places, a place of advisement being one of if not the most critical functions associated with retention/graduation rates and a desire to continue improving.
As a matter of framing the legal portion of this, I will be taking the initial position that the "why" of our decision, albeit obvious, is not the proper subject of negotiations. We acknowledge that impact may

be negotiable (there is no impact in reprioritizing workload) and we will agree to negotiate negotiable issues regarding the move to 12 hours. We also are willing to discuss and entertain any good faith proposal that will enhance the quality and amount of advising in such a way that will benefit our students.

I look forward to working further with you on this matter.

Later on November 16, Muraskin responded to Green with the following e-mail:

I am asking if this proposed extension of office hours is based on any study or data. Do we know how many students are visiting faculty during the existing system of 8 office hours, or whether there are students who have complained that faculty are unavailable?

Bennett

Later on November 16, Green responded to Muraskin with the following e-mail:

Sir,

I am personally aware of multiple faculty, including union officials, who are not present during office hours let alone providing good advisement during those time periods. I am personally aware of a lack of good and arguably no advisement being provided. So, just as an aside, my personal knowledge of the circumstances supports the move. That being said, the October 9, 2017 letters of both Presidents Haresign and Castiglione make it clear that a demand for negotiations will be forthcoming or [ha]s arguably been blanketly requested already. As such, for all practical purposes, our discussion is part of the negotiation process.

As such, I want to be clear that the "why" of our decision is not subject to mandatory negotiation and I am not inclined to enter

into discussions regarding reasoning that was fully vetted in a hearing and decision. The "impact" of our decision may well be negotiable assuming there is any impact and the University stands ready and willing to negotiate any negotiable issues. Should the Union wish to engage and provide good faith discussions regarding alternatives to implementation of 12 hours (not the impact), the University is willing to do so. However, to be clear, we are moving towards 12 hour advisement (or an alternative that provides equal or greater value to students) and that is not going to be the subject of negotiations. Impact, if any, will be negotiated and discussions are always welcome.

By letter of December 20, 2017, Castiglione responded to Green's two November 13, 2017 e-mails. Castiglione stated, in pertinent part:

Given the above information, we reply to the four positions that you stipulate in your first e-mail of November 13 as follows:

- 1) The university has not negotiated in good-faith over the impact of the increase in office hours;
- 2) The KFT has not waived its rights to negotiation as we have not been inactive on this matter for in excess of two years;
- 3) The KFT has provided compromise solutions in its proposals over the impact of these changes and therefore has demonstrably negotiated in good faith;
- 4) The matter is not moot as the university has yet to negotiate in good faith in accordance with the PERC order;

We note that the university, via your November 13 emails, is now describing its unilateral increase in office hours from 5 to 8 per week as "reprioritizing" of faculty workload. The university has never made this claim before. If this is now going to be the

case, please provide for us, in writing, which of faculty members' other duties are being de-prioritized, and specifically decreased in the amount of three hours less per week.

With regards to the first issue, that of retroactive compensation, the KFT reiterates its demand for compensation here:

. . .

With regards to the second issue, negotiations over the office hours increase from 5 to 8 hours per week prospectively, we first note that, despite the KFT providing the university with written proposals, the university has yet to negotiate in good faith by providing written counterproposals, other than to say in the PERC hearings that it takes a zero-pay position. In fact, the university seems to be going out of its way to engage in bad faith by announcing in your second email of November 13, 2017 its intention to unilaterally increase faculty office hours to twelve (12) hours per week without negotiations or an offer of additional payment, effective fall semester 2018. This position is particularly troubling as it presents the appearance, if not actuality, of a retaliatory response to the KFT's request that the University honor PERC's earlier determination. Nonetheless, the KFT reiterates its commitment to working with the University in good-faith to achieve a fair, negotiated resolution.

Please provide, in writing, a formal proposal for the pay that will accompany the previously imposed increase of 3 office hours and the pay for the proposed additional increase of 4 office hours for next fall. Or, if the university plans to reprioritize or redirect faculty workload, please provide a written proposal as to your proposed reductions in faculty workload elsewhere. Lastly, please consider this to be a formal request for all information about any investigations that the university conducted

regarding the inadequacy of the current office hours, and any studies, data, etc., that it has generated or used in its processes. We note that President Farahi has asserted in various public forums that faculty advisement is the most important factor for determining retention and graduation of our students, and we wish to be provided with the investigations, studies, data, information, etc., on which he bases this assertion. Please provide your written counterproposals at our next local negotiations meeting currently scheduled for January 4, 2018.

Please find attached to this demand, a proposal for office hours and/or compensation for increased office hours prospectively.

By e-mail of December 21, 2017, Green responded to Muraskin and the KFT, stating, in pertinent part:

Without waiving any previous position and reserving all rights, were and/or when we negotiate this matter (prospectively and/or retroactively), the University would (consistent with how it is handling all of its negotiations):

Initially provide or request an information exchange regarding what amount, if any, faculty work in excess of 35 hours per week to determine what any impact is or what additional work is being performed.

The information would be analyzed to determine what, if any, impact or additional work results from the additional office hours. It is the University's position that should negotiations commence that your proposal is premature as it is not accompanied by any evidence to suggest that there has been any impact or additional work performed by your members. The proposal would therefore initially be rejected as being unsupported by any facts whatsoever.

In short, the University maintains its position set forth on November 13, 2017 at this time regarding the move in Office Hours from 5-8. The position will be re-evaluated upon receipt of further information regarding the proposal dated December 2017. Even should the University reverse its position, the first step in the process will be for the University and Union to exchange information and perform an evaluation of that information. The University will neither accept a proposal or make a proposal without there being evidence on the record to review and takes the position that any Order and/or law governing this matter does not require it to so do. As such, your demand as to January 4, 2018 is rejected for the date set forth.

Green certifies that the KFT participated in Presidential task forces that were created in January 2018. He certifies that after the discussion about the office hours policy on November 13, 2017, the University and KFT had local negotiations sessions on February 27, 2018, April 10, 2018, and May 1, 2018. Green certifies that the University has negotiated in good faith, that it will "not consider a compensation offer with no record upon which to evaluate the appropriateness of such an offer," and that it has "clearly addressed the one impact issue raised by the Union on November 14, 2017 by expressly stating that no additional work would be required by the move to twelve office hours."

On April 20, 2018, Muraskin e-mailed Green asking that the University provide its rationale for increasing office hours from 8 to 12 and if it was still planning to increase office hours in

September 2018. On April 27, 2018, Green e-mailed Muraskin, refusing to provide an additional explanation for the increase in office hours, and reiterating the University's position that "there has been no increase in the minimum number of hours (35) required to be accounted for consistent with the University's Service and Accountability Requirements and that faculty are only having their work priorities re-directed at this time."

On May 1, 2018, the parties met for a negotiations session which included the issues of the impacts of both the increase from 5 to 8 office hours that was the subject of the 2013 Commission decision, and the increase from 8 to 12 office hours that the University announced for the Fall 2018 semester. At the May 1 meeting, the University did not make a counterproposal to the KFT's demand for additional compensation, and Green took the position that no additional compensation would be offered for the increase from 8 to 12 office hours because the University did not believe that the increase in office hours increased the faculty workload beyond 35 hours per week.

On June 6, 2018, all faculty received an e-mail from Provost and Vice President for Academic Affairs, Dr. Jeffrey H. Toney. Dr. Toney's e-mail provided, in pertinent part:

Full Time Faculty Office Hours

In an effort to better serve our students, beginning Fall 2018 all full-time faculty will be required to post and hold 12 office hours over a minimum of four days. . . . Fall

2018 office hours are required to be entered via KeanWISE by Monday, June 25.

Legal Standard

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

Legal Arguments

The Council asserts that it has a substantial likelihood of success on the merits because the Commission has already determined that the University is required to negotiate over additional compensation for increases in faculty office hours (P.E.R.C. No. 2013-64), and has already determined that the University's "zero-pay" position does not satisfy its obligation to negotiate in good faith (P.E.R.C. No. 2018-18). It argues that in the previous office hours case involving the parties, the Commission considered and rejected the University's position that increased office hours are merely a reprioritization of faculty

workload and therefore compensation does not need to be negotiated. The Council contends that the University's continued position that it does not need to offer anything in exchange for the increased office hours demonstrates it has violated its statutory obligation to negotiate in good faith.

As for irreparable harm, the Council asserts that without interim relief, Council members are likely to suffer irreparable harm because their right to an effective remedy will be lost if the University is permitted to impose another increase in office hours before negotiations, as they did previously. The Council argues that the Commission's 2013 decision to leave the elevated workload requirement in place, because almost five years had passed, left the Council ill-equipped to negotiate effectively for additional compensation. It contends that gave the University no incentive to offer additional compensation because faculty continued to be obligated to post and hold 8 office hours per week without a corresponding pay increase. The Council asserts that the University has repeatedly rejected any proposals for additional compensation, has refused to make counter-proposals to the Council's offers, and then responded to the Council's October 2017 request to negotiate by announcing another unilateral increase in faculty office hours. It argues that the only way to avoid repeating the same result of the University refusing to negotiate in good faith over increased hours and the

Council being left with no effective remedy, is by directing the University to maintain the status quo while this case is pending. The Council, citing multiple prior interim relief decisions, asserts that the Commission has repeatedly held that the inability to fashion an effective remedy at the conclusion of an unfair practice charge constitutes irreparable harm sufficient to grant interim relief. Finally, the Council contends that this is not a situation in which the Commission can order a monetary remedy at the conclusion of the case, because the only way to achieve monetary relief would be from the University as a result of negotiations over the increased office hours, and the only chance for such monetary relief given the University's previous actions and "zero-pay" position "is to permit the parties to negotiate this issue on a level playing field, and the only way to do that is to preserve the status quo pending the outcome of the union's charge."

The University asserts that the Council has not demonstrated a substantial likelihood of success on the merits because hard bargaining is lawful and not inconsistent with good faith negotiations. It argues that it is undisputed that office hours and student advisement are a normal job duty of University faculty. The University contends that it has had four negotiation sessions with the Council, which have resulted in the Council identifying and the University resolving the only raised

impact issue. It asserts that the conversations between the parties "have created a very initial, rough framework within which to discuss a possible proposal to the Office Hour issue," and that "These objective, tangible good faith efforts by the University have only been met with the Union's repeated demands for increased compensation without engaging in any meaningful discussion about what objective evidence exists necessary to determine what additional compensation would be fair." The University asserts that it is not refusing to negotiate those issues that are negotiable, but is simply maintaining that negotiations must be based on objective evidence upon which a proposal could be evaluated. It argues that the Council has refused to provide such evidence of impact.

The University contends that this case is not identical to the 2013 office hours case in which the Commission rejected its position that no negotiations were required because the University was merely reprioritizing work assignments and there was no increase in the total number of hours worked by faculty. It asserts that the University has a different position now because "the University understands that there may be impact issues that are negotiable, and the University has repeatedly invited the Union to engage in meaningful discussions about what impact issues may result from the increase in the proportion of hours within the existing 35-hour workweek that are devoted to

student advisement.” The University argues that the determination of the presence of bad faith in negotiations is fact sensitive and requires a plenary hearing to determine intent.

The University asserts that the Council will not be irreparably harmed because its claim is for monetary loss, which, without more, does not constitute irreparable harm. It argues that this case is distinguishable from one in which interim relief was granted to stop the implementation of a new work schedule, as this case does not involve an entirely new work schedule but only the requirement to increase the proportion of hours devoted to academic advisement. The University contends that: “The only change that will occur in September of 2018 is an increase in the proportion of hours that will be devoted to academic advisement. Even [if] it is later determined that this increase in office hours warrants additional compensation, this does not even come close to establishing irreparable harm.”

Legal Analysis

N.J.S.A. 34:13A-5.3 defines a public employer’s duty to negotiate before changing existing working conditions:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to

grievances, disciplinary disputes, and other terms and conditions of employment.

Consistent with the Act, the Commission and courts have held that changes in negotiable terms and conditions of employment must be achieved through the collective negotiations process. See, e.g., Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28, 29-30 (¶29016 1997), aff'd, 334 N.J. Super. 512 (App. Div. 1999), aff'd, 166 N.J. 112 (2000); Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 338 (1989); and Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 52 (1978). In Middletown Tp., P.E.R.C. No. 2007-18, 32 NJPER 325 (¶135 2006), the Commission held that the Township violated the Act by unilaterally making a mid-contract change to an existing non-contractual working condition, and ordered that the condition be restored until the completion of good faith negotiations over the change. The Appellate Division affirmed, holding:

N.J.S.A. 34:13A-5.3 requires a public employer to negotiate conditions established by past workplace practices prior to changing any non-contractual employment conditions. This duty prohibits an employer from instituting unilateral, mid-contract changes in any conditions established by such past practices. The remedy for a failure to negotiate prior to instituting a mid-contract change is to restore and maintain the status quo until negotiations have been held and an agreement reached.

[Middletown, 34 NJPER 228 (¶79 App. Div. 2008); internal citations omitted.]

The Commission and courts have consistently held that qualitative increases in student contact time such as replacing a duty period with a teaching period, or replacing a prep period with a duty period, are mandatorily negotiable even where the total length of the school day or weekly hours have not been quantitatively increased. See Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973); Maywood Bd. of Ed. v. Maywood Ed. Ass'n, 168 N.J. Super. 45 (App. Div. 1979), certif. den., 81 N.J. 292 (1979) (increase in pupil contact time for two phys-ed teachers); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977) (limit on teaching periods to five a day with a minimum of two subject area preparations was negotiable); Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976) (change from duty-free period to requiring teachers to remain in classroom while specialists taught music and art was negotiable); Englewood City Bd. of Ed., NJPER Supp.2d 28 (¶18 App. Div. 1974) (unilateral work load increase assigned five teaching periods per day instead of four); Ramsey Bd. of Ed. and Ramsey Teachers. Ass'n, P.E.R.C. No. 85-119, 11 NJPER 372 (¶16133 1985), aff'd, NJPER Supp.2d 160 (¶141 App. Div. 1986) (phys-ed teachers assigned a fourth teaching preparation period); Bayonne Bd. of Ed. and Bayonne Teachers Ass'n, P.E.R.C. No. 80-58, 5 NJPER 499 (¶10255 1979), aff'd, NJPER Supp.2d 86 (¶68 App. Div. 1980), certif. den., 87 N.J. 310 (1981) (replacement of duty

free time with 9 minutes of morning student supervision was arbitrable workload increase); Newark Bd. of Ed. and Newark Teachers Union, Local No. 481, AFT, P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd, NJPER Supp.2d 72 (¶55 App. Div. 1980) (replacement of teacher prep periods with teaching periods was arbitrable workload increase); Westfield Bd. of Ed., P.E.R.C. No. 2002-41, 28 NJPER 135 (¶33042 2002) (teacher could arbitrate replacement of duty period with instructional period); Lincoln Park Bd. of Ed., P.E.R.C. No. 85-54, 10 NJPER 646 (¶15312 1984) (replacement of 10 minutes of teacher prep time with bus duty was mandatorily negotiable increase in pupil contact time); Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 83-102, 9 NJPER 104 (¶14057 1982) (assignment of two additional periods of pupil contact time each week was mandatorily negotiable); East Newark Bd. of Ed., P.E.R.C. No. 82-123, 8 NJPER 373 (¶13171 1982) (increase in pupil contact time caused by reduction in weekly music, art, phys-ed classes taught by others was arbitrable); and Wanaque Bor. Dist. Bd. of Ed., P.E.R.C. No. 82-54, 8 NJPER 26 (¶13011 1981) (replacement of duty-free prep time with student supervision in period before start of classes was arbitrable).

The Commission has therefore regularly held that a unilateral change in existing workload conditions caused by increased pupil contact time constitutes an unfair practice for refusing to negotiate in good faith in violation of subsections

5.4a(5) and 5.4a(1) of the Act. See, e.g., Dover Bd. of Ed. and Dover Ed. Ass'n, P.E.R.C. No. 81-110, 7 NJPER 161 (¶12071 1981), aff'd, NJPER Supp.2d 112 (¶92 App. Div. 1982); Andover Reg. Bd. of Ed and Andover Reg. Ed. Ass'n, P.E.R.C. No. 87-4, 12 NJPER 601 (¶17225 1986), aff'd, NJPER Supp.2d 180 (¶156 App. Div. 1987) (employer violated Act by unilaterally increasing teacher workload by replacing previously assigned supplemental instruction and library supervision periods with conventional teaching periods); Ewing Tp. Bd. of Ed., P.E.R.C. No. 95-99, 21 NJPER 217 (¶26137 1995) ("Board had an obligation to negotiate before increasing the workload of the three full-time coordinators by adding a regular teaching assignment to their regular duties"); Lodi Bd. of Ed., P.E.R.C. No. 92-120, 18 NJPER 351 (¶23151 1992); Montague Tp. Bd. of Ed., P.E.R.C. No. 88-26, 13 NJPER 751 (¶18283 1987) (employer unilaterally increased pupil contact time and decreased preparation time); Bethlehem Tp. Bd. of Ed., P.E.R.C. No. 88-15, 13 NJPER 712 (¶18265 1987) (employer unilaterally increased pupil contact time with addition of seventh teaching period during school day); Lumberton Tp. Bd. of Ed., P.E.R.C. No. 87-12, 12 NJPER 643 (¶17243 1986); Buena Reg. School Dist., P.E.R.C. No. 86-3, 11 NJPER 444 (¶16154 1985) (employer unilaterally increased pupil contact time by adding instructional period; ordered to restore previous workload level and pay teachers for past workload increase according to

compensation formula in contract); and Wharton Bd. of Ed., P.E.R.C. No. 83-35, 8 NJPER 570 (¶13263 1982) (employer violated Act by unilaterally assigning home room duties in place of duty-free preparation periods; ordered to rescind home room assignments, negotiate in good faith over future assignments, and negotiate compensation for home room duty already served without negotiations).

In Dover, supra, the Commission found that the employer violated the Act by replacing a duty period with an instructional period, increasing pupil contact time by 35 minutes per day but not lengthening the workday. The Commission ordered that the workload increase be rescinded and that the employer negotiate in good faith regarding any proposed changes in pupil contact time prior to implementation. 7 NJPER at 161-162. The Appellate Division affirmed, holding:

The change in the teacher schedule had a significant impact on the terms and conditions of the teachers' employment by increasing their instructional work load. Negotiations would not have substantially encroached on the board's educational objective of improving student reading skills. We affirm PERC's determination that the increase in the teacher work load was mandatorily negotiable and that, in instituting this change unilaterally, the board was guilty of an unfair labor practice. See Bd. of Ed. Woodstown-Pilesgrove School v. Woodstown-Pilesgrove Ed. Assn., 81 N.J. 582, 591, 410 A.2d 1131 (1980); State v. State Supervisory Employees Association, 78 N.J. 54, 67, 393 A.2d 233 (1978); Burlington Cty. Col. Fac. Assoc. v. Bd. of Trustees, 64 N.J.

10, 14, 311 A.2d 733 (1973).

[Dover, NJPER Supp.2d at 112 (¶92 App. Div. 1982).]

In Lumberton, supra, the Commission found that the employer violated the Act by unilaterally increasing pupil contact time and decreasing preparation time. The Commission ordered a return to the status quo ante and that the employer negotiate in good faith before changing the teachers' workload. 12 NJPER at 644.

In Lodi, supra, the Commission found that the employer violated the Act by unilaterally increasing instructional time and decreasing the preparation time of high school teachers. The Commission held:

Here, although the parties have agreed by contract to the length of the workday, they have not agreed to the amount of teaching, preparation, duty or duty-free time within that workday. The contract nowhere indicates that the parties contemplated that the Board would have the right to make changes in these amounts unilaterally. The Board is not contractually bound to maintain the status quo or some set contractual amount, but it is required to negotiate before implementing uncompensated increases in instructional time and uncompensated decreases in preparation time. Its failure to do so violated subsections 5.4(a)(1) and (5). We therefore order the Board to negotiate in good faith over compensation for teachers for 1990-91 and 1991-92 and workload/compensation for 1992-93.

[Lodi, 18 NJPER at 354.]

In Kean University, P.E.R.C. No. 2013-64, 39 NJPER 449 (143 2013) ("Kean I"), involving these same parties, the Commission

held that the University violated subsection 5.4a(5) of the Act by unilaterally increasing faculty office hours from 5 to 8 per week. The University asserted that the increase in office hours was not negotiable because it "was not an increase in hours, but a reorganization of work or a reallocation of the time spent in already existing job responsibilities." Kean University, H.E. No. 2012-10, 39 NJPER 5, 16 (2 2012). The University also argued that it did not need to negotiate compensation for the increase in office hours because student advisement was already contractually obligated and therefore accounted for in faculty compensation. H.E. 2012-10, 39 NJPER at 13; Kean I, 39 NJPER at 454. The University was ordered to negotiate prospectively in good faith "over the increased office hours and/or compensation for increased office hours." Kean I at 456.

In the instant case, as in Dover, Lumberton, Lodi, Buena, Wharton, Andover, Ewing, Montague, Bethlehem, and Kean I, the University unilaterally increased workload by increasing student contact time.^{3/} Increases in faculty office hours are akin to

^{3/} Although the change has not yet been implemented, the University announced the unilateral change via Green's November 13, 2017 e-mail, and officially reiterated it via Provost Toney's June 6, 2018 e-mail. The Commission and Supreme Court have held that both the announcement, as well as the implementation of a unilateral change, are separate unfair practices. See, e.g., Riverside Tp., P.E.R.C. No. 95-7, 20 NJPER 325 (¶25167 1994), adopting H.E. No. 95-1, 20 NJPER 303 (¶25152 1994); Liberty Tp. Bd. of Ed., P.E.R.C. No. 85-37, 10 NJPER 572 (¶15267 1984); Galloway Tp. Bd. of
(continued...)

replacing teacher prep time or non-duty time with duty time involving an increased level of student interaction and responsibility. An increase in office hours is a newly scheduled obligation that qualitatively impacts faculty workload by affecting how they schedule their various duties within the work week. Such a scheduled obligation in which faculty must be physically present and available to perform their professional roles as student advisors at a specific location on campus for a minimum number of hours over four different days obviously impacts their ability to perform other work. The University's unilateral increase of 8 office hours to 12 office hours is a 50% increase that would reasonably be expected to alter faculty members' daily and weekly allocation of time to performing lecture preparation, grading, research, scholarship, and other teaching and student advisory duties. Many of these other faculty duties either do not have to be done in faculty offices, or cannot be done from faculty offices, and many could be performed off-campus. Just as requiring home room duty, bus duty, lunchroom duty, study hall duty, or adding an instruction period constitutes a workload increase even if a teacher's weekly hours have not changed, mandating additional office hours creates additional student contact time and additional levels of

3/ (...continued)
Ed. v Galloway Tp. Assn. of Ed. Sec., 78 N.J. 1 (1978).

responsibility regarding when and where faculty must be, as opposed to having non-teaching, non-advising time that may be performed at various times and locations.^{4/}

The University argues that it has negotiated in good faith over its announced increase in faculty office hours. The standard for determining whether a parties' conduct evidences good faith has been established by the Commission in State of New Jersey, E.D. No 79, 1 NJPER 39 (1975), aff'd, 141 N.J. Super (App. Div. 1976), wherein it held that:

It is necessary to subjectively analyze the totality of the parties' conduct in order to determine whether an illegal refusal to negotiate may have occurred....A determination that a party has refused to negotiate in good faith will depend upon an analysis of the overall conduct and/or attitude of the party charged. The object of this analysis is to determine the intent of the respondent, i.e., whether the respondent brought to the negotiating table an open mind and a sincere desire to reach an agreement, as opposed to a pre-determined intention to go through the motions, seeking to avoid, rather than reach, an agreement.

[State of N.J. at 40; footnote omitted.]

In Hamilton Tp. Bd. of Ed. and Hamilton Tp. Administrators

^{4/} Accord Kean University, H.E. No. 2018-2, 44 NJPER 104, 109-110 (¶34 2017): "Moreover, the mandatory on-campus participation increased workload which is a mandatory subject of negotiations . . . Therefore, when the University mandated winter-break training during what was previously unstructured work time which did not require faculty to be on-campus, it increased their workload by taking away from other non-teaching duties."

and Supervisors Ass'n, P.E.R.C. No. 87-18, 12 NJPER 737 (¶17276 1986), aff'd, NJPER Supp.2d 185 (¶163 App. Div. 1987), certif. denied, 111 N.J. 600 (1988), the Commission found that the employer violated the Act by refusing to negotiate in good faith over possible additional compensation for a curriculum assistant temporarily assigned to teach an industrial arts class. The Commission held:

We also agree with the Hearing Examiner that the November 30 meeting did not fulfill the Board's negotiations obligation. We have recognized that an employer or employee representative may take a hard line in negotiations so long as it does so with a sincere intent to reach agreement instead of a pre-determined intention to avoid agreement. Ocean County College, P.E.R.C. No. 84-99, 10 NJPER 172 (¶15084 1984); State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J. Super. 470 (App. Div. 1976). But the record does not indicate that the Board's representatives negotiated with an open mind and until impasse over the Association's proposals. At the November 30 meeting, the administration took the position that it had a right to make this assignment and that "no compensation, either extra sick day benefits, vacation day benefits or salary remuneration would be considered." The superintendent, although he thought the term "negotiations" could be used, did not think the parties had negotiated and instead characterized the meeting as "a discussion of possible things [the Association] wanted and the reasons why the administration did not feel it was appropriate." The administration made no counterproposals and instead reiterated its initial position that the curriculum assistant's administrative duties had been reduced. Under all the circumstances of this case, we do not believe that the Board negotiated with the

Association until impasse about possible additional compensation for the teaching assignment. Accordingly, we conclude that the Board violated subsections 5.4(a)(5) and, derivatively, (a)(1).

[Hamilton, 12 NJPER at 739; footnote omitted.]

The Appellate Division affirmed. NJPER Supp.2d 185 (¶163 App. Div. 1987), certif. denied, 111 N.J. 600 (1988).

Similarly, in Kean University, P.E.R.C. No. 2018-18, 44 NJPER 221 (¶64 2017) ("Kean II"), involving these same parties, the Commission found that the University violated the Act by failing to negotiate in good faith over additional compensation for faculty attendance at a recently implemented mandatory winter break training. In that case, the University took the negotiating position that training was already included in faculty compensation, so it offered a "zero pay position" and never offered a counterproposal to the KFT's demands for negotiations over compensation. Id. at 225. The Commission agreed with the Hearing Examiner's following legal analysis:

The University argues that its zero-pay response to the union's negotiations demand fulfilled its 5.4a(5) obligations. This position is disingenuous because the University's response to the KFT's negotiations demand was that it had no duty to negotiate since the parties' collective agreement covers training as a non-teaching duty for which compensation was already provided and/or that an interim settlement agreement of a grievance relieved it of its negotiations obligation.

[Kean II at 225-226.]

In the instant case, the previous increase in office hours from 5 to 8 that resulted in the Commission finding that the University violated the Act (Kean I) was still being negotiated when Green announced a further unilateral increase in office hours up to 12 on November 13, 2017. Following Kean I's 2013 order that the University negotiate over the increase in hours and/or compensation for that increase, the faculty continued to post the 8 office hours without any agreement on additional compensation or other concessions from the University. The Council/KFT had placed the issue of increased office hours on the negotiating agenda in 2014 and 2015, and made a written proposal in 2016 that the University did not counter. On October 9, 2017, the KFT again formally demanded a return to negotiations on the issue of compensation for the increased office hours, requesting that the University comply with the Commission's order, and including a proposal. Green's November 13, 2017 rejection of the KFT's demand for negotiations repeated many of the University's positions that the Hearing Examiner and Commission rejected in Kean I. Green's e-mail characterized the KFT's request as "additional compensation for management redirecting the work priorities of faculty." Green's e-mail characterized the increased office hours as "management's reprioritizing of faculty workload."

Just four minutes after rejecting the KFT's proposal and request for negotiations while reviving the University's positions that were found to violate the Act in Kean I, Green sent the 11:50 a.m. November 13, 2017 e-mail that announced another unilateral increase in faculty office hours from 8 to 12. In his November 14 e-mail responding to Muraskin's questions about the newly announced office hour increase, Green stated that the University was "willing to discuss and entertain any good faith proposal that will enhance the quality and amount of advising in such a way that will benefit our students." However, the e-mail also re-asserted the University's position that "there is no impact in reprioritizing workload."

In his November 16 e-mail responding to Muraskin's latest e-mail questioning the change, Green again offered conflicting positions regarding whether the University was willing to negotiate impact, and whether it believed there might be any impact. Green suggested that the impact "may well be negotiable assuming there is any impact." Green stated that "impact, if any, will be negotiated and discussions are always welcome." However, Green also suggested that the University was willing to engage in good faith discussions "regarding alternatives to implementation of 12 hours (not impact)." Green's e-mail clarified that the University's decision on increased office hours (or an equivalent) was made and would not be negotiable:

"However, to be clear, we are moving towards 12 hour advisement (or an alternative that provides equal or greater value to students) and that is not going to be the subject of negotiations."

In his December 21, 2017 response to Muraskin's latest negotiations demand over increased office hours, Green again repeated the University's position from Kean I, stating that the Council's negotiations request was premature without "evidence to suggest that there has been any impact or additional work performed by your members." Green stated: "In short, the University maintains its position set forth on November 13, 2017 at this time regarding the move in Office Hours from 5-8."

On April 27, 2018, Green repeated the University's position from Kean I that the increase in office hours did not increase workload, stating: "there has been no increase in the minimum number of hours (35) required to be accounted for consistent with the University's Service and Accountability Requirements and that faculty are only having their work priorities re-directed at this time."

During the May 1, 2018 negotiations session in which the parties discussed the increased office hours, the University did not make a counterproposal to the KFT's compensation proposal, and the University took the position that no additional compensation would be offered because it did not believe that the

increased office hours increased faculty workload. Green's July 18, 2018 certification acknowledges that the University's position did not change during negotiating sessions in 2018: "The University clearly addressed the one impact issue raised by the Union on November 14, 2017 by expressly stating that no additional work would be required by the move to twelve office hours." Finally, on June 6, 2018, the University's Provost directed faculty to post and hold 12 office hours over a minimum of four days starting in the Fall 2018 semester.

Applying the standards of State of N.J., Hamilton, and Kean II, the record does not indicate that the University engaged in good faith negotiations over the increase in office hours or over the impact of the increase in office hours. The University made a unilateral announcement about the change that repeated its position from Kean I that increased office hours do not increase workload because they are a reprioritization of work hours. Throughout negotiations and attempted negotiations by the Council/KFT, the University repeated that the increase in office hours was non-negotiable and that the University would not offer any additional compensation because it did not believe there was an impact and did not believe that workload had been increased. The University took this position in contravention of the Hearing Examiner's report and Commission decision in Kean I finding that its previous unilateral increase in office hours violated the Act

because it amounted to an uncompensated workload increase that it was required to negotiate.

The timing of Green's announcement of the unilateral increase in office hours four minutes after rejecting an invitation to negotiate as ordered by Kean I is also suspicious. That the University essentially responded to the KFT's request to negotiate compensation for the previous office hour increase with an additional 50% increase in minimum faculty office hours is strong evidence of bad faith negotiations on its face, if not retaliation for protected activity.^{5/}

As in Hamilton and Kean II, the University's "zero pay" position, lack of counterproposals, and intransigent position that there was no workload increase, indicate that it did not bring an open mind to the negotiations table and a sincere desire to reach an agreement. The University took these positions and engaged in this conduct despite the holding in Kean I that unilateral increases in faculty office hours constitute an unfair practice, and despite the holding in Kean II that a "zero pay" position for increased workload is not good faith negotiations.

Accordingly, by unilaterally increasing faculty workload from 8 weekly office hours to 12 weekly office hours, I find that a final Commission decision on the merits is likely to conclude

^{5/} The Council's charge does include a 5.4a(3) allegation for retaliation, but it specifically limited its application for interim relief to the 5.4a(5) charge.

that the University has violated the Act's prohibition on changing existing work rules or conditions of employment without negotiating in good faith, which constitutes an unfair practice under subsections 5.4a(5) and 5.4a(1) of the Act.

Turning to the second prong of the interim relief standard, the Charging Party must establish that it is irreparably harmed by Respondent's actions. Irreparable harm is by definition harm that cannot be remedied at the conclusion of a final Commission determination. Ordinarily, where the final remedy is primarily money, the Commission is reluctant to grant interim relief.

Township of Maplewood, I.R. No. 2009-26, 35 NJPER 184 (¶70 2009); Union Cty., I.R. No. 99-15, 25 NJPER 192 (¶30088 1999). Money alone, without additional factors demonstrating particular hardship, does not support irreparable harm. See Sussex County Bd. of Freeholders & Sussex County Sheriff, I.R. No. 2003-13, 29 NJPER 274 (¶81 2003). However, Commission Designees have frequently granted interim relief, including monetary remedies, based on the disruption to the negotiations process caused by unilateral changes to negotiable terms and conditions of employment. See Newark, I.R. No. 2015-5, p. 17, and cases cited therein.

While irreparable harm has most often been found when a unilateral change was made during collective negotiations for a successor contract, the Commission has also granted interim

relief based on irreparable harm caused by a mid-contract unilateral change in a negotiable term and condition of employment. See Union County, I.R. No. 92-4, 17 NJPER 448, 452 (¶22214 1991). In Union County, the then Commission Chairman granted interim relief where an employer unilaterally sought to impose mid-contract temporary layoffs in the absence of any statutory or regulatory scheme permitting temporary layoffs. Finding that the dispute concerned the mandatorily negotiable subjects of work year, compensation and unpaid leaves of absence, the Chairman found:

[P]ermitting unilateral changes of this magnitude in these fundamental terms and conditions of employment during this litigation could irreparably harm the continuing relationship between the employer and the majority representatives and cause hardship for individual employees.

[Union County, 17 NJPER at 452; emphasis added.]

Similarly, in Egg Harbor Tp., I.R. No. 2011-14, 36 NJPER 336 (¶131 2010), the Commission Designee granted interim relief based on a mid-contract unilateral change in a negotiable term and condition of employment. The Designee found:

[A]lthough there is no harm to individual CWA unit members that cannot be remedied by a monetary award in a final Commission determination, the irreparable harm here is not to the individuals but to the negotiations process. . . . Although the repudiation in this instance occurred not in successor negotiations but mid-contract, CWA correctly argues that under the particular

circumstances of this case, . . . the Township's actions in repudiating not only the collective agreement but the agreed-upon modification ("MOA I") has upset the balance required for good faith negotiations and has chilled the negotiations process . . .

[Egg Harbor Tp., 36 NJPER at 339; emphasis added.]

In the instant case, a final Commission decision could not order a monetary remedy because the charge is based on a non-contractual work rule or condition of employment, so there is no current agreement between the parties regarding what compensation would be for the additional office hours. Any compensation, monetary or otherwise, can only be the result of negotiations between the parties. Without an injunction preventing the University from implementing the increased office hours before negotiating in good faith, the Council's opportunity to eventually receive compensation for the increased office hours is diminished. In Newark Bd. of Ed., I.R. No. 92-10, 17 NJPER 515 (¶22255 1991), the Commission Designee granted interim relief to restrain the public employer from unilaterally increasing employees' work days, even though they sought compensation for the increase. In finding irreparable harm, the Designee found:

Absent a restraint, even if the Board were to negotiate now over the change in hours and compensation, the Association would be negotiating with the disadvantage of having the uncompensated increase in hours an accomplished fact.

[Newark Bd. of Ed., 17 NJPER at 516; emphasis

added.]

The reasoning of Newark is applicable here. In the context of the ongoing disputes between the University and Council concerning negotiations over workload increases and/or negotiations over compensation for workload increases, the irreparable harm to the negotiations process by yet another unilateral change is not hypothetical speculation. The situation found to constitute irreparable harm in Newark has previously occurred between these parties, causing the Council members to continue to endure the last uncompensated increase in office hours despite the University committing an unfair practice and being ordered to negotiate.

I also note that the remedial posture of this case is factually distinguishable from Kean I in a way that strengthens the Council's irreparable harm position. In Kean I, the Commission ordered negotiations prospectively about the hours and compensation, but did not order restoration of the status quo ante. The Commission stated:

The Hearing Examiner found that rolling back the office hour requirement from eight per week to five per week would create more harm to the process. We agree. The parties have lived with the new requirement for almost five years.

[Kean I, 39 NJPER at 456.]

However, in the instant case, the 50% increase in mandatory minimum office hours from 8 to 12 per week has not yet begun but

is set to be implemented for the Fall 2018 semester. Thus, in contrast to the remedy ordered in the previous office hours case, more harm would be caused to the collective negotiations process by permitting the University to unilaterally implement another workload/student contact time increase. An injunction now to prevent the additional unilateral increase would prevent the passage of significant time working the uncompensated hours while awaiting final Hearing Examiner and Commission decisions that occurred in Kean I.

Next, in assessing the relative hardship to the parties, I find that the balance of hardship weighs in favor of the Council/KFT who would again be required to increase their office hours prior to any agreement obtained through good faith negotiations. The professors would be negotiating from a position in which the University has already imposed its desired outcome, and hope that future good faith negotiations would occur, or alternatively that a future unfair practice finding by the Commission might provide a remedy retroactive to when the unilateral office hour increase was imposed. Granting interim relief does not preclude the University from a future increase in faculty office hours so long as it completes the process of good faith negotiations as required by the Act.^{6/} Good faith

^{6/} I also note that, unlike in Kean I, the University has not provided a particularly significant educational policy goal
(continued...)

negotiations might also result in alternatives to implementation of 12 office hours that are satisfactory to both parties, e.g., increased use of online discussion boards or availability via e-mail or other media to increase professor availability for student advisement, whether or not in conjunction with increased compensation, credit hours, or other benefits. If interim relief is denied, then the professors would be providing the 50% increase in office hours in the meantime before receiving the benefit of any negotiated agreement on the issue, and may never be made whole for the period of their unilaterally increased workloads.

Finally, I find that the public interest is furthered by requiring adherence to the tenets expressed in the Act, which require the parties to negotiate prior to implementing changes in terms and condition of employment. Maintaining the collective

6/ (...continued)
for increasing office hours from 8 to 12. Green responded to Muraskin's repeated requests for studies or data supporting the University's rationale for the change by repeating that the University documented its reasons for increased office hours in Kean I. When pressed by Muraskin, Green's 11/16/2017 e-mail at 4:58 pm suggested that anecdotal reports of some faculty allegedly not being present or not providing good advisement during their existing 8 office hours supported the increase to 12 hours. However, such concerns speak less to a legitimate educational purpose for 12 weekly office hours, and more to disciplinary or evaluatory issues related to individual faculty failing to fulfill the currently required minimum office hours or perform well in their advisement duties.

negotiations process results in labor stability and promotes the public interest.

Based upon the above facts and analysis, I find that the Commission's interim relief standards have been met. I grant the Council's requested remedy that the University be restrained from unilaterally implementing an increase to faculty office hours from 8 hours per week to 12 hours per week. The order today requires that the University engage in the ameliorative process of collective negotiations before it changes terms and conditions of employment by unilaterally increasing faculty workload - in the form of increased office hours - without compensation. This case will proceed through the normal unfair practice processing mechanism.

ORDER

The application for interim relief is granted. The University is restrained from unilaterally implementing an increase in faculty office hours.

/s/ Frank C. Kanther
Frank C. Kanther
Commission Designee

DATED: August 7, 2018

Trenton, New Jersey