

H.E. NO. 2015-6

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

-and-

Docket No. CO-2011-404

UNION OF RUTGERS ADMINISTRATORS, AFT,  
AFL-CIO,

Charging Party.

**SYNOPSIS**

A Hearing Examiner recommends that the Commission dismiss a Complaint alleging violations of 5.4a(1) and (5) regarding the reclassification and removal of six employees from the Rutgers URA unit as confidential. The employees were moved into University Human Resources (UHR). She determined that based on clear and certain prospective duties related to up-coming negotiations with the Rutgers existing unions and the newly merged UMDNJ unions, the increased work load necessitated the expansion of the management team. The six employees were going to be assisting those at the negotiations table or actually at the table. Moreover, the six employees attend bi-monthly staff meetings with UHR staff led by the University's chief negotiators at which discussions pertaining to issues for negotiations and other related issues are discussed. For these reasons as well as their unfiltered access to the new campus-wide computer system, the employees were confidential. The Hearing Examiner also found no violation related to a change in procedure regarding the reclassification of the employees as confidential. She determined that there were no agreed-upon procedures and that no demand to negotiate had been made.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent,  
Wilentz, Goldman and Spitzer, attorneys  
(Rebecka J. Whitmarsh, of counsel)

For the Charging Party,  
Loccke, Correia, Limsky and Bukosky, attorneys  
(Marcia J. Tapia, of counsel)

**HEARING EXAMINER'S REPORT**  
**AND RECOMMENDED DECISION**

On April 11, 2011, the Union of Rutgers Administrators, AFT, AFL-CIO (Charging Party or URA) filed an unfair practice charge against Rutgers, The State University (Respondent or Rutgers) alleging that Rutgers violated 5.4a(1) through (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.<sup>1/</sup> On the first day of hearing, Charging Party withdrew all

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the  
(continued...)

violations with the exception of 5.4a(1) and (5) (1T9).<sup>2/</sup>

Charging Party asserts, specifically, that on or about December 2, 2010, Rutgers reassigned certain employees from the payroll department to the benefits administration department and reclassified them as confidential employees, removing them from Charging Party's negotiations unit. Charging Party contends that these employees are not confidential, and that any reorganization of University functions did not render the employees at issue confidential. It also alleges that Rutgers violated contractual procedures regarding the reclassification of the employees at issue and refused to negotiate over the change in procedures.

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1/ (...continued)  
rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act; (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; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (7) Violating any of the rules and regulations established by the commission."

2/ Transcript references to the hearing are "1T" thru "4T", respectively. The gap in time between the third and fourth days of hearing were due to lengthy settlement discussions engaged in by the parties, which discussions were eventually determined to be unsuccessful.

Charging Party seeks by way of remedy, among other things, that the employees be returned to the negotiations unit, that Rutgers be ordered to negotiate, and that the affected employees be made whole for any loss in benefits as a result of their removal from the negotiations unit.

On April 16, 2012, a Complaint and Notice of Pre-Hearing issued (C-1).<sup>3/</sup>

On May 3, 2012, Respondent filed its Answer (C-2). It generally denies that it violated the Act. Specifically, Rutgers asserts that the employees at issue formerly worked in the Payroll Department where they had no contact with or knowledge of collective negotiations. The employees were then transferred as a group to the University Human Resources (UHR) Department after a restructuring triggered by the installation of a new human resources management system. Within UHR is the office of labor relations, a small group of employees, including the Benefits section where the employees in this case are assigned. This assignment, it is alleged, brings these employees into direct contact with individuals who are responsible for collective negotiations on behalf of Rutgers. They are also given access to the same computer and equipment used by labor relations professionals. Thus, Rutgers concludes that these employees are

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<sup>3/</sup> "C", "CP" and "R" refer, respectively, to Commission, Charging Party and Respondent exhibits received into evidence at the hearing.

confidential employees, statutorily barred from representation. Finally, Rutgers contends that there are no negotiated procedures for the reassignment of these employees to non-unit, confidential positions.

A hearing was conducted on August 20 and 21 and September 18, 2013 and May 7, 2014. The parties examined witnesses and presented documentary evidence. After requests for extensions to file were granted, briefs were filed by July 13, 2014. Based on the record, I make the following:

#### FINDINGS OF FACT

##### Background

1. Rutgers and URA are public employer and public employee representative, respectively, within the meaning of the Act (1T8-1T9).

2. I take administrative notice<sup>4/</sup> that URA became the majority representative of administrative employees of Rutgers on June 7, 2007, when the Director of Representation issued a Certification of Representative based upon authorization cards.

Specifically, URA represents all regularly employed administrative employees employed by Rutgers at its New Brunswick, Piscataway, Newark and Camden campuses and all field and other locations (CP-4, CP-5; 1T21). Included in that group were the titles previously held by the employees at issue in this

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4/ N.J.A.C. 19:14-6.6(a)

hearing, namely payroll specialist, accountant assistant and payroll assistant in the University's payroll department.

Excluded from the unit are:

All managerial executive employees, supervisory employees (as to administrative unit employees), professional employees, confidential employees, casual employees, temporary employees, T-coded employees, term contract employees, police employees, faculty, employees whose inclusion presents a conflict of interest (e.g. Internal Auditors and Claims Managers), employees currently in other collective negotiations units, and all other employees. [CP-4; CP-5]

3. When URA became the majority representative in 2007, the unit consisted of approximately 1868 employees. Currently, there are over 2200 employees represented by the URA in various titles (1T56-1T57). There are currently no URA titles in UHR nor are any other employees represented by unions in UHR (1T51, 1T59).

4. The parties' first collective agreement was effective from July 1, 2007 through June 30, 2011 (CP-4). The parties negotiated a successor agreement effective from July 1, 2011 through June 30, 2014 (CP-5). Both agreements contain in Appendix E a list of URA job titles, although the current agreement contains many more titles than in the first collective agreement (CP-4, CP-5).

In Article 13, entitled "Health Benefits." University employees are deemed to be employees of the State for purposes of

health benefits. In Article 34, entitled "Retirement and Life Insurance Benefits." eligible employees participate in either the Public Employees' Retirement System (PERS) or the Alternate Benefits Program (ABP).

5. On July 1, 2013, Rutgers University merged with the University of Medicine and Dentistry of New Jersey (UMDNJ), consisting of seven medical schools (2T19). The merger resulted in more than doubling of the number of unions at Rutgers from 13 to 29, covering approximately 10,700 additional employees (2T19-2T20). Since the merger and at the time of this hearing, there have been no negotiations with the new unions. Negotiations will commence with both the new unions and existing Rutgers unions sometime in 2014 (2T20).

**Lucye Millerand and Sonia Robell**

6. Lucye Millerand has been president of the URA since December 2008 and a Rutgers employee since 2001 (1T20). Robert Cousins became the URA executive director in 2008 and has general oversight of the URA office, grievance processing and negotiations. He had minimal involvement in negotiating the parties' first collective agreement, but was on the negotiations team for the current agreement (CP-4, CP-5; 1T61-1T62).

7. On or about January 30, 2011, Millerand received an email from UHR Acting Associate Director for Consulting and Staffing Sonia Robell notifying her that:

...as a result of the recent conversion to the Human Resources/Payroll PeopleSoft System, the Benefits Enrollment unit and its staff, formerly located in Payroll Services, were permanently transferred to University Human Resources (UHR) effective 10/15/10. As a result, the job responsibilities of these nine employees, six of whom held AFT titles, are now deemed to be confidential.

Pursuant to Article 1-Recognition, of the URA- AFT bargaining agreement which excludes confidential employees from its membership for the purpose of collective negotiations for terms and conditions of employment, the employees listed below are no longer represented by the AFT bargaining unit.  
[CP-1]

The six employees listed together with their new titles were HR Benefit Enrollment Specialist Jeff Husted and HR Benefits Enrollment Assistants Dawn Mattioli, Gail Van Derveer, Linda LaGreca, Kimberly Wiggins, and Judy Vachna (CP-1).<sup>5/</sup> Robell instructed Millerand to contact her if she had any questions.

8. Robell is responsible for classifying staff positions within the University in consultation with Associate Vice President for Human Resource Operations Carolyn Knight-Cole and University counsel. Robell made the determination to move the six employees (2T58, 2T113). Generally, in considering new and old job descriptions and whether a title merits a confidential status, Robell considers an employee's involvement with, access

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<sup>5/</sup> Judy Vachna has since been promoted and moved out of UHR back to payroll (2T23).



to and knowledge of data that would be used in collective negotiations or labor relations matters such as disciplines (2T118-2T119). Here, she also considered the fact that the six employees would be moved physically to UHR, a secured area accessible only by card access readers and next to the office of labor relations within UHR which shares printers and faxes with the benefits section. Additionally, Robell took into account their unlimited access to PeopleSoft, the new campus-wide computer system (2T51, 2T119-2T120).

Robell considered in particular the requirement of the job description set out in the Classification and Recruitment Form (CARF) for the new title that the employee(s) would coordinate the preparation of confidential information for University counsel, office of labor relations, internal auditors, external auditors and State auditors and answer inquiries from these partners to create a confidential status precluding union membership (CP-3; 1T30, 2T123-2T124, 2T130). In this regard, she specifically asked Knight-Cole whether the reports that the six employees would be preparing would be providing information for negotiations, and she was told "yes" (2T128). In fact, Knight-Cole drafted the new job descriptions for the six employees anticipating that they would be involved in collective negotiations and anything else handled by UHR (CP-3; 2T59-2T60).

9. The decisional process involving the reclassification and relocation of the six employees began a few months prior to the December 2010 physical move of the employees from the Busch Campus payroll department to UHR on Highway 1 (2T59, 2T63). In fact, the decision to remove them was made in October 2010 but was delayed until December 2010 for construction to be completed on the new office space in UHR, although training began on PeopleSoft before December 2010 (2T108). Accordingly, the delay in notifying URA of the decision to transfer the six employees from payroll to UHR and remove them from the URA unit as confidential was attributable to the January 2011 implementation of PeopleSoft, the construction of the new office space for the expanded UHR staff and the challenges presented by the absorption of the UMDNJ employees into Rutgers. The delay in notifying URA was not intentional (2T57, 2T116).

10. Millerand, however, felt that there was a change in procedure regarding the reclassification of these employees as confidential and their removal from the URA unit. She based her conclusion on a prior settlement between the parties of an unfair practice charge. Specifically, in 2008, as the result of the filing of an unfair practice charge, the University and URA entered into a settlement whereby UHR was to notify Millerand and, perhaps, one other URA officer on a case-by-case basis of individuals who left the unit as the result of a promotion and

had therefore been removed from the URA unit [reclassified]. After notification of a promotion, the URA was to request information, such as new and old job descriptions, organizational tables and, in many cases, speak to the affected employee (1T38). Millerand would then review the job duties of the promoted employee to determine whether the URA agreed that the individual was no longer appropriately in the unit, usually because of supervisory duties (1T35-1T37).

The effective date of a reclassification can be retroactive, in which case the URA is notified after the fact, but notification to the union can also be contemporaneous with the reclassification. There is no absolute rule or pattern as to when notification to the URA occurs (1T37, 1T56, 1T58, 2T116-2T117). Other types of removals from the URA unit not involving promotions also involve notification to the URA, but until the removal of the six employees at issue here, no employee had been removed from the URA unit as confidential (1T38, 1T41).

11. In this instance, having been notified of the removal of the six individuals from the URA unit, Millerand responded to Robell requesting an immediate "grievance meeting" and asking Robell to provide her with the new and old job descriptions for each of the employees listed in CP-1 together with an organizational chart for the UHR unit and any guidelines utilized

to determine to remove these employees from the AFT unit as confidential (CP-2).

12. On February 7, 2011, Robell responded with the former and current job descriptions (Classification and Recruitment Form or CARF) for each employee as well as the organizational charts for Payroll Services and UHR (CP-3; 1T30). According to the Payroll Services chart, all six employees reported to Payroll Supervisor Sarah Schaible. The UHR chart showed Huestad, Wiggins and Van Derveer reporting to Schaible who now holds the title in UHR of HR Benefits Enrollment Supervisor, while La Greca, Mattioli and Vachna report to HR Benefits Enrollment supervisor Joe Morgan (CP-3).

13. When Millerand reviewed the material in CP-3, she was struck by the similarities in the old and new job descriptions, so she requested a meeting (1T34). At the meeting in early February with University Counsel Jeff Maschi, Knight-Cole and Robell, it was explained to Millerand and URA Executive Director Cousins that changes in the organizational structure to eliminate redundancies between payroll and UHR prompted the decision to move the six employees and that the new University-wide technology system called PeopleSoft required the six employees to be located in UHR. As a result, the employees would be coming into contact with information pertaining to negotiations, thus making them confidential (1T34, 2T55-2T56).

Basically, Millerand was told that it was their access to information, not their job duties, that had changed (1T34). Although Millerand felt that the University had not provided the guidelines it utilized to determine confidential status, she requested no further information (1T45). Nor did she speak with any of the six employees 1T57.

14. After the meeting, having reviewed the material provided by the University as well as considering the discussions at the February meeting, the URA concluded that the employees at issue were not confidential and decided to file an unfair practice charge (1T46-1T47). Specifically, in reviewing the CARFs, Millerand determined that most of the job duties described related to the enrollment and adjustment of Rutgers employees' statutorily provided benefits in the various retirement systems, duties which, she analyzed, were not confidential in the labor relations sense (1T47, 1T52). Although Millerand acknowledged that there are no URA titles within the UHR Department nor are any other UHR employees in other collective negotiations unit, she asserts that there are some URA employees in some departments who perform human resources functions. The record does not identify more specifically these functions (1T51, 1T59).

**Carolyn Knight-Cole**

15. Carolyn Knight-Cole is currently associate vice president for human resource operations and has held that title

since July 2013 (2T7-2T8). Her office is located in an administrative building on U.S. Highway Route 1 in the UHR department. UHR is in a secured area accessible only by card access readers (2T11-2T12). The University office of labor relations is located in the same area and shares faxes and printers with UHR (2T51).

The employees at issue here sit in the UHR benefits administration section which is connected to the operations unit and next to the labor relations department both of which are located in the secured area comprising UHR (2T53-2T54). There are conference rooms used for negotiations in the vicinity of where they sit, permitting them to overhear conversations pertaining to negotiations (2T54).

16. Knight-Cole reports to Vice President for Faculty and Staff Resources Vivian Fernandez as well as University Counsel Jeff Maschi (2T12). Knight-Cole has sat in with some of the negotiations teams and is called upon to supply information to those teams (2T12-2T13, 2T18-2T19).

Knight-Cole anticipates being on several negotiations teams once negotiations commence in 2014 (2T21). In addition to the new unions, most of Rutgers' collective negotiations agreements with its existing unions will expire in 2014 (2T21). Thus, Knight-Cole anticipates that everyone in UHR will be involved to some degree in negotiations because of the enormity of the task

(2T21, 2T30). Specifically, the employees at issue here will be called upon to give advice in their areas of expertise and to answer questions and prepare reports for individuals who will be sitting at the negotiations table, including herself (2T22, 2T84).

17. When she is asked to supply data for negotiations, Knight-Cole might request the information from the employees at issue in this proceeding who are now assigned to UHR (2T14). Prior to their move to UHR, when the six employees were assigned to payroll, Knight-Cole did not ask for their assistance because they did not previously have access to that information (2T15). Now through PeopleSoft, UHR staff has complete access to personnel records which, in the past, could only be accessed by request for specific information from UHR (2T15-2T17).<sup>6/</sup> The new system also has a module called benefits administration allowing for direct access to provide reports on eligibility (2T16). If necessary and upon request, the six employees may need to review an employee's disciplinary record, including grievance determinations, to calculate eligibility for benefits (2T52).

Although access to PeopleSoft could be limited by UHR IT staff, at present there is no limitation on access nor are there plans to limit that access (2T89, 2T105). The six employees were

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<sup>6/</sup> Other University employees have limited read only access to PeopleSoft (2T50). UHR employees have complete access to personnel files (2T50).

specifically moved to UHR to give them total access to PeopleSoft so that they could run data reports for collective negotiations and possibly sit at the negotiations table (2T105-2T106). The creation of these reports will give them access to negotiations information prior to the unions having the information (2T106).

18. Since there have been no negotiations yet, Knight-Cole can only recall one instance where she has requested information from one of the employees transferred to UHR pertaining to negotiations (2T25). During negotiations with the FOP, Knight-Cole, at the request of University Office of Labor Relations, instructed Kimberly Wiggins to compare two life insurance companies in order to cost out a proposal (2T25-2T26, 2T28). Prior to the move to UHR, Wiggins would not have had access to gather this information (2T29).

19. Similarly, Knight-Cole recalls Jeff Husted being asked by University counsel's office to gather information regarding a police officer's pension benefit for a disciplinary proceeding (2T27). Prior to his move to UHR, Husted would not have been asked by University counsel's office for this information (2T27).

20. Also, since being moved to UHR, the six employees participate with UHR staff in bi-weekly staff meetings during which Vice President Fernandez and others update the entire staff on issues, including negotiations (2T31). Fernandez is directly involved in negotiations (2T31). Discussions may involve



proposals about benefits and salary increases (2T93-2T94).

Because the issues discussed at these meetings are generally not communicated to the University community but only to UHR staff, the six employees signed confidentiality agreements tailored to protect UHR information, such as employee records (R-1; 2T33, 2T100).

21. Another task that is new to the six employees and specific to UHR is answering telephone calls from employees and others through a ticketing system (2T35). The UHR employee taking a phone call is required to address the inquiry either directly or by forwarding the information request to the correct person in UHR or labor relations who can respond. That information request is usually answered within 24 hours, and the person taking the original call is responsible for getting the information and closing out the ticket by transmitting the answer to the caller (2T35-2T39, 2T95-2T96). Although not all of the six employees are fully trained on the system at the time of this hearing, it is anticipated that all will have begun utilizing the system and be fully trained by September 1, 2014 (2T40-2T41, 2T43-2T44). Questions on the ticketing system could involve disciplinary matters and tuition remissions/tuition

reimbursement<sup>7/</sup> which is a topic anticipated to be addressed in up-coming negotiations (2T46-2T49).

22. During the upcoming negotiations, many "soft benefits" (not a benefit conferred by the State like health benefits), such as the tuition remission benefit, the compassionate leave program, pet insurance and the concierge program, will be on the table (2T48-2T49). The six employees will have to create data reports upon request on soft benefits during negotiations, a task they could not have performed when they were assigned to payroll because they did not have access to PeopleSoft (2T49).

#### The Transferred Employees

23. Jeff Huestad was a payroll specialist in the University's payroll department prior to being transferred to UHR as a benefits specialist (3T7-3T8). Now, his office is located within the UHR secured area and near the conference rooms used for union meetings with the University (3T63). The conference room is behind glass partitions that allow him to view and hear what is being said (3T64).

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7/ Tuition remission is a benefit for legacy Rutgers employees allowing dependent children to attend Rutgers tuition free, while legacy UMDNJ employees now merged with Rutgers have a tuition reimbursement benefit, namely reimbursement to employees for a certain amount of their tuition depending on their grades (2T44-2T45). Eligibility for these soft benefits is expected to be a hot topic during upcoming negotiations (2T47). The costs related to these will be calculated using the PeopleSoft program (2T46).

Since his transfer to UHR, in addition to his responsibilities monitoring employee benefits, Huestad is taking calls from the public through the University's ticketing system. He is responsible for getting the answer for the caller and closing the ticket (3T9-3T10, 3T46-3T47). The calls are on various topics, none of which so far have related to collective bargaining, but there are no limitations on the types of questions he can answer (3T11, 3T48). Some might require him to go through the ImageNow system which is where all employee records are kept (3T18).<sup>8/</sup>

If he needs to, he has access to information regarding disciplinary matters (3T22, 3T37). For instance, he might have to examine a disciplinary record to determine eligibility for re-enrollment (3T37-3T38). Only UHR employees have unlimited access to ImageNow and PeopleSoft (3T18-3T19, 3T45). Huestad's access to PeopleSoft and training in its use, began either at the time of his move to UHR or within a few months after (3T44-3T45). He had no access to these systems prior to moving to UHR (3T45).

To date, he has not been advised of the employer's position in collective negotiations or asked to collect data for negotiations, but speculates that he might in the future (3T22).

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<sup>8/</sup> PeopleSoft is a computerized program for payroll, retirement systems and other benefits, while ImageNow, also a computerized system, contains employee personnel files (4T31).

He has, however, attended the bi-weekly staff meetings conducted by Vice-President Fernandez and others to discuss generally issues related to the UHR department as well as specific topics including, but not limited to, the UMDNJ merger and the up-coming collective negotiations (3T25-3T26). Vice President Fernandez, Labor Counsel Maschi, and Knight-Cole attend these meetings and are all directly involved in labor negotiations for the University (3T28). Huestad's direct supervisor, Sarah Schaible, reports to Knight-Cole (3T28).

Huestad expects that once negotiations begin later in 2014 these topics will be raised and discussed during the bi-weekly meetings with the entire UHR staff (3T26, 3T29, 3T40-3T41, 3T42-3T43). He believes that his position in UHR will give him advance knowledge of the University's proposals in collective negotiations and that he would have to run reports about these proposals (3T48-3T49). Indeed, when Huestad was moved from payroll to UHR and more recently, Knight-Cole and Schaible told him that his role would be expanding and that he will be involved in the upcoming negotiations through information gathering and possibly sitting at the negotiations table (3T29-3T30, 3T40, 3T49, 3T52-3T53).

24. Kimberly Wiggins was also previously a payroll assistant in the payroll department before moving to UHR as a benefits enrollment assistant (3T68-3T69). She deals

specifically with enrollment in the alternate benefit plan, a pension retirement plan (3T70). Wiggins handled this plan in the payroll department and now in UHR, but also currently has the responsibility for flexible spending accounts (3T72). Wiggins was told when she was transferred to UHR that she would be required to run reports, queries and gather data for collective negotiations (3T98).

Wiggins office in UHR is in the same location as Huestad's in an open area in close proximity to two conference rooms used by the University and unions for meetings (3T114-3T115).

Wiggins, like Huestad and other employees in UHR, has unlimited access to PeopleSoft and ImageNow giving her the ability to review all employee records including disciplinary records (3T76-3T77). She has, however, not yet done so (3T78). However, recently, Wiggins ran a query for collective negotiations on behalf of the University involving a new benefit, by comparing Boston Mutual Life Insurance Co. and Colonial Life Insurance for cost effectiveness (3T79-3T80, 3T102). She was comparing the cost for a negotiations involving ASFCME Local 888 and 1761, the police and fire unions, at the direction of her supervisor, Schaible, although upon completion of the report Wiggins was not told what the University's position would be during negotiations (3T80-3T82, 3T101). Prior to moving to UHR, Wiggins did not have the ability to run this type of report and

has been told that she will be running similar reports in the future for Knight-Cole as part of collective negotiations.

(3T102-3T103).

Wiggins too attends the bi-weekly staff meetings at which there are discussions about the new unions as well as negotiations that are taking place (3T84-3T85, 3T98).

Wiggins also will be taking calls from individuals and entering them into the ticketing system (3T86). However, she only recently received training in the system and has received no calls as of yet (3T89). When she starts taking calls, Wiggins will be responsible for making sure the inquiry is answered and will review the answer before conveying it to the employee, including answers involving labor relations and discipline which she anticipates will be necessary in the future (3T90-3T93, 3T95). Prior to moving to UHR, Wiggins did not have the ability to search the system and access employee records to get answers to these questions (3T94-3T95). However, there is certain information that might not be passed through the ticketing system, such as an inquiry from an attorney to Fernandez regarding negotiations (3T110-3T111).

25. Linda Gutch previously handled health benefits as a payroll specialist in the payroll department and reports on both the PERS and PFRS retirement pension plans (4T9). She performs those same functions now as a benefits specialist in UHR and, in

addition, has unlimited access to ImageNow and Peoplesoft for purposes of research (4T10, 4T22). She also has responsibility for taking telephone calls for the ticketing system (4T22).

At the bi-weekly UHR staff meetings, Gutch explained, general human resources information is disseminated (4T19). She confirmed that the meetings are run by Fernandez and Knight-Cole as well as, sometimes, the University's head of labor relations, Harry Agnostak (4T28). Information pertaining to the UMDNJ merger and negotiations are discussed (4T28, 4T54).

Gutch was told by her supervisor Schaible that in the near future, as the UMDNJ unions are merged with the University, Gutch will be on teams providing research and support, presumably during collective negotiations (4T16, 4T19). Gutch is currently in training to access personnel files of the UMDNJ employees, because they are not yet in the University's electronic system (4T25, 4T57). Gutch needs to review employee personnel files to determine, for instance, new enrollment dates, especially any arbitration decisions impacting that date (4T26).

26. Dawn Mattioli was an accountant assistant in the payroll department responsible for enrolling new hires for health benefits, prescription drug and dental coverage (4T39). As a benefits enrollment assistant in UHR, she is still responsible for enrolling new hires, but now has unlimited access through PeopleSoft and ImageNow to review employee data records and

capture information she needs to determine eligibility (4T39-4T40, 4T42).

To date, Mattioli has not been asked to gather information for collective negotiations but has been told by her supervisor, Schaible, that she might need to collect information to be used at collective negotiations, particularly as the integration with UMDNJ moves forward (4T45, 4T51-4T53). Moreover, although she has received training, Mattioli has not yet taken telephone inquiries for the ticketing system (4T46).

Her location in UHR allows her to witness union meetings, even if she is not actually in attendance (4T56). No one in UHR has ever expressed any concern that she might hear confidential information because of her work location (4T56).

27. Gail Van Derveer was also an account assistant in payroll, but her responsibilities encompassed enrollments into the alternate benefit program pension plan<sup>9/</sup> (4T63). Since transferring to UHR in the new title of benefits enrollment specialist, her responsibilities have increased (4T64). In addition to enrollment, she is now a certifying officer for employees who want to take loans through their carrier and basically handles all problems dealing with the State, the carriers and the ABP plan (4T64, 4T67).

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<sup>9/</sup> The ABP is a mandatory pension plan that employees with certain job classifications must join. It is not negotiated (4T85).



Like the other six employees, she has unlimited access now to Peoplesoft and ImageNow (4T68). Recently, Van Derveer had to research ImageNow for an employee who complained about lost service time, necessitating a review of the employee's personnel file through ImageNow and, specifically, her disciplinary record to explain the missing credit (4T68, 4T71-4T72). Prior to moving to UHR, Van Derveer would not have had the ability to perform this task, but would have had to call UHR for the information (4T73).

Van Derveer anticipates participating in collective negotiations, if any pension information is required (4T75). Additionally, she fills in for Schaible when she is absent. As a result, if Knight-Cole needs information related to negotiations, she would come to Van Derveer in Schaible's absence (4T75-4T76).

Van Derveer's work area is next to Schaible's and near the two conference rooms which are used for grievance hearings among other uses (4T78). She occasionally hears discussions of union representatives in the meetings and at the table next to her office (4T79). Van Derveer has never been told to leave the area because the meetings are confidential (4T79).

Van Derveer, like the others, takes part in the ticketing system (4T52). Her access to that system and the answers generated for the callers are not limited and could be about collective negotiations, for instance (4T83). So far she has

received no calls regarding collective negotiations, employee grievances or disciplinary actions (4T86).

#### ANALYSIS

N.J.S.A. 34:13A-5.3 protects the right of public employees to form, join and assist employee organizations or to refrain from doing so, but these rights are not extended to elected officials, members of boards and commissions, managerial executives, or confidential employees. The Charging Party asserts that Rutgers violated the Act when it removed a group of employees from its bargaining unit by declaring them to be confidential. It also asserts that even if the University correctly removed the employees as confidential, it violated agreed upon procedures for reclassifying and removing these employees from the negotiations unit. Rutgers disagrees and argues that it effectuated a reorganization and that the employees in the disputed titles now report to the benefits administrator in UHR, not to payroll, and that by virtue of their new responsibilities are confidential and, therefore, not entitled to representation by the URA.

The Act does not require a formal Agency determination of confidential status before employer action to remove an employee from a negotiations unit since the Act does not protect organizational rights of confidential employees, although our rules provide for a non-adversarial method to do so. State of

N.J. (Office of Employee Relations) and Council of N.J. State College Locals NJSFT-AFT, AFL-CIO, P.E.R.C. No. 90-22, 15 NJPER 596 (¶20244 1989), aff'd NJPER Supp. 2d 246 (¶206 App. Div. 1991); Passaic Cty. Reg. H.S. Dist. No. 1 Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976). In the latter instance, either a public employer or majority representative can file a Petition for Clarification of Unit to resolve a dispute concerning the unit placement of a disputed job title. N.J.A.C. 19:11-1.5. However, if a public employer chooses to Act without a non-adversarial proceeding and simply refuses to negotiate with the majority representative concerning the disputed titles/employees, it does so at its peril. If the public employer's judgment is wrong, it will have committed a violation of the Act, 5.4a(1) and (5), regardless of any good faith belief that its actions were justifiable. The violation can be fully remedied by the filing of an unfair practice charge and a Decision and Order of the Commission.

As a threshold issue, the union contends that Rutgers employees are State employees under our Act's definition of confidential employees. The definition of confidential employee is set out in N.J.S.A. 34:13A-3 (g):

"Confidential employees" of a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their

membership in any appropriate negotiating unit incompatible with their official duties.

Effective January 18, 2010, the New Jersey legislature modified the statutory definition of confidential employee, by adding that employees of the State of New Jersey are confidential if they "have direct involvement in representing the State in the collective negotiations process making their membership in any appropriate negotiating unit incompatible with their official duties." N.J.S.A. 34:13A-3(g) (2010).<sup>10/</sup>

Thus, the legislature created a narrower, more stringent test to establish confidential status for State employees versus employees of other public employers. Simply put, it is more difficult for the State to declare its employees to have confidential status and remove them from a negotiations unit than for other public employers. A State employee must have "direct involvement" representing the State in negotiations, not merely tangential involvement in the negotiations process. Accordingly, the question of whether the individuals at issue, here, are State employees or employees of another public employer, namely Rutgers, is a threshold issue and one of first impression, since the Commission has not yet considered this issue.

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<sup>10/</sup> The legislature also amended the definition of managerial executives for employees of the State executive branch.  
N.J.S.A. 34:13A-3.

First, the following is a brief history pertaining to the evolution of Rutgers as the State University as set out in Trustees of Rutgers College in New Jersey v. Richman, 41 N.J. Super. 259 (Ch. Div. 1956) and Respondent's August 20, 2012 brief at pp. 3-5. In 1766, British King George III chartered "Queen's College." and instruction began in New Brunswick in 1771. After the American Revolution, the State of New Jersey and the Board of Trustees of Queen's College confirmed and amended the original charter in 1781 and again in 1799. Then, in 1825, the school's name was changed to "The Trustees of Rutgers College in New Jersey." In 1864 a department of Rutgers College, Rutgers Scientific School, was designated by the New Jersey Legislature as a land grant college enabling Rutgers to receive land and federal grants to promote science and agriculture.

In the ensuing years, Rutgers established several other schools and expanded its territory beyond New Brunswick into Camden and Newark. In 1928, the State established the Board of Regents to oversee any property interest the State had at institutions of higher education receiving State funds, including Rutgers. Subsequently, in 1945 the State purchased educational services from the Rutgers Board of Trustees in exchange for annual appropriations from the State. However, for approximately 190 years, Rutgers maintained an essentially independent status.

Respondent's August 20, 2012 brief at p. 3 and 4. See generally, Trustees of Rutgers College, supra.

In 1956, the Legislature passed the Rutgers Law (N.J.S.A. 18A:65-1 et seq.) establishing Rutgers as "the instrumentality of the State for purpose of operating the state university."

N.J.S.A. 18A:65-2. This reorganization of Rutgers as the State University was accompanied by the following declaration that:

... the corporation and the university shall be and continue to be given a high degree of self-government and that the government and conduct of the corporation and the university shall be free of partisanship. [N.J.S.A. 18A:65-27(1)(a)]

This legislative contract also recognized that resources and funds would be provided and appropriated by the State in order for Rutgers to meet its high educational standards, the cost of increasing enrollment and the need for proper facilities.

Rutgers v. Piluso, 60 N.J. 142, 154, 157-158 (1972). Finally, the legislative contract between the Board of Trustees and the State altered somewhat the governance structure by establishing the Board of Governors, consisting of a majority of voting members appointed by the Governor, to have "general supervision over and be vested with the conduct of the university." N.J.S.A. 18A:65-24 to 26. However, the altered governance structure preserved the historical status of the "Corporation" which conducts the educational entity of the "University" as a body

corporate and politic incorporated under the original royal charter dated 1766 as amended in 1770. The Rutgers Law also confirmed that the Corporation was to continue to enjoy all rights, privileges and powers granted under authority of its charter. N.J.S.A. 18A:65-2.

With this historical context in mind, the Courts have recognized the unique hybrid legal status of Rutgers as both a private and public entity and have considered whether Rutgers is an "instrumentality of the State" in the context of different statutory schemes with differing results. For instance, Rutgers has been found to be a full-fledged instrumentality of the State immune from local zoning laws. Rutgers v. Piluso, 60 N.J. 142 (1972). Rutgers has also been considered an instrumentality of the State for purposes of the Tort Claims Act and the Venue Rule (Rule 4:3-2a). See respectively, Trustees of Rutgers College, supra, and Fine v. Rutgers, The State University of New Jersey, 163 N.J. 464 (2000). Rutgers has been regarded as a State agency and found to be exempt from local land use and property taxes. Rutgers, The State University v. Piscataway Township, 1 N.J. Tax 164 (Tax Ct, 1980) and Fuchilla v. Layman, 109 N.J. 319 (1988).

In other instances, Rutgers has been found not to be an arm of the State entitled to Eleventh Amendment immunity or subject to public bidding statutes. Kovats v. Rutgers, The State University, 822 F. 2d 1303 (3d Cir. 1987), cert. denied, 289 U.S.

1014 (1989) and Rutgers v. Kugler, 110 N.J. Super. 424 (Law Div. 1970), aff'd 58 N.J. 113 (1971). Rutgers is also not synonymous with the State for purposes of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 to 10 and, therefore, is capable of being sued and has the power to sue. Frank Briscoe Co. V. Rutgers, the State University, 130 N.J.Super. 493 (Law Div. 1974).

In In re Executive Commission on Ethical Standards, 116 N.J. 216 (1989), the New Jersey Supreme Court considered whether a Rutgers Law professor conducting a clinical teaching program was considered to be a "State Employee" for purposes of the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 to 27. The Court determined initially that the professor was not an employee of any of the "principal departments in the Executive Branch of the State Government." In analyzing whether Rutgers, which holds a State charter, was an instrumentality of the State for purposes of the Conflicts of Interest Law, the Court considered the purposes of the general program and the purposes of the Rutgers legislative charter. Specifically, the Court considered whether the teaching role of a Rutgers professor intersected with the legislative concerns giving rise to the law, namely regulating the conduct of public officials.

The Court reviewed the history and unique status of Rutgers which maintained an independent status until 1956 when it was



reorganized by statute as the State University. The reorganization statute declared that the University would be given a high degree of self-government and that the powers granted to the trustees could be exercised without recourse to any department or agency of the State except as expressly provided by statute. N.J.S.A. 18A:65-27(1)(a) and 28. The Court concluded, therefore, that the fundamental importance of academic freedom precluded characterizing Rutgers professors as the equivalent of State employees, and that there was no violation of the Conflicts of Interest Law caused by the representation of clients by the clinical legal program before State agencies. See also, Sussex Commons Assoc., LLC v. Rutgers, The State University, 210 N.J. 531 (2012). (Rutgers clinical legal programs not subject to OPRA or to common law right of access as they do not perform any government functions nor do clinical professors at public law schools act as public officers or conduct official business).

Based on this case law, it is clear that Rutgers' status as a State agency depends on the particular statute at issue and is decided on a case-by-case basis. Whether the legislative intent expressed by the 2010 amendment to our Act restricting the definition of confidential employees for State employees applies to Rutgers requires a consideration of the purpose of the amendment and the purposes of the Rutgers' legislative charter.

Recently, in State of N.J. and Council of N.J. State College Locals, AFT, and Communication Workers of America, AFL-CIO, P.E.R.C. No. 2013-52, 39 NJPER 30, (¶101 2013), app. pending, the Commission considered whether the change to the definition of managerial executive for State employees under the 2010 amendment to N.J.S.A. 34:13A-3 extended to employees of the State Colleges. Although this case is on appeal and, thus, not controlling, it lends guidance.

In Council of State Colleges, the unions argued that since N.J.S.A. 18A:64-21.1 recognizes the Governor, acting through the Office of Employee Relations (OER), as the public employer under our Act for purposes of negotiations, employees of State colleges should be viewed as State employees for purposes of the amended definition of managerial executive under our Act. The Commission rejected that argument finding that other statutory language, N.J.S.A. 18A:64-20, addresses the employment of professors, teachers etc. as in the employ of the board of trustees of their respective colleges and supercedes the Governor's authority as negotiator. Moreover, the Commission recognized that the structure of the State college system had changed over the years and that the State Board of Higher Education was legislated out of existence and replaced by the individual college board of trustees as the public employer. Thus, the Commission determined that the employees of State colleges were not State employees for

purposes of the amendment to N.J.S.A. 34:13A-3 and its revised definition of managerial executive.

Here, the unique structure of Rutgers more strongly supports the argument that Rutgers, not the State, is the public employer for purposes of the amended definition of confidential employees. Unlike the State colleges, the State performs no negotiations function on behalf of Rutgers. All negotiations are done locally through the University office of labor relations and University counsel. Moreover, like the State college statute, the Rutgers statute confers control over employees to the University. Specifically, N.J.S.A. 18A:65-25(h) confers on Rutgers' Board of Governors, among other responsibilities, the power "to elect, appoint, remove, promote or transfer all corporate, official, educational and civil administrative personnel, and fix and determine their salaries..."

Under our Act, the Commission focuses on the control of labor relations test in determining employer status - e.g. control over hiring, performance evaluations, promotions, discipline, firing, work schedules, vacation, hours of work, wages benefits, funding and expenditures. Mercer Cty. Superintendent of Elections, P.E.R.C. No. 78-78, 4 NJPER 221 (¶4111 1978), aff'd 172 N.J. Super. 406 (App. Div. 1980); Bergen Cty. Prosecutor and Mercer Cty. Prosecutor, P.E.R.C. No. 78-77, 4 NJPER 220 (¶4110 1978), aff'd 172 N.J. Super. 406 (App. Div.

1980); Hudson ARC, P.E.R.C. No. 94-57, 19 NJPER 593 (¶24287 1993); Morris Cty. Bd. of Social Services, P.E.R.C. No. 86-15, 11 NJPER 491 (¶16175 1985). There is no evidence in the record before me that the State, other than appropriating funds from the State budget and providing other resources for Rutgers as well as having representatives on the Board of Governors appointed by the Governor, controls any terms and conditions of employment of either the Rutgers faculty or administrative staff that would make it the public employer of Rutgers employees. Accordingly, Rutgers is the public employer for purposes of the 2010 amendment to our Act defining confidential status.

Based on the foregoing, since Rutgers is the public employer, the revised definition of confidential employees set out in the amendment to N.J.S.A. 34:13A-3(g) does not apply to employees of Rutgers. Therefore, the analysis as to whether the employees at issue are confidential is focused on the traditional case law interpreting our statute, not whether these employees have direct involvement in negotiations.

In State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507 (¶16179 1985), recon. den. P.E.R.C. No. 86-59, 11 NJPER 714 (¶16249 1985), the Commission delineated its approach in determining confidential status:

We scrutinize the facts of each case to find for whom each employee works, what he does, and what he knows about collective negotiations issues. Finally we determine

whether the responsibilities or knowledge of each employee would compromise the employer's right to confidentiality concerning the collective negotiations process if the employee was included in a negotiating unit. [Id. at 510]

In New Jersey Turnpike Authority v. AFSCME, Council 73, 150 N.J. 331 (1997), the New Jersey Supreme Court approved these standards explaining:

The baseline inquiry remains whether an employee's functional responsibilities or knowledge would make their membership in any appropriate negotiating unit incompatible with their official duties. [citations omitted] Obviously, an employee's access to confidential information may be significant in determining whether the employee's functional responsibilities or knowledge make membership in a negotiations unit inappropriate... However, mere physical access to information without any accompanying insight about its significance or functional responsibility for its development or implementation may be insufficient in specific cases to warrant exclusion. The test should be employee-specific, and its focus on ascertaining whether, in the totality of the circumstances, an employee's access to information, knowledge concerning its significance, or functional responsibilities in relation to the collective negotiations process make incompatible that employee's inclusion in a negotiating unit. [Id. at 358]

In a more recent decision, the Director of Representation determined that "[t]he key to finding confidential status is the employee's knowledge of materials used in the labor relations process, including contract negotiations, contract

administration, grievance handling and preparations for these processes." Pompton Lakes Bd. of Ed., D.R. No. 2005-16 31 NJPER 73 (¶33 2005). The confidential duties need not be a regular and continuous responsibility to create a confidential status. Tp. of Scotch Plains, D.R. No. 84-11, 9 NJPER 632, 633 (¶14270 1983) (citing Tp. of Dover, D.R. No. 79-19, 5 NJPER 61, 62 (¶10040 1979)).

The Commission is cautious when finding confidential status, because such a finding essentially takes that employee out of the Act's protection. Accordingly, speculation or conjecture of job functions cannot be the basis for such a determination. However, confidential status can be based on the potential of coming into contact with confidential information even though the duties of a job have not yet been performed. Twp. of Wayne v. AFSCME, 220 N.J. Super. 340, 345-346 (App. Div. 1987). "If the future job functions to be performed are clear and implementation is certain, then future circumstances may be considered in the evaluation of confidential status." Montgomery Tp. Bd. of Ed., D.R. No. 93-12, 19 NJPER 96, 97 (¶24044 1993).

Applying this case law, I find that the employees at issue here are confidential based on both their actual and intended duties and responsibilities. Specifically, the transfer, reassignment and reclassification as confidential occurred as a result of an expansion of UHR due to the absorption of thousands

of former UMDNJ employees and the implementation of a campus-wide computer system (PeopleSoft and ImageNow). The responsibilities undertaken by UHR and the University's Office of Labor Relations greatly increased with the doubling of the number of unions to be serviced. Most contracts of both traditional Rutgers' unions as well as the former UMDNJ unions expire in 2014. Thus, there was a necessity to expand the management team to accommodate the workload increase. It is anticipated that everyone in UHR will be involved to some degree in the negotiations process because of the enormity of the task either by supplying information to the team or actually being at the negotiations table.

The six employees who formerly held non-confidential titles in the payroll department as benefits specialists were transferred specifically to assist UHR and the office of labor relations in collective negotiations, contract administration and grievance processing. Although they retained most of their former job duties related to enrollment in the various retirement systems, duties which previously did not make them confidential, they are now expected to assist Rutgers management team directly in upcoming negotiations by providing information and reports. The creation of these reports will give them advance knowledge of negotiations proposals prior to the unions having this information. Some may even be called to the negotiations table

if their area of expertise, especially with what is termed "soft benefits," is needed. Even though the job duties relied upon by the University to determine confidential status are prospective in many instances, implementation of the duties is "clear" and "certain." Gloucester County College, P.E.R.C. No. 2014-12, 40 NJPER 184 (¶69 2013) (Commission determined future job functions can be determinative of confidential status).<sup>11/</sup>

One of the employees, Kimberly Wiggins, has already prepared a comparison of two different insurance policies for use by management in collective negotiations with the FOP union. Also, Jeff Huestad, another of the employees, was asked by University counsel to gather benefits information in connection with a police officer's discipline, a task which he was able to perform because he now has unrestricted access to personnel files and other information through the new campus-wide computer system. He could not have performed this function before his re-classification. Finally, Gail Van Derveer is asked to fill in when her direct supervisor, Sarah Schaible, is not available. Schaible reports to Knight-Cole who is directly involved in the negotiations process and, therefore, would be required to provide

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<sup>11/</sup> In Gloucester, the Commission explained that after a period of time, if the prospective duties do not arise in the next negotiations session, the union is not barred from filing a clarification of unit petition seeking to include the disputed titles. Id. at 185.



Knight-Cole with assistance related to negotiations or other labor-related functions.

Additionally, the six employees were moved physically into UHR which is located within a secured facility accessible only by employees assigned there and any visitors who are allowed entry. Their work area is adjacent to conference rooms where unions and management meet, permitting them to overhear any conversations in the room or outside of it. These conversations concern labor relations, issues such as negotiations and grievance processing. Also, the University Office of Labor Relations that is responsible for negotiating and administering Rutgers' collective agreements with its many negotiations units is located in the same area of UHR as the six employees and shares faxes and printers with UHR.

Next, and perhaps most importantly, UHR does not exclude any of its employees from bi-monthly staff meetings at which discussions include on-going negotiations among other topics. During these meetings, Knight-Cole, as well as Vice President Fernandez and University Counsel Maschi, provide updates on issues, including negotiations and UMDNJ merger information. Although those discussion topics have not yet included proposals for negotiations, it is expected that as negotiations ramp up, such discussions will become more specific. In any event, there is no filter for information disseminated to staff at these

meetings, and the issues discussed are not generally known to the University community. For this reason, the six employees were asked to sign new confidentiality agreements specific to UHR. These agreements are different than others they have signed in the past and protect information available only in UHR.

Finally, the six employees are being trained and will be responsible for answering telephone inquiries through a ticketing system. This responsibility requires them to obtain answers to questions which may involve disciplinary matters and issues for the upcoming negotiations. I agree with Charging Party that this duty is unlikely to expose them to confidential matters, as it is hard to fathom how answering questions from the public could lead to knowledge of confidential matters. However, this duty is only a fraction of the responsibilities of the new position. Other duties, in particular attendance at the UHR staff meetings and unfiltered access to the University's PeopleSoft and ImageNow computer systems as well as advance knowledge of negotiation stances through preparation of reports, do expose these employees to confidential information.

For all of the foregoing reasons and in reliance on the case law previously cited, I find that the six payroll benefits specialists transferred to UHR and reclassified are confidential employees. Accordingly, I do not find that the University violated the Act when it unilaterally removed these employees

from the URA unit on the basis of their confidential status.

Passaic Cty. Reg. H.S. Dist. No 1 Bd. of Ed., supra.<sup>12/</sup>

Charging Party also contends that even if these employees are confidential, the University unilaterally changed terms and conditions of employment, namely agreed-upon reclassification procedures, by not notifying the URA in advance in contravention of an agreement between the union and University. I found no evidence to support this argument. URA President Millerand testified generally about the settlement of a grievance regarding a promotion, but did not produce the agreement. Nor did her testimony provide any reliable detail to support a particular agreed-upon procedure. Her testimony supported that sometimes the union was notified contemporaneously with the personnel action and at other times notification occurred retroactively.

Millerand also stated that she or another officer is provided with information about the reclassified employee, namely job duties and responsibilities. Here, Millerand was provided with the information about job duties that she requested. She did not request any additional information. It would appear that even if there was an agreed-upon procedure in this instance, the

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12/ In State of New Jersey (Office of Employee Relations) and Council of New Jersey State College Locals, supra., at foot note 2, the Commission opined that [w]hile we believe that non-adversarial unit clarification proceedings are the most appropriate forum for resolving these disputes, we recognize that there may be circumstances where an employer needs to act unilaterally."

University fulfilled its responsibilities. However, Millerand's testimony did not support that the parties had any particular practice or procedure in regard to reclassifying an employee as confidential. Millerand admitted that this was the first time an employee was removed from the URA as confidential.

Charging Party is correct that any procedural aspects of reclassifying and removing employees from a unit are mandatorily negotiable. But in this instance, there was no demand to negotiate procedure nor were any procedures related to reclassification as a confidential in existence. The parties may engage in negotiations upon demand over such procedures, including, among others, notification.

Based on the foregoing, I do not find that the University violated any established practice or procedure or changed any term or condition of employment by unilaterally reclassifying and removing the six employees from the URA unit and notifying the URA after the fact.

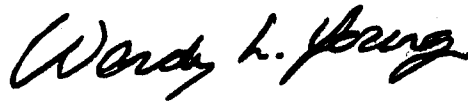
#### **CONCLUSIONS OF LAW**

Respondent did not violate N.J.S.A. 34:13A-5.4a(1) and (5) by unilaterally removing six employees from the payroll department to the benefits administration department in University Human Resources and reclassifying them as confidential employees. Respondent also did not violate 5.4a(1) and (5) by

unilaterally changing agreed-upon reclassification procedures and refusing to negotiate.

RECOMMENDATION

I recommend that the Commission dismiss the Complaint.



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Wendy L. Young  
Hearing Examiner

DATED: December 24, 2014  
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by January 5, 2015.