I.R. NO. 2018-1

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY
OF NEW JERSEY,

Petitioner,

-and- Docket No. SN-2018-012

UNION OF RUTGERS ADMINISTRATORS-
AMERICAN FEDERATION OF TEACHERS,
LOCAL 1766, AFL-CIO,

Respondent.

SYNOPSIS

A Commission Designee denies Rutgers' request for an interim restraint of binding arbitration pending the outcome of a scope of negotiations petition before the Public Employment Relations Commission. The grievance alleges that Rutgers misclassified an employee as exempt under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, et seq. The Designee found that Rutgers failed to demonstrate a substantial likelihood of prevailing in a final Commission decision on its argument that the FLSA preempts arbitration.

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Appearances:

For the Petitioner, David A. Cohen, Associate Vice President and Deputy General Counsel; Julianne Apostolopoulos, Associate General Counsel

For the Respondent, Weissman & Mintz, LLC, attorneys (Ira W. Mintz, of counsel and on the brief)

INTERLOCUTORY DECISION

On August 18, 2017, Rutgers, the State University of New Jersey (Rutgers), filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Union of Rutgers Administrators-American Federation of Teachers, Local 1766, AFL-CIO (Local 1766). The grievance alleges that Rutgers violated the parties' collective negotiations agreement (CNA) and related policy when it reclassified the status of the grievant's position under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, et seq., from non-exempt to exempt. On September

1, Rutgers filed the instant application for interim relief seeking a temporary restraint of binding arbitration scheduled for September 20 pending disposition of the underlying scope of negotiations petition.

PROCEDURAL HISTORY

On September 5, 2017, I signed an Order to Show Cause directing Local 1766 to file any opposition by September 11 and setting September 14 as the return date for oral argument. On September 11, Local 1766 filed opposition to the application for interim relief. On September 14, counsel engaged in oral argument during a telephone conference call. At the conclusion of oral argument, I granted Rutgers the opportunity to provide supplemental written argument by the close of business on September 14 and any response from Local 1766 by noon on September 15.

In support of the application for interim relief, Rutgers submitted a brief, exhibits, and the affidavit of Associate General Counsel, Julianne Apostolopoulos. Rutgers also relies upon the brief and exhibits it filed in support of the underlying scope petition. In opposition, Local 1766 submitted a brief. Both parties timely filed supplemental papers.

FINDINGS OF FACT

Local 1766 represents all regularly employed administrative employees at Rutgers' New Brunswick, Piscataway, Newark, and

Camden campuses and all field and other locations. Rutgers and Local 1766 are parties to a CNA in effect from September 1, 2014 through June 30, 2018. The grievance procedure ends in binding arbitration.

Rutgers' Policy Section 60.3.14, entitled "Overtime/Comp Time for Regularly Appointed Staff," provides in pertinent part:

> A. Eligibility for overtime compensation
>
> The Fair Labor Standards Act (FLSA) provides for overtime compensation for certain job categories, such positions are designated as non-exempt. In addition, Rutgers policies and negotiated agreements may further extend eligibility criteria for certain job categories as described in this policy. Each job title at the University has a designation which indicates whether employees in the title are eligible for overtime compensation or not.
>
> 1. Non-exempt from FLSA (Eligible for Overtime)
> . . .
> b. "NE" - Employees in titles coded "NE" receive overtime compensation for hours worked beyond 37-1/2 hours in the workweek.
> . . .
> 2. Exempt from FLSA (Not eligible for Overtime)
> a. "NL" - Employees in titles coded "NL" are exempt from the overtime provisions of the FLSA and are neither eligible for, nor entitled to receive, overtime compensation.
> . . .
> c. "N4" - This title code applies to exempt employees who are required to work a minimum of 40 hours per week because their primary function is directly to supervise non-exempt, 40 hour, fixed workweek employees.

Article 14 of the parties' CNA, entitled "Grievance Procedure," Section 1, provides in pertinent part:

> A grievance is defined as a claimed violation of any provision of this Agreement or of any Rutgers policy relating to mandatorily negotiable wages, hours or terms and conditions of employment which has been filed pursuant to this Article. The procedure set forth herein is the sole and exclusive right and remedy for any and all claims that could be brought under this grievance procedure.

Article 25 of the parties' CNA, entitled "NE/NL Designation," provides:

> Requests for reconsideration of NE/NL designations shall be brought by the Union to a quarterly Labor Management committee for discussion and shall be reviewed by UHR.

Article 28 of the parties' CNA, entitled "Overtime/Compensatory Time Benefits," Section "NL and N4 Employees," provides in pertinent part:

> "NL" and "N4" employees have work schedules which are neither tied to a fixed number of hours per day or per week, nor tied to a fixed number of days per week. While the standard workweek for NL employees varies according to the nature and scope of the employee's work, it is understood that in the course of a fiscal year the number of hours worked by an employee and the days on which such work must be performed may also vary to meet seasonal needs or specific demands of the position.
>
> The parties to this Agreement recognize that NL and N4 employees are professionals whose duties vary in content and schedule and sometimes require working more than the standard workweek. At the same time, the

parties to this agreement acknowledge that there may be occasions where an employee believes that he/she is working an excessive workload. In such cases, the employee shall do the following:

a. The employee shall request a meeting with his/her supervisor, which will be scheduled within five (5) days of the request, to discuss the nature of the employee's work and the time required for the employee's duties. The employee shall present to the supervisor his/her rationale as to why the workload is considered excessive, along with any documentation the employee may wish to present, such as time records.

b. In cases where the supervisor concurs that the employee is working an excessive workload, the supervisor will address such a situation through one or more of the following actions:

i. Eliminating, reducing or modifying the duties the employee is performing;

ii. Providing logistical assistance or adding additional personnel on either a temporary or permanent basis;

iii. Providing compensatory time off to the employee which is to be scheduled on a mutually acceptable basis.

c. The supervisor will provide his/her determination in writing, with a copy to the employee's personnel file maintained at UHR, to the employee within five (5) work days of the meeting referenced in subsection "a." above.

d. An employee who is dissatisfied with the decision of his/her supervisor may elect to meet with the next higher level of supervision to discuss the situation and to seek further relief. Should the matter not be resolved at this level, at the request of

> the union there shall be a meeting between two (2) URA-AFT representatives and two (2) UHR representatives in an attempt to come to a mutually acceptable resolution. The employee may attend at the discretion of the union. Other administration representatives may attend at the discretion of UHR. Any agreements reached at this meeting shall be reduced to writing. The URA-AFT reserves the right to grieve only where UHR refuses to meet and discuss the employee's complaint and to attempt to come to a mutually acceptable resolution.

Article 52 of the parties' CNA, entitled "University Policies and Procedures," provides:

> Rutgers and the URA-AFT agree that all members of the bargaining unit shall enjoy and be subject to all University regulations, procedures and the University Policy Library applicable to administrative employees except as may be otherwise set forth in this Agreement. There shall be no duplication or pyramiding of benefits. During the life of this Agreement, any change in University regulations, procedures, or in the University Policy Library that constitutes a change in a mandatorily negotiable term and condition of employment for members of the bargaining unit shall be negotiated.

The grievant has been employed by Rutgers as a Senior Program Coordinator, a position that was classified as non-exempt from the overtime requirements of the FLSA, since January 2013. On December 12, 2016, Rutgers informed the grievant that her position had been reclassified to exempt.

On January 6, 2017, Local 1766 filed a grievance requesting that the "[g]rievant . . . be properly classified in accordance

with [the] Fair Labor Standards Act . . . [and] be compensated for additional job requirements." Rutgers' response to the grievance is the subject of a pending unfair practice charge (CO-2017-275). On February 17, Local 1766 filed a Request for Submission of a Panel of Arbitrators (AR-2017-368). Arbitration was scheduled for September 20. On August 18, Rutgers filed the underlying scope of negotiations petition. Thereafter, Rutgers unsuccessfully sought the consent of Local 1766 to adjourn the arbitration pending disposition of the scope petition. Rutgers also unsuccessfully requested an adjournment from the arbitrator. The instant application for interim relief ensued.

LEGAL ARGUMENTS

Rutgers argues that its application for interim relief should be granted because "the issue of whether a position has been classified properly as exempt from . . . [the overtime requirements of the FLSA] is preempted by federal law and is not negotiable." Specifically, Rutgers contends that it has a substantial likelihood of prevailing in a final Commission decision because "the FLSA itself and its implementing regulations set forth the standards under which a position is to be classified as exempt or non-exempt", "[a] position either meets the standards set forth in the FLSA . . . to be exempt . . . or it does not", and "[t]he parties cannot negotiate to agree

to make a position non-exempt . . . when it is . . . in fact . . . exempt as a matter of law."[1/] Rutgers also maintains that it will suffer irreparable harm if arbitration proceeds before the underlying scope petition is resolved because it would be a "monumental waste of time and energy" to arbitrate a non-negotiable issue. Given that it is a public entity, Rutgers asserts that the public interest is best served by temporarily restraining arbitration in order to avoid any waste of public funds. Moreover, Rutgers claims that the relative hardship weighs in its favor because the proposed relief sought by Local 1766 is "monetary in nature and could be awarded retroactively by the arbitrator."

Local 1766 argues that Rutgers has failed to demonstrate that it has a substantial likelihood of prevailing in a final Commission decision. Specifically, Local 1766 contends that "there is no statute or regulation that expressly, specifically or comprehensively provides that either the grievant's Senior Program Coordinator position is exempt . . . or that a dispute over her FLSA [status] cannot be arbitrated." While Local 1766 does not challenge the applicability of the FLSA or its

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1/ In support of its position, Rutgers cites Stafford Tp., P.E.R.C. No. 2005-51, 31 NJPER 84 (¶40 2005), Closter Bor., P.E.R.C. No. 92-42, 17 NJPER 484 (¶22235 1991), and Atlantic Cty. Prosecutor's Office, P.E.R.C. No. 2008-65, 34 NJPER 120 (¶52 2008).

implementing regulations and concedes that the standards to be applied to determine FLSA status are non-negotiable, Local 1766 maintains that there is no legal authority that grants Rutgers the unfettered right to unilaterally determine exempt or non-exempt status. Given that there is "[n]o statute or regulation [that] specifies any other enforcement mechanism as exclusive," Local 1766 asserts that "disputes over FLSA coverage can and sometimes must be subject to arbitration." Moreover, Local 1766 claims that "the grievance itself seeks compensation" and that the grievant may be entitled to overtime compensation under the FLSA and the parties' CNA if Local 1766 prevails.

STANDARD OF REVIEW

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[2/] 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. See Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); Burlington Cty., P.E.R.C. No. 2010-

2/ Material facts must not be in dispute in order for the moving party to have a substantial likelihood of success before the Commission.

33, 35 NJPER 428 (¶139 2009) (citing Ispahani v. Allied Domecq Retailing United States, 320 N.J. Super. 494 (App. Div. 1999) (federal court requirement of showing a substantial likelihood of success on the merits is similar to Crowe)); 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).

Scope of negotiations determinations must be decided on a case-by-case basis. See Troy v. Rutgers, 168 N.J. 354, 383 (2000) (citing City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574 (1998)). Where a restraint of binding arbitration is sought, a showing that the grievance is not legally arbitrable warrants issuing an order suspending the arbitration until the Commission issues a final decision. See Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); Bd. of Ed. of Englewood v. Englewood Teachers, 135 N.J. Super. 120, 124 (App. Div. 1975); City of Newark, I.R. No. 2005-4, 30 NJPER 459, 460 (¶152 2004).

In a scope of negotiations determination, the Commission's jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978) states:

> The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for

> the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, the Commission does not consider the contractual merits of the grievance or any contractual defenses the employer may have.

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982):

> [A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

The Supreme Court of New Jersey has held that "an otherwise negotiable topic cannot be the subject of a negotiated agreement if it is preempted by legislation." Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982). "However, the mere existence of legislation relating to a given term or

condition of employment does not automatically preclude negotiations." Mercer Cty., P.E.R.C. No. 2015-46, 41 NJPER 339 (¶107 2015). "Negotiation is preempted only if the [statute or] regulation fixes a term and condition of employment 'expressly, specifically and comprehensively.'" Bethlehem Tp. Bd. of Ed., 91 N.J. at 44 (citing Council of New Jersey State College Locals v. State Bd. of Higher Ed., 91 N.J. 18, 30 (1982)). "The legislative provision must 'speak in the imperative and leave nothing to the discretion of the public employer.'" Id. (citing Local 195, 88 N.J. at 403-404); see also, State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

However, "[t]here is a difference . . . between the scope of negotiation and the scope of grievability." New Jersey Transit Bus Operations, I.R. No. 2012-17, 39 NJPER 328 (¶113 2012). The Supreme Court of New Jersey addressed this issue in West Windsor Twp. v. PERC, 78 N.J. 98, 115-117 (1978):

> A consequence of our holding herein is that the scope of mandatory grievability is substantially equivalent to the scope of mandatory negotiability. Just as the public employers are required to negotiate with respect to the terms and conditions of public employment, so must they provide their employees with a forum for the presentation of their grievances pertaining thereto. However, an important difference does exist between what may be grieved and what may be negotiated. We have today held that the parties may not agree to contravene specific statutes or regulations setting particular terms and conditions of public employment and therefore that proposals to do so are not

> mandatorily negotiable. State v. State Supervisory Employees Ass'n, supra, 78 N.J. at 80. We have further held that such statutes and regulations are effectively incorporated by reference as terms of any collective agreement covering employees to which they apply. Id. As such, disputes concerning their interpretation, application or claimed violation would be cognizable as grievances subject to the negotiated grievance procedure contained in the agreement. However, as is the case with negotiated agreements, no grievance resolution may contravene a statutory or regulatory mandate. Nevertheless, the issues of whether and how such statutes and regulations apply to authorize or prohibit particular actions by the public employer or the employees are proper subjects of "appeal" pursuant to N.J.S.A. 34:13A-5.3. The inability of the parties to agree to contravene statutory or regulatory imperatives pertaining to the terms and conditions of public employment precludes negotiability. However, the fact that no grievance may be resolved in a manner that would contravene any applicable statutes or regulations does not mean that the grievability of disputes concerning their alleged violation in a particular case is similarly precluded. To this extent, the scope of grievability is more expansive than the scope of negotiability.

ANALYSIS

At issue in this matter is whether Local 1766's grievance challenging Rutgers' decision to reclassify the status of the grievant's position under the FLSA from non-exempt to exempt, and a compensation claim that flows therefrom, is legally arbitrable. Both parties have conceded that the standards to be applied to determine FLSA status are non-negotiable.

The "principal congressional purpose in enacting the Fair Labor Standards Act of 1938 was to protect all covered workers from substandard wages and oppressive working hours . . . ." Barrentine v. Arkansas-Best Freight System, 450 U.S. 728, 739 (1981). Accordingly, the FLSA establishes a minimum wage and the maximum number of hours for a workweek beyond which an employer must provide overtime compensation. See 29 U.S.C. §§ 206-207. An employee's default status under the FLSA's overtime compensation requirement is non-exempt. See 29 U.S.C. § 207(a). However, as specified by statutory exemptions and related regulations, the FLSA's overtime compensation requirement does not apply to certain positions. See 29 U.S.C. § 213; 29 C.F.R. 541.0, et seq.

In addition, "[t]he statutory enforcement scheme [under the FLSA] grants individual employees broad access to the courts" and "permits an aggrieved employee to bring [a] statutory wage and hour claim 'in any Federal or State court of competent jurisdiction.'" Barrentine, 450 U.S. at 740 (citing 29 U.S.C. § 216(b)). "Congress has [also] empowered the Secretary of Labor to bring judicial enforcement actions under the [FLSA]." Id. at 740, n.16; see also, 29 U.S.C. §§ 216©, 217. However, the U.S. Department of Labor has developed "factor[s] to be considered" when deciding whether to litigate or defer to arbitration when a matter is subject to an arbitration agreement despite the fact

that "deferral to arbitration often will not be appropriate in wage-hour matters." See Memorandum from the Solicitor of Labor on Consideration of Employment Arbitration Agreements to Regional and Associate Solicitors (U.S. Dep't of Labor August 9, 2002); see also, Ann C. Hodges, Can Compulsory Arbitration Be Reconciled With Section 7 Rights, 38 WAKE FOREST L. REV. 173, 231-232, n.319 (2003). Cf. National Council of EEOC Locals No. 216, AFGE, AFL-CIO and U.S. Equal Employment Opportunity Commission, Case No. 071012-00226-A (Federal Mediation and Conciliation Service Arbitration Award dated March 23, 2008).

Within the private sector, the Supreme Court of the United States has held that "an employee may bring an action in federal district court . . . alleging a violation of the . . . [FLSA] . . . after having unsuccessfully submitted a wage claim based on the same underlying facts to a joint grievance committee pursuant to the provisions of [a] collective-bargaining agreement." Barrentine, 450 U.S. at 729-730, 734, 745-746. In Barrentine, the Supreme Court stated:

> Not all disputes between an employee and his employer are suited for binding resolution in accordance with the procedures established by collective bargaining. While courts should defer to an arbitral decision where the employee's claim is based on rights arising out of the collective-bargaining agreement, different considerations apply where the employee's claim is based on rights arising out of a statute designed to provide minimum substantive guarantees to individual workers.
>
> * * *

> In submitting his grievance to arbitration, an employee seeks to vindicate his contractual right under a collective-bargaining agreement. By contrast, in filing a lawsuit under the statute, an employee asserts independent statutory rights accorded by Congress. The distinctly separate nature of these contractual and statutory rights is not vitiated merely because both were violated as a result of the same factual occurrence. And certainly no inconsistency results from permitting both rights to be enforced in their respectively appropriate forums.[3/]
>
> [Id. at 737, 745-746 (citations omitted).]

See also, 14 Penn Plaza LLC v. Pyett, 556 U.S. 247, 263-285 (2009) (discussing Barrentine and noting the difference between "whether arbitration of contract-based claims precluded subsequent judicial resolution of statutory claims" as compared to instances where "the collective-bargaining agreement's arbitration provision expressly covers both statutory and contractual discrimination claims").

The Commission has held that "if [a] statute or regulation only specifies a minimum level of rights or benefits for employees on a particular term and condition of employment, then proposals to enlarge these rights are mandatorily negotiable." Trenton Bd. of Ed., P.E.R.C. No. 85-62, 11 NJPER 25 (¶16013 1984). The Commission has also held that "statutes and

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3/ The Supreme Court noted, however, that "the weight to be accorded an arbitral decision . . . must be determined in the court's discretion with regard to the facts and circumstances of each case." Id. at 743, n.22.

regulations which specifically set a term and condition of employment are incorporated by reference into the collective negotiations agreement and disputes concerning whether the employer has complied with the command of the statute or regulation are therefore subject to the negotiated grievance procedure, including binding arbitration." Id.; see also, Hudson Cty., P.E.R.C. No. 2012-46, 38 NJPER 326 (¶109 2012) ("[e]ven where an otherwise negotiable term and condition of employment is set, and thereby preempted, by a statute or regulation, arbitration of a grievance asserting that the statute or rule is part of the parties' agreement and has been violated, may proceed, provided the result does not conflict with a pertinent law or rule or significantly interfere with non-negotiable managerial prerogatives"); accord Union Cty. Reg. H.S. Dist. No. 1, P.E.R.C. No. 98-98, 24 NJPER 119 (¶29060 1998) (holding that "a collective negotiations agreement may contain the protections afforded by the OPMA as construed in Rice, and that disputes over compliance with such notice provisions may be arbitrated"); Pemberton Tp. Bd. of Ed., P.E.R.C. No. 2016-53, 42 NJPER 364 (¶103 2016) (holding that although N.J.S.A. 52:14-7 "mandates that employees of local school districts maintain their principal residence within the State of New Jersey," an arbitrator may determine "the narrow fact question of whether the grievant

failed to maintain her principal residence within the State of New Jersey while employed").

Given these legal precepts and even assuming, arguendo, that Rutgers has satisfied the other factors necessary to obtain interim relief, I find that Rutgers has failed to demonstrate a substantial likelihood of prevailing in a final Commission decision on its legal allegations. This appears to be a matter of first impression before the Commission and the New Jersey courts. Rutgers has not cited any legal authority demonstrating that an employer has a managerial prerogative to classify the status of an employee's position as exempt from the overtime requirements of the FLSA or to determine related compensation claims. While conceding that "an employee has recourse outside arbitration to challenge the classification of his or her position," Rutgers has not cited any legal authority demonstrating that a related grievance is not legally arbitrable.

Moreover, the cases cited by Rutgers are distinguishable from the instant matter. In Stafford Tp., P.E.R.C. No. 2005-51, 31 NJPER 84 (¶40 2005), the Commission determined that a contract proposal requiring "compl[iance] with the provisions of the Fair Labor Standards Act" was mandatorily negotiable because it "afford[ed] the PBA an opportunity to enforce alleged violations of the FLSA through the negotiated grievance procedure." In Closter Bor., P.E.R.C. No. 92-42, 17 NJPER 484 (¶22235 1991), the

Commission agreed with the determination of the U.S. Department of Labor and held that a contractual provision specifying that certain employees would receive a percentage increment "in lieu of overtime" was preempted by the FLSA because it did not comply with statutory overtime compensation requirements. In Atlantic Cty. Prosecutor's Office, P.E.R.C. No. 2008-65, 34 NJPER 120 (¶52 2008), the Commission held that the FLSA did not preempt negotiations regarding overtime compensation payments in excess of those required under the FLSA. In Salem Cty. Prosecutor, P.E.R.C. No. 97-14, 22 NJPER 325 (¶27165 1996), a case not cited by either party, the Commission determined that two contract proposals specifying that employees in certain positions would receive a lump sum payment "in lieu of overtime" were preempted by the FLSA because they did not comply with statutory overtime compensation requirements given that there was no dispute that the positions in question were non-exempt.

Accordingly, I find that Rutgers has not established a substantial likelihood of prevailing in a final Commission decision on its legal allegations, a requisite element to obtain interim relief under the Crowe factors,[4/] and deny the application for interim relief.

4/ As a result, I do not need to conduct an analysis of the other elements of the interim relief standard. See, e.g., New Jersey Transit Bus Operations, I.R. No. 2012-17, 39 NJPER 328 (¶113 2012).

ORDER

The request of Rutgers, the State University of New Jersey, for an interim restraint of binding arbitration is denied pending the final decision or further order of the Commission.

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JOSEPH P. BLANEY
COMMISSION DESIGNEE

DATED: September 18, 2017

Trenton, New Jersey