

H.E. NO. 2021-2

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

In the Matter of

STATE OF NEW JERSEY
(KEAN UNIVERSITY),

Respondent,

-and-

Docket Nos. CO-2018-136
CO-2018-176

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, AFT/AFL CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner grants Charging Party's motion for summary judgment on Docket No. CO-2018-136 and denies Respondent's motion for summary judgment on Docket Nos. CO-2018-136 and CO-2018-176. The Hearing Examiner determined that Respondent violated 5.4a(1) and (5) when it unilaterally implemented rotating librarian work schedules without prior negotiations, refused to timely provide relevant information requested by Charging Party, and refused to negotiate in good faith with AFT concerning the impact of its implementation of rotating librarian work schedules.

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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COLLEGE LOCALS, AFT/AFL CIO,

Charging Party.

Appearances:

For the Respondent,
Gurbir S. Grewal, Attorney General
(Christopher W. Weber, Deputy Attorney General, on the
brief)

For the Charging Party,
Mets Schiro & McGovern, attorneys
(Kevin P. McGovern, Esq., on the brief)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On December 18, 2017, the Council of New Jersey State College Locals, AFT/AFL-CIO ("AFT") filed an unfair practice charge against the State of New Jersey, Kean University ("Kean"), which was assigned Docket No. CO-2018-136. The charge alleges that sometime in or after September 2017, Kean unilaterally changed the work schedules of Kean employees at the Nancy Thompson Library from steady work schedules to rotating work schedules. The charge further alleges that, after Kean made this

unilateral change, AFT submitted two separate requests for information regarding the change to Kean, but Kean refused to provide any of the requested information. AFT asserts that Kean's unilateral change of library employees' work schedules, and Kean's refusal to provide AFT with the requested information constitute a violation of 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

On or about January 28, 2018, AFT filed a second unfair practice charge against Kean, which was assigned Docket No. CO-2018-176, alleging that Kean violated sections 5.4a(1) and (5) of the Act by negotiating in bad faith with AFT over the impact of Kean's decision to implement rotating work schedules for Kean employees at the Nancy Thompson Library.

On or about October 11, 2018, the Director of Unfair Practices issued Complaints on both charges and assigned the matters to me for a hearing. Kean filed an Answer to both Complaints on October 19, 2018. In its Answer, Kean denies violating sections 5.4a(1) and (5) of the Act, stating that it

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act;" and "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

had a managerial prerogative to implement the rotating work schedules at issue in Docket No. CO-2018-136, and denying that it negotiated in bad faith over the impact of its decision to implement those schedules, at issue in Docket No. CO-2018-176. The two matters were consolidated on January 30, 2019.

On August 12, 2019, AFT filed a motion for summary judgment pursuant to N.J.S.A. 19:14-4.8 on Docket No. CO-2018-136, together with a brief, and the certifications of Eleanor McKnight, AFT Staff Representative Bennett Muraskin, and AFT counsel Kevin McGovern, with exhibits.

On the same date, Kean filed a motion for summary judgment pursuant to N.J.S.A. 19: 14-4.8, on both Docket Nos. CO-2018-136 and CO-2018-176, together with a brief, and the certifications of Kean's Chief Labor Counsel Kenneth Green and Dr. Paul Croft, with exhibits.

On August 30, 2019, AFT and Kean each filed a response to the other party's motion for summary judgment.

On September 3, 2019, the Commission referred both motions to me for a decision. N.J.A.C. 19:14-4.8. I have conducted an independent review of the parties' briefs and supporting documents submitted in these matters. Based upon the record, I make the following undisputed

FINDINGS OF FACT

1. Kean and AFT are, respectively, a public employer and a public employee majority representative within the meaning of the Act.

2. AFT is comprised of nine (9) local unions, which represent faculty, librarians and professional staff at nine (9) State colleges and universities, including Kean.

3. Kean and AFT are parties to a collective negotiations agreement ("CNA") effective from July 1, 2015 through June 30, 2019.

4. Article XVII of the parties' CNA applies to "Librarians" and is the only provision in the parties' CNA that addresses Kean library employee work schedules.

5. Article XVII, Section G, provides in pertinent part:

G. The scheduled hours for librarians shall not involve split work periods, other than those provided by meals, except as may be required by the unanticipated needs or for periods of special activity.

6. Prior to September 2017, the six (6) full time librarians employed by Kean in its Nancy Thompson Library worked steady work schedules.

7. Those work schedules were as follows: three librarians worked Monday to Friday, 8:00 a.m. to 4:00 p.m.; one librarian worked Monday to Friday, 10:00 a.m. to 6:00 p.m.; and one

librarian worked Monday to Thursday, 3:00 p.m. to 11:00 p.m., and Sunday, 1:00 p.m. to 9:00 p.m.

8. On August 18, 2017, Kean held a staff meeting where library employees were notified that Kean was implementing a change from steady to rotating work schedules beginning in September 2017.

9. There were no prior negotiations between Kean and AFT over Kean's decision to implement a change from steady to rotating work schedule for librarians.

10. On December 5, 2017, AFT demanded that Kean rescind its decision to implement rotating work schedules for librarians, and negotiate over both the changes to the work schedule, as well as over the impact of the decision.

11. Kean responded on the same date, stating that the decision to implement a change in work schedules was "an exercise of an indisputable prerogative," and therefore non-negotiable. Kean did agree to negotiate the impact of its decision with AFT.

12. Also on December 5, 2017, AFT requested from Kean all documents relating to Kean's claim that the work schedule change was within its managerial prerogative.

13. On December 6, 2017, AFT submitted a second document request to Kean for all documents pertaining to "when, how and why" Kean arrived at its decision to implement rotating work

schedules, along with documents pertaining to all unit and non-unit librarians employed by Kean throughout 2017.

14. Later in the day on December 6, 2017, AFT supplemented its second document request to Kean with a request for the work days and work hours of the unit and non-unit librarians employed throughout 2017.

15. In response on the same day, Kean denied AFT's requests for information and failed to identify any relevant documents in Kean's possession that were responsive to AFT's requests.

16. As Kean had agreed to negotiate the impact of its decision, three impact negotiation sessions were held between AFT and Kean between December 2017 and February 2018.

17. As part of those impact negotiations, several unit employees submitted certifications and supporting documentation asserting that changing their work schedules would adversely affect their existing medical conditions, their ability to care for family members, and would prevent one employee from attending religious activities.

18. As a result, two of the six librarians had their work schedules changed due to medical and/or religious reasons.

19. On August 5, 2019, counsel for Kean provided a copy of a staffing/usage study which had been completed by Dr. Paul Croft, Associate Vice President of Academic Affairs, in August 2017 (the "Croft Report").

20. Kean relied on the findings and recommendations in the Croft Report when making its decision to implement rotating work schedules for AFT librarians.

21. The Croft Report found that changes in staff and work schedule distributions were necessary to "provide services more closely aligned to student's needs based upon timeliness, accessibility, and flexibility."

22. The changes in staff and work schedule distributions included having staff available seven (7) days a week from 8:00 a.m. to 12:00 midnight during the academic year. Additionally, the Croft Report recommended having more than one or two library staff members available across shifts to ensure suitable operating levels in the afternoon and evening hours.

23. In the Croft Report, Dr. Croft suggested that "shifts may be rotated monthly or quarterly in fairness to staff."

24. The new rotating work schedules are as follows: two librarians work Sunday to Thursday, 12:00 p.m. to 8:00 p.m.; two librarians work Monday to Friday, 8:00 a.m. to 4:00 p.m.; one librarian works Monday to Friday, 12:00 p.m. to 8:00 p.m.; and one librarian works Tuesday to Friday, 4:00 p.m. to 12:00 a.m. and Saturday, 12:00 p.m. to 8:00 p.m. Work schedules were to rotate in mid-December, mid-April and mid-August.

25. As of September 1, 2019, only one librarian's work schedule is still being rotated. The remaining five librarians have not had their work schedules rotated since September 2018.

ANALYSIS

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954).

N.J.A.C. 19:14-4.8(d) provides:

If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross motion for summary judgment may be granted and the requested relief may be ordered.

In considering a motion for summary judgment, all inferences are drawn against the moving party and in favor of the party opposing the motion. No credibility determinations may be made, and the motion must be denied if material factual issues exist. N.J.A.C. 19:14-4.8(e); Brill; Judson. The summary judgment motion is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981); UMDNJ, P.E.R.C. No. 2006, 32 NJPER 12 (¶6 2006).

With regard to the issue in Docket No. CO-2018-136 of Kean's change to librarian work schedules, the parties agree that Kean changed AFT librarians' work schedules from steady work schedules to rotating work schedules without prior negotiations.

Therefore, I find that no genuine issue of material fact exists with respect to this issue that would require a plenary hearing.

Thus, the critical remaining legal issue for purposes of summary judgment on the changed work schedules in Docket No. CO-2018-136 is whether the change from steady to rotating work schedules is a mandatory subject of negotiations.

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.

In re Local 195, IFPTE, 88 N.J. 393, 404-405. This balancing test must be applied to the facts and argument in each case.

City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

Public employers have a managerial prerogative to determine the hours and days that a public service will be provided. Work schedules of individual employees, however, are generally mandatorily negotiable. Local 195; see also Teaneck Tp. and Teaneck Tp. FMBA Local No. 42, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003); Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582, 589 (1980); Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 6-7 (1973); Burlington Cty. College Faculty Ass'n v. Burlington Cty. College, 64 N.J. 10, 12, 14 (1973). The change from fixed to rotating shifts has also been found to be mandatorily negotiable. Hamilton Tp., P.E.R.C. No. 86-106, 12 NJPER 338 (¶17129 1986), aff'd NJPER Supp.2d 172 (¶152 App. Div. 1987), certif. den. 108 N.J. 198 (1987).

In its motion, Kean argues that "while individual schedules are generally negotiable, they are not negotiable where the employer has demonstrated that maintaining a particular schedule would substantially limit a governmental policy determination." Twp. of Clark, P.E.R.C. No. 2016-55, 42 NJPER 372 (¶105 2016), aff'd 43 NJPER 147 (¶44 App. Div. 2016). Kean cites a litany of cases, including Twp. of Pemberton, H.E. 87-52, 13 NJPER 197 (¶18085 1987); Hoboken Bd. of Ed., P.E.R.C. No. 93-15, 18 NJPER

446 (¶23200 1992); Moonachie Bd. of Ed., P.E.R.C. No. 97-13, 22 NJPER 324 (¶27164 1996); State of N.J. (Rowan University), P.E.R.C. No. 99-26, 24 NJPER 483 (¶29224 1998); and Oakland Public Library, P.E.R.C. No. 2010-71, 36 NJPER 115 (¶48 2010), to support its position that AFT was not entitled to negotiate Kean's decision to implement rotating work schedules, as Kean alleges that the decision was made in furtherance of educational goals and a dominant public policy.

Kean further relies upon the Croft Report, which called for "changes in staff and shift distributions in order to provide services more closely aligned with students needs," to support its argument that it had a managerial prerogative to implement rotating librarian work schedules.

In its motion, AFT asserts that Kean unilaterally implemented a rotating work schedule for librarians in direct violation of the Act. AFT primarily relies on Township of Hamilton, H.E. No. 86-29, 12 NJPER 114 (¶17045 1985), to argue that a change from steady to rotating work schedules directly affects the work and welfare of employees, and therefore, Kean cannot unilaterally implement rotating work schedules. Further, AFT argues that in applying the Local 195 balancing test, the disruption experienced by the librarians is so severe that it cannot be outweighed by any of Kean's arguments to support a finding of managerial prerogative.

Kean's reliance on both Hoboken Bd. of Ed. and Moonachie Bd. of Ed. is misplaced, however, as the Commission found in both cases that changes to individual work schedules are mandatorily negotiable, even when there are educational reasons for the changes, as long as qualified employees are available to work the hours.

In Hoboken Bd. of Ed., P.E.R.C. No. 93-15, 18 NJPER 446 (¶23200 1992), the Commission found that the Hoboken Board of Education had a managerial prerogative to keep its library open after the teaching day had ended and to extend the starting and quitting times for school librarians, guidance counselors, and staff developers by one-half hour. The Hoboken Board articulated educational reasons for the changes, including increasing students' and staff's access to the library and enabling students to meet with their guidance counselors without disrupting class time. 18 NJPER at 446. However, the Commission held that the Hoboken Board did not have a managerial prerogative to determine individual work schedules unilaterally, but instead had an obligation to negotiate over which qualified employees work what hours and how much they are paid for those hours. Id., see also City of Linden, P.E.R.C. No. 92-127, 18 NJPER 362 (¶23158 1992); Waterford Tp. Bd. of Ed., P.E.R.C. No. 92-35, 17 NJPER 473 (¶22228 1991); Morris Cty. College, P.E.R.C. No. 92-24, 17 NJPER 424 (¶22204 1991); New Jersey Sports and Exposition Auth.,

P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181 1987), aff'd NJPER Supp.2d 195 (172 App. Div. 1988); Local 195.

Further, in Moonachie Bd. of Ed., P.E.R.C. No. 97-13, 22 NJPER 324 (¶27164 1996), the Moonachie Board of Education hired a librarian, but did not include the position in the negotiations unit, and set the librarian's hours of work and compensation outside the terms and conditions negotiated with the majority representative. Relying on Hoboken, the Commission held that the Moonachie Board had a managerial prerogative to create the librarian position, but if an arbitrator found that the title belonged in the negotiations unit, the librarian's work hours and compensation were mandatorily negotiable. 22 NJPER at 324. The Commission noted, however, that any arbitration award on work hours had to take into account the Board's right to determine when the library would be open, and the Board's right to have qualified staff available during those hours. Id.

Here, Kean has not asserted that the six full-time librarians employed in the Nancy Thompson Library are not equally qualified. In fact, the Croft Report states that "although not all staff share the same credentials, an adequate amount of overlap exists among the staff to meet student needs and requests."

With regard to the first prong of the Local 195 balancing test, whether "the item intimately and directly affects the work

and welfare of public employees," AFT has shown that the schedule change will affect the work and welfare of the librarians by causing adverse health consequences, the inability to observe religious faith, and the inability to pursue outside interests.^{2/} With regard to the third prong, whether "a negotiated agreement would not significantly interfere with the determination of governmental policy," Kean relies on the Croft Report to attempt to establish that it had a "well found basis for implementing an overlapping and rotating shift schedule for the benefit of students". However, the only reference to rotating shifts in the Croft Report states that, "shifts can be rotated . . . in fairness to staff." Nothing in the Croft Report supports Kean's argument that the implementation of rotating shifts benefits students. Therefore, Kean has failed to establish that negotiating over the implementation of rotating work schedules would have substantially limited or interfered with its right to determine a policy to benefit students. Thus, while Kean has a managerial prerogative to determine the hours and days that library service will be provided, any change to the work schedules of individual librarians is mandatorily negotiable.

Based on the foregoing, Kean's decision to unilaterally implement rotating librarian work schedules without prior

^{2/} The second prong of the Local 195 balancing test regarding full or partial preemption by statute or regulation is not applicable here.

negotiations violated 5.4a(1) and (5), and AFT is entitled to the relief requested as a matter of law. Consequently, I grant AFT's motion for summary judgment on Docket No. CO-2018-136 with regard to this issue.

With regard to the other issue in Docket No. CO-2018-136, which is Kean's refusal to provide requested information, a majority representative has a statutory right to information in a public employer's possession which is relevant to its representational duties. Mt. Holly Bd. of Ed. et al., P.E.R.C. No. 2019-6, 45 NJPER 103, 104 (¶27 2018). Relevance includes a broad range of information that "should be disclosed to majority representatives for the purpose of effectuating their duties." Mt. Holly Bd. of Ed., 45 NJPER at 104. The majority representative's right to relevant information, however, is not absolute. Id. An employer "is not required to produce information clearly irrelevant, confidential, or which it does not control or possess." Id. Barring these limited exceptions, an employer's refusal to provide a majority representative with information it needs to represent its members is a violation of N.J.S.A. 34:13A-5.4a(5). Id.

Here, Kean argues that the Croft Report was confidential and protected by the deliberative process privilege, and therefore did not need to be disclosed. AFT asserts that the Croft Report is both "potentially relevant" and related to AFT's ability to

carry out its obligation to fully and fairly represent its members. Furthermore, AFT argues that Kean has violated the Act by failing to disclose the existence of the Croft Report. With respect to Kean's claim of privilege, AFT asserts that the Croft Report is largely comprised of data and analysis concerning the amount of time students use the library and, therefore, does not meet the standard to qualify for the deliberative process privilege.

The deliberative process privilege aims "to establish a qualified privilege for governmental deliberative process materials because the government, like its citizens, needs open but protected channels for the kind of plain talk that is essential to the quality of its functioning." In re Liquidation of Integrity Ins. Co., 165 N.J. 75, 88 (2000) (internal quotations omitted). To qualify for the privilege, the document must be both pre-decisional and deliberative, containing opinions, recommendations, or advice regarding agency policies. Id. at 84-85.

Not all government decision processes are protected by the privilege, and the privilege should be narrowly construed. Redland Soccer Club, Inc. v. Dept. of the Army of the United States, 55 F.3d 827, 856 (3d Cir. 1995). More specifically, "[t]he [p]rivilege is properly limited to communications relating to policy formulation at the higher levels of government; it does

not operate indiscriminately to shield all decision-making by public officials.” Scott v. Bd. of Educ. of E. Orange, 219 F.R.D. 333, 337 (D.N.J. 2004) (quoting Grossman v. Schwarz, 125 F.R.D. 376, 381 (S.D.N.Y. 1989)). For example, the privilege does not protect purely factual material, “meaning factual information that does not reveal the nature of the deliberations that occurred during an agency’s decision-making process.” In re Liquidation of Integrity Ins. Co., 165 N.J. 75, 85 (2000); Educ. Law Ctr. v. New Jersey, 198 N.J. 274, 295 (2009). Nor does the privilege apply to the routine operating decisions of a government agency. Scott, 219 F.R.D. at 338 (concluding that privilege does not protect deliberations leading up to Board of Education’s decision to terminate Board employee).

AFT submitted two document requests to Kean in December 2017, and not only did Kean deny both requests, but Kean also failed to identify any relevant responsive documents. This failure by Kean is problematic, as the Croft Report was prepared in August 2017, and Kean relied upon it when making its decision to implement rotating work schedules for AFT librarians, but Kean did not identify it as a relevant responsive document in December 2017. Equally problematic is the fact that Kean now asserts that the Croft Report was confidential or privileged, after it provided an unredacted copy to AFT on August 5, 2019. Kean offers a number of reasons to dispute that it engaged in any

wrongdoing by failing to produce or even disclose the existence of the Croft Report in December 2017, including that AFT made no discovery requests as part of these matters; that information relating to Kean's decision to implement rotating work schedules was, in fact, shared with AFT members; and that the Croft Report itself was "publicly disclosed". However, none of these assertions relieve Kean of its obligation under the Act to provide relevant information to AFT when requested in December 2017.

The Croft Report is potentially relevant because Kean relied on it when making its decision to implement rotating work schedules for AFT librarians. Additionally, the Croft Report could have assisted AFT in evaluating its rights with respect to the unilateral implementation of rotating work schedules.

Furthermore, although the Croft Report was labeled confidential, it was not. The Croft Report contained information solely related to student use of the library and the need for appropriate staffing during those times. No personal information was contained in the Croft Report, nor did the Croft Report contain any information that would enable harassment or retaliation. N. Indiana Pub. Serv. Co. and Local Union No. 12775, 347 NLRB 210, 179 LRRM 1305 (2006). The information contained in the Croft Report is also unprotected by the

deliberative process privilege because it merely examines factual and statistical data that was part of routine policy making.

Thus, Kean had a duty to provide the Croft Report to AFT in response to AFT's two information requests in December 2017. Kean has not met its burden of establishing that confidentiality and/or the deliberative process privilege shielded the Croft Report from production. This is especially true in light of the fact that Kean later provided the unredacted Croft Report to AFT. Thus, Kean's failure to produce the Croft Report in response to AFT's requests in December 2017 violated 5.4a(1) and (5) of the Act, and AFT is entitled to the relief requested as a matter of law. Therefore, I grant AFT's motion for summary judgment on Docket No. CO-2018-136 with regard to this issue as well, and Kean's motion for summary judgment on Docket No. CO-2018-136 is denied.

With regard to Kean's summary judgment motion on Docket No. CO-2018-176 on the issue of bad faith impact negotiations, Kean submits that it "was not obligated to negotiate its academic decision to implement overlapping and rotating shifts" and, therefore, any "bad faith" allegations with respect to impact negotiations is legally untenable. However, Kean admits that both the Commission and the courts have required impact negotiations even when, as it alleges, a managerial prerogative exists. Furthermore, although Kean asserts it was not obligated

to engage in impact negotiations with AFT, Kean claims that it has made every attempt to negotiate in good faith with AFT, but AFT refused to negotiate and has been inconsistent in its position. Specifically, Kean's Chief Labor Counsel Kenneth Green certified that Kean made "reasonable and repeated attempts to negotiate impact" with AFT.

AFT relies upon the Supplemental Affidavit of Bennett Muraskin to refute Kean's claim that it made good faith attempts to negotiate impact. Muraskin certifies that the only "impact negotiations" that Kean has engaged in were done to comply with applicable law regarding library employees' proven disabilities and religious beliefs. Furthermore, AFT claims that Kean's admitted refusal to negotiate over compensation is enough evidence to deny Kean's motion for summary judgement.

Thus, with regard to Kean's motion for summary judgment on the issue of bad faith impact negotiations, Kean and AFT have submitted conflicting Certifications regarding the other party's willingness and actual participation in those negotiations. Therefore, as there are material facts in dispute on the issue of bad faith impact negotiations, I find that Kean has not met its burden of proving that it is entitled to relief as a matter of law on Docket No. CO-2018-176, and its motion for summary judgment is denied.

As detailed above, AFT's motion for summary judgment on Docket No. CO-2018-136 has been granted based on a finding that Kean's unilateral implementation of rotating librarian work schedules is mandatorily negotiable, and therefore AFT is entitled to the relief it requested as a matter of law, which will include restoring the status quo ante with regard to librarian work schedules, requiring Kean to negotiate in good faith over any proposed changes to librarian work schedules, and requiring Kean to post a notice regarding its violation of the Act. Notably, although AFT did not file a motion for summary judgment in Docket No. CO-2018-176 on the issue of bad faith impact negotiations, the remedy that AFT sought in that matter is the same as the remedy granted to AFT in Docket No. CO-2018-136. Thus, as these matters are consolidated, the remedy granted to AFT in Docket No. CO-2018-136 is a merged remedy for both Docket Nos. CO-2018-136 and CO-2018-176.

RECOMMENDED ORDER

1. AFT's motion for summary judgment on Docket No. CO-2018-136 is granted. Kean's motion for summary judgment on both Docket Nos. CO-2018-136 and CO-2018-176 is denied, and the merged remedy detailed below is granted to AFT for both Docket Nos. CO-2018-136 and CO-2018-176.

2. Kean is ordered to:

A. Cease and desist from:

1.) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by implementing rotating librarian work schedules without prior negotiations, and refusing to timely provide relevant information requested by AFT.

2.) Refusing to negotiate in good faith with AFT concerning terms and conditions of employment of employees in its unit, particularly by implementing rotating librarian work schedules without prior negotiations, refusing to timely provide relevant information requested by AFT, and refusing to negotiate in good faith with AFT concerning the impact of its implementation of rotating librarian work schedules.

B. Take the following action:

1.) Restore the status quo ante with respect to librarian work schedules that existed prior to the issuance of the rotating work schedules that were implemented in September 2017.

2.) Negotiate in good faith with AFT over any proposed changes by Kean to librarian work schedules, negotiate in good faith with AFT over the impact of its implementation of rotating librarian work schedules in September 2017, and maintain the status quo during negotiations.

3.) Post in all places where notices to employees are customarily posted, copies of the attached notice marked as "Appendix A." Copies of such, on forms to be provided by the

Commission, will be posted immediately upon receipt thereof and after being signed by the Respondent's authorized representative will be maintained by it for at least sixty (60) consecutive days. Reasonable steps will be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other materials; and,

4.) Within twenty (20) days of receipt of this order, notify the Chair of the Commission what steps the Respondent has taken to comply with this order.

/s/ Lisa Ruch
Lisa Ruch
Hearing Examiner

DATED: August 25, 2020
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 September 4, 2020.



NOTICE TO EMPLOYEES

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF THE NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT, AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by implementing rotating librarian work schedules without prior negotiations, and refusing to timely provide relevant information requested by AFT.

WE WILL cease and desist from refusing to negotiate in good faith with AFT concerning terms and conditions of employment of employees in its unit, particularly by implementing rotating librarian work schedules without prior negotiations, refusing to timely provide relevant information requested by AFT, and refusing to negotiate in good faith with AFT concerning the impact of its implementation of rotating librarian work schedules.

B. Take the following action:

WE WILL restore the status quo ante with respect to librarian work schedules that existed prior to the issuance of the rotating work schedules that were implemented in September 2017.

WE WILL negotiate in good faith with AFT over any proposed changes by Kean to librarian work schedules, negotiate in good faith with AFT over the impact of its implementation of rotating librarian work schedules in September 2017, and maintain the status quo during negotiations.

WE WILL post in all places where notices to employees are customarily posted, copies of the attached notice marked as "Appendix A." Copies of such, on forms to be provided by the Commission, will be posted immediately upon receipt thereof and after being signed by the Respondent's authorized representative will be maintained by it for at least sixty (60) consecutive days. Reasonable steps will be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other materials; and,

WE WILL within twenty (20) days of receipt of this order, notify the Chair of the Commission what steps the Respondent has taken to comply with this order.

Docket Nos. CO-2018-136/CO-2018-176

STATE OF NEW JERSEY
KEAN UNIVERSITY
(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 292-9830