

D.R. NO. 2019-9

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

UNION COUNTY COLLEGE,

Public Employer,

-and-

Docket No. CU-2018-011

UNION COUNTY COLLEGE CHAPTER
OF THE AMERICAN ASSOCIATION
OF UNIVERSITY PROFESSORS,

Petitioner.

SYNOPSIS

The Director of Representation orders that a collective negotiations unit of instructional and professional library staff be clarified to include the title academic specialist. The public employer contested the title's eligibility for inclusion, claiming that academic specialists are supervisors within the meaning of the Act; that including academic specialists will create conflicts of interest; that academic specialists lack a community of interest with the existing unit; and that the recognition clause and other contract provisions exclude academic specialists from the existing unit. The Director determined that the facts failed to demonstrate supervisory status or conflicts of interest; that the facts demonstrated a community of interest among the petitioned-for employees and the existing unit; and that the unit description accommodates full-time employees that perform administrative duties in addition to classroom instruction.

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Appearances:

For the Public Employer
Cleary, Giacobbe, Alfieri & Jacobs, L.L.C., attorneys
(Matthew J. Giacobbe, of counsel)

For the Petitioner
Levy Ratner, P.C., attorneys
(Carl J. Levine, of counsel)

DECISION

On January 8, 2018, Union County College Chapter of the American Association of University Professors (AAUP) filed a clarification of unit petition (petition) seeking to clarify its collective negotiations unit of instructional and professional library staff employed by Union County College (College) to include the job title, academic specialist. AAUP contends that academic specialists fall within the recognition provision of the parties' most recent collective negotiations agreement (CNA) because they are full-time members of the College's instructional

staff and are not among any of the provision's "excluded" categories of employees. The College opposes the petition, arguing that the recognition provision and other provisions of the CNA exclude academic specialists from AAUP's unit. The College also contends that academic specialists are supervisors within the meaning of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq.; that including academic specialists in the AAUP's unit will create inherent conflicts of interest; and that academic specialists lack a community of interest with the AAUP unit.

On February 26, 2018, the College and AAUP filed position statements. On March 6, an investigatory conference was held. On April 18, 2018, a Commission staff agent sent a letter to the College and AAUP requesting responses to a series of questions soliciting facts about the petitioned-for employees' job duties and related matters. The staff agent requested certifications or affidavits of individuals with personal knowledge of such responsibilities, together with specific examples of work performed and detailed explanations of whether academic specialists formulated or directed the effectuation of the College's policies; performed supervisory duties within the meaning of the Act; and/or whether including academic specialists in the AAUP unit would generate an impermissible conflict of interest. The letter advised the parties that the "failure . . .

to provide competent evidence in support of a claim . . . may result in the dismissal of the petition or rejection of a position opposing the petition.”

From May 23 to 31, 2018, AAUP filed a response, altogether comprised of a letter; a certification from Nicholas Gilbert (Gilbert), Associate Professor; a certification with supporting exhibits from Carol Healey (Healey), former Senior Professor; a certification with supporting exhibits from Anthony Nicoli (Nicoli), Senior Professor; a certification with supporting exhibits from Carl Cuttita (Cuttita), full-time faculty member; a certification with supporting exhibits from Derek McConnell (McConnell), Associate Professor; and a certification with supporting exhibits from Paula Belmonte (Belmonte), former Associate Professor. On July 9, 2018, AAUP also filed a brief. On November 12, 2018, AAUP submitted an email update attaching a November 5, 2018 meeting agenda and the September 25, 2018 meeting minutes of the College’s Education Planning and Policy (EPP) Committee.

On June 15, 2018, the College filed a letter and a certification with supporting exhibits from Heather Cavise (Cavise), Director of Human Resources. On July 9, the College also filed a brief. On November 8, the College submitted an email update.

We have conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. Our review of the parties' submissions does not present substantial and material factual issues requiring an evidentiary hearing. N.J.A.C. 19:11-2.6(f). I find the following facts.

The College and AAUP signed a CNA extending from September 1, 2012 through August 31, 2015 and a successor memorandum of agreement (MOA) extending from September 1, 2015 through August 31, 2018. As part of their negotiations for the successor MOA, the parties reached the following agreement:

During the late stages of negotiations for a successor Collective Negotiations Agreement the College began hiring individuals into a newly created classification designated as "Academic Specialists" which it maintains are not properly included in the Union's negotiations unit. The College hereby agrees that if the parties reach final agreement on a Successor Agreement, which does not address the bargaining status of individuals hired into this new classification, it will agree that entering into such an Agreement will not act as a waiver of the Union's right to assert, through an appropriate action before the Public Employment Relations Commission, that this classification should properly be included in the Union's negotiations unit.
[Belmonte Certification, Ex. K]

Article II of the parties' expired CNA, entitled "Recognition," provides:

A. The Board recognizes that the Chapter is the certified exclusive negotiating representative of all full-time instructional and professional library staff employed by Union County College excluding managerial

executives, confidential employees, police and craft employees, supervisors and all other employees as set forth by the State of New Jersey Public Employment Relations Commission on November 9, 1983, in case number RO-83-116.^{1/}

B. Subject to governing law, this Agreement shall apply in full force and effect to any and all accretions of the unit and specifically to all full-time instructional and professional library staff who perform duties which are the same as or are similar to the duties performed by full-time instructional and professional library staff currently employed by the Board.^{2/}

1/ On December 29, 2014, AAUP was again certified as the majority representative of all full-time instructional and professional library staff employed by the College (Dkt. No. RO-2015-015).

2/ Article I of the parties' expired CNA includes the following definitions:

G. "Instructional staff" means all persons employed by the Board or its agents who teach courses for college or institutional credit at the College.

H. "Professional library staff" means all persons employed by the Board or its agents who perform professional library work at the College.

I. "Full-time members of the instructional staff" means all individuals who are members of the instructional staff and who normally are assigned to teach thirty (30) credit hours or their equivalent credit hours each academic year. "Temporary members of the instructional staff" means all individuals who are members of the instructional staff who are assigned to teach fifteen (15) credit hours or their equivalent credit hours for one semester within an academic year.

(continued...)

It is undisputed that the recognition clause in the parties' CNA has remained unchanged since AAUP became the majority representative in 1983. See 1984-1987 CNA, Art. II; 2003-2006 CNA, Art. II; 2012-2015 CNA, Art. II.

Article IX of the parties' expired CNA, entitled "Work of the Faculty," Section A, provides in pertinent part:

1.b. A member of the instructional staff who teaches fifteen (15) credit or equivalent credit hours a semester for two (2) consecutive semesters shall be considered a faculty member as of the beginning of that second semester, as defined in Article I, Sections I and K of this Agreement and shall be subject to all terms and provisions of this Agreement.

Article X of the parties' expired CNA, entitled "Appointment of Part-Time Members of the Instructional Staff and Professional Library Staff," provides in pertinent part:

C. The combined total of courses taught by part-time members of the instructional staff within a department or across multiple disciplines in any semester, including late start courses and UCC 101, shall not exceed fourteen (14) credits or contact hours.

2/ (...continued)

J. "Full-time members of the professional library staff" means all individuals who are members of the professional library staff and who normally are assigned to a thirty-five (35) hour work week over a twelve (12) month period.

K. "Faculty" means all full-time members of the instructional staff and all full-time members of the professional library staff.

Administrative Organization and Structure

The College's table of organization for administration shows a minimum of seven titles that report to the President:

- Vice President of Academic Affairs, Dr. Maris Lown;
- Vice President of Administrative Services and Executive Assistant to the President, (vacant);
- Vice President of Financial Affairs and Treasurer, Lynne Welch;
- Vice President of Student Development, Dr. Demond Hargrove;
- Executive Director of Institutional Research, Elizabeth Cooner;
- Executive Director of UCC Foundation, Douglas Rouse; and
- Secretary of the Boards and Director of College Relations, Jaime Segal.
[Cavise Certification, ¶¶3-5, Ex. C]

The College's table of organization for the Division of Academic Affairs shows seven titles that report to the Vice President:

- Dean of Humanities, Dr. Melissa Sande;
- Dean of Social Science, Business and History, (vacant);
- Dean of Science, Technology, Engineering and Mathematics (STEM), Dr. Liesl Jones;
- Dean of Learning Resources, Dena Leiter;
- Dean of Curriculum, Accreditation and American Honors, Dr. Bernard Polnariev;
- Interim Dean of Elizabeth Campus, Dr. Lester Sandres Rapalo; and
- Dean of Plainfield Campus, Dr. Victoria Ukachukwu.
[Cavise Certification, ¶¶3-5, Ex. C]

Academic specialists are included in the Division of Academic Affairs and work in various disciplines. Academic specialists report to the Dean of their particular discipline;

the Dean is responsible for conducting performance evaluations of academic specialists and has the authority to hire or fire them, or to take disciplinary action against them. See Cavise Certification, ¶¶3-5, 35, 38, Ex. F. The College's table of organization for each discipline within the Division of Academic Affairs shows a minimum of 21 academic specialist positions as follows:

Humanities

- Academic Specialist, Music and Theater, Michael Hegarty;
- Academic Specialist, Modern Languages, (vacant)

Social Science, Business and History

- Academic Specialist, Business Admin., (vacant);
- Academic Specialist, Criminal Justice, (vacant);
- Academic Specialist, Education, (vacant);
- Academic Specialist, History, (vacant);
- Academic Specialist, Paralegal, Monica Schurtman

STEM

- Academic Specialist, Biochemistry, Kessler McCoy-Simandle;
- Academic Specialist, Engineering, Richard Morris;
- Academic Specialist, Math, (vacant);
- Academic Specialist, Game Design, (vacant)

Curriculum, Accreditation and American Honors

- Academic Specialist, American Honors, (vacant)

Plainfield Campus

- Academic Specialist, ASL, English Interpreting, (vacant);
- Academic Specialist and Program Director, Paramedic Program, Jessica Dean;
- Academic Specialist, Health Information Technology and Program Director, (vacant);
- Academic Specialist and Program Director, Respiratory Care, Michele Okun;
- Academic Specialist and Director of Clinical Education, Respiratory Care, (vacant);
- Academic Specialist and Program Director, Physical Therapist Assistant, Carmela Hanna;
- Academic Specialist, Practical Nursing, Nancy Friedrich;
- Academic Specialist, Practical Nursing, Korena Stewart;
- Academic Specialist, Practical Nursing, (vacant)

See Cavise Certification, ¶¶3-5, Ex. C; EPP Committee's September 25, 2018 meeting minutes.

Academic Specialist Title

The College created the academic specialist title in June, 2016 and first appointed someone to the position in October, 2016. See Cavise Certification, ¶1. The College currently employs 15 academic specialists. See Cavise Certification, ¶¶3-5, Ex. C; College's email dated November 8, 2018; AAUP's email dated November 12, 2018; EPP Committee's September 25, 2018 meeting minutes.^{3/} The academic specialist title is a 12-month, non-tenure track position and the holder is required to work 35

^{3/} The EPP Committee's September 25, 2018 meeting minutes indicate that 6 individuals have been hired or transferred into Academic Specialist positions (i.e., American Honors, Game Design, History, Biochemistry, Education, and Biochemistry) since the College's June 15, 2018 submission.

hours per week. According to the College, academic specialists perform these primary duties:

- providing up to 9 hours of classroom instruction per week (n.b., prohibited from instructing any overload courses);
- carrying out administrative functions and programs;
- using data and analytics to interview, observe, and evaluate adjunct^{4/} and full-time faculty;
- writing grants and participating in the administration of grant activities;
- designing, preparing, and developing instructional materials;
- representing the College at conferences and seminars;
- participating in the College governance process;
- assisting with hiring adjunct faculty;
- conducting meetings as necessary for the effective functioning of specific programs;
- conducting office hours and assisting with curriculum and assessment projects, division reports, revisions, changes, or updates; and
- during summer months, pulling enrollment and registration reports, redesigning course, and establishing outside contacts to foster student development and success.

Academic specialists also perform specialized job duties related to their assignment within a particular discipline. According to the College, academic specialists typically share office space only with other academic specialists. See Cavise Certification, ¶¶3-4, 14, 25, Exhs. D-E.

^{4/} "Adjunct teaching faculty members" are included in a separate collective negotiations unit. That unit excludes, among others, "full-time faculty . . . and all other non-adjunct faculty employees employed by the College." See Art. I of 2016-2019 CNA between Union County College and Union County College Chapter of the Adjunct Faculty of New Jersey, Local 2222, AFT, AFL-CIO; Art. I of 2004-2007 CNA between Union County College and Union County College Adjunct Faculty Local 6227, AFT, AFL-CIO.

-Managerial Executive Status

The College's Board of Directors, President, Vice Presidents, Executive Directors, Associate Vice Presidents, Secretary of the Boards and Director of College Relations, Human Resources Director, Deans, and Assistant Deans regularly participate in the policy formulation process. According to the College, academic specialists also play an active role in policy formulation, policy implementation, and budgetary needs. See Cavise Certification, ¶¶15, 16, 18, 24-25.

Academic specialists participate in policy formulation by performing the following activities as assigned by the appropriate Dean:

- establishing admissions criteria with faculty input;
 - creating an Education Pilot program;
 - researching, writing, and applying to appropriate grants to redevelop Engineering Technology programs;
 - gathering data on courses to determine if changes can be made in prerequisites and curriculum;
 - developing partnerships to support student career and transfer paths; and
 - collaborating with the Dean and Director in developing and revising courses of study and curricula.
- [Cavise Certification, ¶¶16-17, 25]

Academic specialists participate in policy implementation by performing the following roles:

- making discretionary judgments when observing and conducting evaluations of adjuncts and full-time faculty to ensure compliance with College policies;
- participating in student recruitment and admissions process;
- maintaining adequate class sizes and student-to-instructor ratios through appropriate staffing and

scheduling (n.b., do not establish work schedules, leave time, or work assignments);

- tracking and examining student data to improve student retention and completion;
- assisting the Dean to market the program;
- developing articulation agreements with four-year institutions in New Jersey and out-of-State;
- regularly assessing courses and the specific program to ensure that the curriculum is up-to-date and innovative;
- developing partnerships to support student career and transfer paths;
- managing the organization, administration, planning, development, and general effectiveness of the program;
- orienting all program faculty to the curriculum;
- overseeing and successfully completing all accreditation and reaccreditation requirements for the program and ensuring all required documentation is up-to-date;
- providing overall organization and oversight of the program;
- ensuring compliance with clinical reliability standards by clinical faculty and preceptors;
- documenting adherence to clinical management for students and clinical faculty;
- maintaining and monitoring delivery of the clinical curriculum in coordination with program advisory committees and CoARC standards;
- recommending the purchase of supplies and equipment and coordinating repair of lab equipment to assure program quality; and
- serving as Program Director and coordinating programs in compliance with standards.

[Cavise Certification, ¶¶15, 24-25, 30-31, Exhs. E-F]

Academic specialists may select among the following alternative courses of action in putting policies into effect:

- selecting which grants to apply for;
- determining changes that can be made in prerequisites and curriculum;
- selecting which partnerships to develop to support student career and transfer paths; and
- developing and revising courses of study and curricula.

[Cavise Certification, ¶¶20, 25]

Academic specialists also perform specialized policy roles related to their assignment within a particular discipline. See Cavise Certification, ¶¶15, 24-25, 30-31, Exhs. E-F.

Academic specialists do not have authority to make significant purchases or to invest significant amounts of the College's money and generally do not prepare or help prepare a budget; the President, Vice Presidents, Associate Vice Presidents, Directors, and Deans have authority to perform these tasks. However, academic specialists have "input" with respect to the College's budget, may be asked for suggestions when items are needed for specific courses or activities, and perform the following activities:

- assist the Dean with budget activities;
 - assist the Dean to market the program;
 - assist with the budget development process of the specific program;
 - recommend the purchase of supplies and equipment;
 - coordinate repair of lab equipment to assure program quality; and
 - maintain appropriate and accessible inventories of training supplies and equipment.
- [Cavise Certification, ¶¶21-23]

-Confidential Employee Status

Academic specialists are not involved in any aspect of the labor relations process, do not attend negotiations sessions, and do not have access to or knowledge of confidential labor relations information. See Cavise Certification, ¶¶6-13.

-Supervisory/Conflict of Interest Status

Academic specialists perform these purported supervisory duties:

- interview adjunct faculty (e.g., conduct one-on-one interviews with potential candidates, assess candidates' knowledge and ability to teach, providing feedback to the Dean based upon notes taken on the candidates' resume during the interview) but no authority to make recommendations regarding which candidates to hire;
- annually observe and evaluate both adjunct and full-time faculty members through the use of analytics for purposes of hiring, retention, non-renewal of employment, and/or disciplinary action when necessary and appropriate;
- maintain adequate class sizes and student-to-instructor ratios through appropriate staffing and scheduling (n.b., do not establish work schedules, leave time, or work assignments);
- coordinate the use of MatLab and running training sessions for faculty;
- coordinate faculty training workshops for the use of MyLab languages and iLrn, and integrating these tools with the Canvas Learning Management System;
- develop and facilitate faculty professional development workshops for face-to-face and online courses;
- orient all faculty providing instruction in the program to the curriculum;
- oversee and successfully complete all accreditation and reaccreditation requirements for the program and ensure all required documentation is up-to-date;
- serve as the Director of Clinical Education;
- be responsible for curriculum development, revisions, planning, updates, implementation, and evaluation according to national, state, and local standards and needs;
- document adherence to clinical management system for clinical faculty;
- maintain and monitor delivery of the clinical curriculum in coordination with program advisory committees and CoARC standards;
- serve as the Program Director and be responsible for coordination of the Respiratory Care program in compliance with CoARC standards for accreditation;

- serve as Program Director and coordinator of the Physical Therapist Assistant Program in compliance with CoARC standards for accreditation; and
- supervise the Director of Clinical Education and Clinical Instructors.

[Cavise Certification, ¶¶24-25, 27, 29-32, 36, 41, 44-45, Ex. F]

Academic specialists recommend a specific course of action to the Dean, pursuant to their observations when evaluating each faculty member. Academic specialists' evaluations play an essential role in determining whether adjunct faculty members will be hired, disciplined, or renewed; they also play an essential role in making promotional decisions and conducting post-tenure reviews with respect to full-time faculty members. The Dean of a particular discipline will use observation and evaluation forms completed by an academic specialist in the disciplinary process, non-renewal decisions, and tenure proceedings. Academic specialists can be called upon to testify against a charged employee when he/she witnesses an incident. The Dean of a particular discipline will also use the feedback and recommendations provided by an academic specialist in determining whether to hire a candidate; however, an academic specialist's negative assessment does not bar a candidate from consideration, nor does a positive assessment guarantee that a candidate will be hired. See Cavise Certification, ¶¶27-29, 31-32, 36, 41-43, 48-50, Ex. F.

Academic specialists generally do not conduct employment interviews or create/complete any documents as part of the hiring process for titles in AAUP's unit. Academic specialists may sit on search committees that are involved in employment interviews for College faculty and administrators (including candidates for titles represented by AAUP); in those instances, academic specialists have the authority to make recommendations regarding hiring decisions but those recommendations are subject to an assessment by superior College officers before action is taken. See Cavise Certification, ¶33-34, 39, 44-46.

Academic specialists do not independently recommend disciplinary action; they are only involved in the discipline or termination of AAUP members and adjunct faculty to the extent that a particular Dean takes into consideration the information and/or recommendation provided in an Academic Specialist's evaluation. See Cavise Certification, ¶¶48-50, Ex. F. Non-tenured AAUP unit employees are not fired; their contracts are simply not renewed for the following year by the Vice President of Academic Affairs. Tenured AAUP members can be fired only if tenure charges are filed against them by the Board of Directors. See Cavise Certification, ¶¶3, 47.

Academic specialists do not approve time off or adjust pay for AAUP members. See Cavise Certification, ¶34.

AAUP's Negotiations Unit

AAUP's negotiations unit includes about 112 College teaching faculty and librarians. See Cavise Certification, ¶2; College's email dated November 8, 2018; AAUP's email dated November 12, 2018.

The teaching faculty title is a 10-month, tenure track position, the holder of which is not required to be on-campus unless teaching classes or conducting office hours. Since 2015, teaching faculty have performed the following primary duties:

- providing up to 15 hours of classroom instruction per week (n.b., permitted to instruct 2 overload courses, 3 if permission is granted, per semester);
 - grading exams and assignments;
 - holding office hours;
 - serving on governance committees; and
 - developing online and face-to-face classroom courses.
- [Cavise Certification, ¶¶2, 25, Ex. A]

Since 2015, full-time faculty do not interview or evaluate adjunct faculty; they do not supervise any other College employees; they do not have an active role in policy formulation, policy implementation, or budgetary needs; they do not write grants, develop courses, or provide coverage to the Division Office when the Dean is absent. See Cavise Certification, ¶25. According to the College, there are no courses that AAUP members no longer teach as a result of the creation of the Academic Specialist title. See Cavise Certification, ¶26.

The librarian title performs these primary duties:

- provides reference and information regarding library resources;
- manages and maintains library catalogs and systems; and
- prepares monthly and annual reports on library activities and services.

[Cavise Certification, ¶2, Ex. B]

Before 2015, full-time faculty were assigned some administrative duties and served as Department Chairs and Coordinators. Starting in 1983 - when AAUP became the majority representative - until 2015, the parties' CNA included specific contractual provisions regarding the appointment, duties, and additional compensation (i.e., reduction in course load, release time, or overload pay)^{5/} of Department Chairs and Coordinators.

5/ Article XXIX of the parties' 1984-1987 CNA, entitled "Faculty Workload," Section A, entitled "Full-Time Members of the Instructional Staff," provides in pertinent part:

1. . . . c. Teaching load requirements for full-time members of the instructional staff shall be modified only as follows:

- (1). Department Chairpersons shall teach a maximum of nine (9) contact hours per semester unless the number of faculty members in the department is fewer than ten (10) in which case Department Chairpersons may be assigned a maximum of twelve (12) contact hours per semester.
- (2). Department Chairpersons in departments requiring the supervision of laboratories shall teach as part of his/her required teaching load a maximum of nine (9) contact hours per semester even if the number of faculty members is fewer than ten (10).
- (3). The Chairperson of the Faculty shall have his or her teaching load reduced by three (3) credit or equivalent contact hours each semester. The Chairperson of the Peer

(continued...)

5/ (...continued)

Evaluation Committee and the Chairperson of the Curriculum Committee shall have their teaching loads reduced by three (3) credits or equivalent contact hours during the Spring semester.

(4) Full-time members of the instructional staff having agreed to assumed administrative duties shall have their teaching load reduced proportionately with these duties up to a maximum reduction of twelve (12) credit hours or equivalent contact hours for the academic year.

(5). Where the terms and conditions of a grant or fellowship require a reduction of the teaching load of a faculty member, his or her teaching load shall be reduced in accordance with the requirement of the grant.

(6). With the approval of the Academic Vice President and the Department Chairperson, a faculty member shall be given a reduced teaching load proportional to his or her work in developing new curricula, new options of existing curricula, new courses, laboratory exercises or similar activities.

(7). A full-time member of the instructional staff may with the prior written approval of the appropriate Academic Dean agree to more than three (3) separate preparations per semester within his/her required teaching load of fifteen (15) credit or equivalent contact hours if s/he is compensated at the overload rate specified in Article XXI (Compensation), Part F of this Agreement for each credit hour of the course or courses requiring additional preparation. For purposes of this provision, the additional course preparation(s) shall be for that course(s) with the greatest number of credit or equivalent contact hours. If a faculty member agrees to teach beyond the required load of fifteen (15) credit or equivalent contact hours per semester and receives overload compensation for additional credit or equivalent contact hours beyond his or her

(continued...)

Starting in 2010 and until 2015, Department Chairs and Coordinators also received additional compensation for performing their duties during the summer.^{6/} See Gilbert Certification, ¶¶2-5; Cuttita Certification, ¶¶7-8; McConnell Certification, ¶¶12-17; Nicoli Certification, ¶¶2-6; Belmonte Certification, ¶¶8, 23-27, Exhs. L-M (1984-1987 CNA, Art. XX, XXI, XXIX); 2003-2006 CNA, Art. XX, XXI, XXIX.

Department Chairs^{7/} and Coordinators had the following duties and responsibilities:

-Coordinator of Fine Arts: performed some work during summer months, including "most or all of the duties" set forth in the job description for academic

5/ (...continued)

required or reduced load and this additional teaching results in a fourth preparation, double compensation will not be paid for this course as a fourth preparation.

6/ In Spring, 2010, the College and AAUP negotiated a pilot program providing Department Chairs, Coordinators, and/or their designees compensation for administrative work they were to perform during the upcoming summer on behalf of their departments (i.e., 1 credit of overload compensation for every 15 hours of work performed with a maximum of 90 hours for each department for each of the 2 summer sessions). Written drafts were exchanged, but the final agreement was never reduced to writing. However, the terms of the agreement were applied in the summer of 2010 and continued until the summer of 2014. See Cuttita Certification, ¶¶4-6, 9, Ex. A; McConnell Certification, ¶¶12-17; Gilbert Certification, ¶6; Belmonte Certification, ¶¶28; Nicoli Certification, ¶7.

7/ The duties performed by Gilbert and Belmonte as Chairs of respective Departments are similar to those performed by other Chairs during their tenure. See Gilbert Certification, ¶20; Belmonte Certification, ¶38.

specialist for Music and Theater, such as scheduling courses; hiring adjuncts; serving on search committees; coordinating faculty evaluations; transmitting information about policies to other faculty members; developing and overseeing the development of curriculum; preparing and submitting budgets; helping to prepare year-end reports; overseeing and purchasing supplies and equipment for labs and darkrooms. Received either release time or overload pay in return for serving; opted for overload pay; initially received six credits per semester but later this was reduced to four credits per semester. See Nicoli Certification, ¶¶1-7, Ex. A; Cavise Certification, Ex. D.

-Coordinator of Communications: performed some work during summer months, including initiating program review and renewal; developing and maintaining internship opportunities for communications students; serving as the communications point of contact; supervising faculty advisors to student newspaper; developing and implementing communications share of Perkins grant; resolving student and faculty concerns; creating schedule and staffing courses of upcoming term; advertising contingent faculty openings as well as interviewing and hiring faculty for adjunct or temporary full-time positions; providing orientation for new faculty; monitoring enrollment; submitting faculty payroll; evaluating new contingent faculty members; submitting departmental textbook orders; overseeing catalog content; receiving/responding to student contacts; advising students for various purposes; writing/sending student recommendation letters, et al. Received either release time or overload pay in return for serving; opted for release time most semesters but occasionally chose overload pay. See Cuttita Certification, ¶¶7-10, Ex. B.

-Coordinator of Experiential Education: performed duties such as creating and leading workshops on experiential education and service learning; creating courses that used experiential education and service learning; evaluating and building relationships with volunteer agencies in the community that could provide service learning opportunities for students; performed some work during summer months; received three credits of overload compensation during each semester of the academic year in return for serving. See McConnell Certification, ¶¶12-15.

-Co-Coordinator of English as a Second Language (ESL) Level 6: performed duties such as orienting faculty to the covered curriculum; maintaining communications with faculty members concerning various teaching and grading requirements; creating level-wide exams for use by all faculty teaching these courses; and providing guidance to faculty members concerning their advising responsibilities; did not receive additional compensation or release time in return for serving. See McConnell Certification, ¶¶16-17.

-Senior Professor in the Licensed Practical Nursing Program: full-time faculty members in the Nursing Program have been required to work during the summer; reported to the Director of Nursing and performed duties such as covering for the Director of Nursing in her absence; serving as Interim Director of Nursing; serving as liaison to some hospitals in order to arrange clinical experiences for students; performing some administrative duties; participating in the Search Committee for a new Director of Nursing; interviewing candidates for both full-time and part-time faculty positions including academic specialist; serving on the Evaluation Committee and Faculty Advisory Model Committee; writing a report in connection with the Nursing Program's accreditation review; and initiating and leading the writing of an application for the Nursing Program to become a National League for Nursing Center of Excellence.^{8/} See Healey Certification, ¶¶2-5, 7, 9, 11-12, 22, 24, Ex. A; 2012-2015 CNA, Articles I.P, XXI.I, and XXIX.F.

-Chair of the Engineering, Technology and Architecture Department: performed some work during summer months; reported to the Academic Vice President. Duties included chairing departmental meetings; chairing/serving on the Evaluation Committee and departmental hiring committees; participating in the Search Committee for a new Dean; interviewing candidates for both full-time and part-time faculty positions including academic specialists; making the

8/ At the time of Healey's retirement in February, 2018, the College employed four full-time faculty members in the Nursing Program. Healy is unaware of any effort to replace her position with another full-time faculty member. See Healey Certification, ¶¶6, 8.

final recommendations to the Academic Vice President concerning who should be hired as adjunct faculty; reviewing adjunct faculty's work and recommending non-appointment when appropriate; drafting/submitting departmental budgets for approval; scheduling full-time and part-time faculty to teach specific courses; managing the departmental curriculum committee and Perkins Grant Committee; overseeing the process of data analytics; representing the College on an NJIT-sponsored board and at meetings of a group consisting of representatives of New Jersey high schools; serving with other Chairs on the departmental coordinating committee which was managed by the Academic Vice President. Had the option of taking either additional compensation or course reductions in return for serving and opted to take course release; was given six credits of course release for serving as Chair; also taught additional course for which he received overload pay. See Gilbert Certification, ¶¶2, 5-19, 24.

-Chair of the Business Department: performed some work during summer months; reported to the Academic Vice President and "many of the duties" set forth in the job postings for academic specialists such as chairing departmental meetings; chairing/serving on the evaluation committee and departmental hiring committees; serving on the College-wide peer evaluation Committee; interviewing candidates for both full-time and part-time faculty positions; making the final recommendations to the Academic Vice President concerning who should be hired as Adjunct Faculty; reviewing Adjunct Faculty's work and recommending non-appointment when appropriate; drafting/submitting departmental budgets for approval; scheduling full-time and part-time faculty to teach specific courses; managing the departmental Curriculum Committee; overseeing the process of data analytics; serving with other Chairs on the departmental coordinating committee which was managed by the Academic Vice President. Had the option of taking either additional compensation or course reductions in return for serving; opted to take additional compensation See Belmonte Certification, ¶¶3, 25, 27, 29-39, 49.

In late 2014, the College announced a number of organizational changes including the elimination of all

Departments and Department Chairs as well as most Coordinator positions. In order to address these changes, AAUP demanded impact negotiations. On January 29, 2016, the parties reached an agreement regarding impact that modified their expired CNA in a number of ways, including the removal of references to Departments and Chairs. See Belmonte Certification, ¶¶8-11, Exhs. C-E.

In spring, 2016, while negotiations for a successor agreement ensued, AAUP became aware that the College was seeking to hire people into instructional positions designated by a new title - Academic Specialist - and filed an information request. AAUP also inquired about the academic specialist title during negotiations and raised the issue of whether it should be included in AAUP's unit. The College asserted that the academic specialist title should not be in AAUP's unit because it would be managerial and/or confidential. Ultimately, the College produced job postings for four of these new positions and agreed to a waiver so that the successor agreement could be finalized. See Belmonte Certification, ¶¶13-20, Exhs. F-K.

In fall, 2016, academic specialists began working at the College. See Cavise Certification, ¶1. According to AAUP,

-the large majority of courses taught by academic specialists were previously taught by full-time faculty members (See Belmonte Certification, ¶¶13-17, Exhs. F-J; McConnell Certification, ¶¶6-7);

-the academic specialist for Music and Theater has shared an office with full-time faculty members and is not a member of an informal committee that meets with the Dean to discuss assessment (See Nicoli Certification, ¶¶8-9);

-the academic specialist in the Humanities Division has not served on the divisional curriculum committee or the College curriculum committee (See Cuttita Certification, ¶¶7, 11; McConnell Certification, ¶¶21-22);

-the academic specialist for the Nursing Program reports to the Director of Nursing; arranges clinical experiences for students at various hospitals; sits with other faculty members at divisional and program meetings but does not lead/run meetings; attends in-service educational programs but plays no special role; does not develop new curriculum or conduct curricular reviews; does not perform actual clinical teaching work and only performs teaching work in the simulation lab; has never served on the evaluation committee or faculty advisory model committee; has no role in the creation of exams, grading, or decisions concerning which students advance; shares a common space with everyone else in the Nursing Program (See Healey Certification, ¶¶6, 8, 10-11, 14-22, 24);

-the academic specialists in the STEM division report to the Dean; teach several courses that were previously taught by full-time faculty members; sit with other faculty members at divisional and program meetings but do not lead/run meetings; chair the Perkins Grant Committee; do not schedule adjunct faculty; do not play a supervisory role; may help evaluate some adjunct faculty but are overseen by the Assistant Dean; have never served on the evaluation committee, College peer evaluation committee, or College curriculum committee; are assigned fewer administrative tasks and have less authority than Department Chairpersons had despite having access to assistance from the Dean and Assistant Dean; share an office with each other (See Gilbert Certification, ¶¶22-23, 25-35; McConnell Certification, ¶¶20-23);

-the academic specialist in the Social Science, Business, and History Division (Paralegal Program) reports to the Dean; performs job duties that were

performed by Chairs and/or Coordinators before the elimination of Departments; sits with other faculty members at divisional and program meetings but does not lead/run meetings; does not play a role in connection with hiring or assessing divisional faculty members; does not play a role in collective negotiations; have never served on the College-wide calendar committee, divisional assessment committee, or textbook committee; evaluation committee, College peer evaluation committee, or College curriculum committee; are assigned fewer administrative tasks and have less authority than Department Chairpersons had despite having access to assistance from the Dean and Assistant Dean; shared an office with a full-time faculty member and another academic specialist (See Belmonte Certification, ¶¶40-51, Ex. N).

On November 14, 2017, the College approved a new academic program in Respiratory Therapy. According to AAUP, the College does not intend to employ any full-time faculty members to provide instruction in this program. The AAUP asserts that there has never been a regular academic program at the College that did not employ the instructional services of full-time faculty members. See McConnell Certification, ¶31.

As of May 3, 2018, the College advertised eleven available positions for academic specialist on its website but no positions for full-time faculty. No full-time faculty members have been hired since 2013. According to AAUP, the average salary for AAUP unit members is higher than the average salary for academic specialists (e.g., academic specialists have been hired at annual salaries between \$65,000 and \$85,000; the minimum starting salary for an assistant professor is \$66,884 and the minimum starting

salary for a full professor is \$93,219). See McConnell Certification, ¶8-11; AAUP's email dated November 12, 2018.

ANALYSIS

"The purpose of a clarification of unit petition is to resolve questions concerning the scope of a collective negotiations unit within the framework of the Act or as set forth in the unit definition in a Commission certification or the parties' recognition agreement." Newark State-Operated Sch. Dist., P.E.R.C. No. 2017-16, 43 NJPER 115, 116 (¶34 2016); accord State of New Jersey (Montclair State University), D.R. No. 2018-15, 44 NJPER 244 (¶70 2018), adopted P.E.R.C. No. 2018-42, 44 NJPER 398 (¶111 2018). More specifically, the purpose of the clarification of unit procedure is to identify unit employees whom the parties have intended to be encompassed by the unit definition but it ". . . may not normally be used to enlarge the scope of an existing unit to include previously unrepresented employees." Rutgers, The State University, D.R. No. 84-19, 10 NJPER 284, 285 (¶15140 1984) (citing Barneget Tp. Bd. of Ed., D.R. 84-15, 10 NJPER 54 (¶15029 1983); Clearview Reg. High School Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977)). Moreover, "[c]ommunity of interest considerations, alone, are not a sufficient basis to enlarge the scope of a negotiations unit through unit clarification." Id.

N.J.S.A. 34:13A-5.3 provides in a pertinent part:

[P]ublic employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees . . . nor, except where established practice, prior agreement or special circumstances dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership. . . .

The AAUP's clarification of unit petition is timely filed. Although AAUP became aware of the newly-created academic specialist title before the parties' 2015-2018 MOA was signed, the parties agreed to preserve AAUP's right to seek clarification regarding the title. See Belmonte Certification, ¶¶18-20, Ex. K. After the 2015-2018 MOA was ratified in November, 2017, AAUP promptly filed the petition. See Hamilton Tp. Bd. of Ed., D.R. No. 2004-14, 30 NJPER 93, 94 (¶37 2004) (holding that "the parties could conclude negotiations for [a] successor contract but include a provision preserving the [clarification] dispute for the Commission to decide").

I also note preliminarily that although the College provided facts about academic specialists' role in policy formulation, policy implementation, and budgetary needs, it has not argued that academic specialists are managerial executives or

confidential employees within the Act's meaning. (See College's Br. at 1-8; College's Position Statement at 1-9). In fact, the College has conceded that "the Deans and Vice Presidents" are the managerial executives for the College and that academic specialists are not involved in any aspect of the labor relations process. See Cavise Certification, ¶¶6-13, 16.

Supervisory/Conflict of Interest Discussion

N.J.S.A. 34:13A-6(d) provides in a pertinent part:

The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors

The Commission has held "that the Act does, in effect, define a supervisor to be one having authority to hire, discharge, discipline or to effectively recommend the same." Cherry Hill Tp., Dep't of Public Works, P.E.R.C. No. 30, NJPER Supp. 114 (¶30 1970). However, "[a] determination of supervisory status . . . requires more than a job description or assertion that an employee has the power to hire, discharge, discipline or effectively recommend." Hackensack Bd. of Ed., H.O. No. 85-3, 10 NJPER 527 (¶15241 1984), adopted P.E.R.C. No. 85-50, 11 NJPER 21 (¶16010 1984). "An indication that the power claimed to be possessed is exercised with some regularity is needed" because "[t]he mere possession of the authority is a sterile attribute

unable to sustain a claim of supervisory status.'" Id. (quoting Somerset Cty. Guidance Ctr., D.R. No. 77-4, 2 NJPER 358 (1976)); see also Butler Bor., H.O. No. 91-1, 17 NJPER 209 (¶22088 1991), adopted P.E.R.C. No. 91-99, 17 NJPER 260 (¶22119 1991) (holding that "[a]ll of the circumstances of a particular case must be reviewed in order to determine whether the employee has and regularly exercises such power"); Trenton Comm. Charter School, D.R. No. 2000-10, 26 NJPER 187 (¶31076 2000) (finding that in the absence of "specific examples of any hiring decisions and methods," having "attended interviews and made recommendations to school administrators, who, as the ultimate decision-makers, adopted their recommendations," was "too attenuated to be indicative of supervisory authority"). "Acting in a lead capacity, or overseeing and directing the work of other employees, without more, does not render an employee a statutory supervisor."^{9/} City of Linden, D.R. No. 2011-12, 38 NJPER 159 (¶46 2011).

In West Orange Bd. of Educ. v. Wilton, 57 N.J. 404, 425-427 (1971), the Supreme Court of New Jersey explained that

^{9/} The College has not shown that academic specialists act in a lead capacity or oversee the work of other employees. See City of Linden. The College acknowledges that academic specialists conduct only observations and evaluations; that they do not establish the work schedules, leave time, or work assignments for other employees; do not approve time off or adjust the pay of unit members; and do not conduct employment interviews for titles held by unit members. See Cavise Certification, ¶¶29-30, 33-34.

"representatives of the employer and the employees cannot sit on both sides of the negotiating table" because "both employer and employee organization need the undivided loyalty of their representatives and their members . . . if fair and equitable settlement of problems is to be accomplished:"

If performance of the obligations or power delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present. While a conflict of interest which is de minimis or peripheral may in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest. . . .[I]n the absence of a more definitive legislative treatment of the problem of appropriate unit for supervisors, each case must be determined on its own particular facts.

In Monmouth Cty. Sheriff's Office, D.R. No. 2015-16, 41

NJPER 508, 513 (¶159 2015), the Director of Representation wrote:

[In order] [t]o determine whether such conflicts exist, we must examine the facts of each particular case. Any conflicts greater than peripheral or de minimis are against the public interest. An employee's role in evaluations or grievance procedures is a significant factor in determining whether an actual or potential substantial conflict exists. Our case law requires evaluations to be closely connected to personnel actions. Another consideration in determining if an actual or potential substantial conflict exists is whether the historical relationship between the superior and other included employees reveals compromised interests or rights. (citations omitted).

The Commission has "consistently held that supervisor's evaluations must be closely tied to a personnel action or disciplinary decision in order to find a Wilton conflict." State of New Jersey (Montclair State University), D.R. No. 2018-15, 44 NJPER 244 (¶70 2018), adopted P.E.R.C. No. 2018-42, 44 NJPER 398 (¶111 2018). "Evaluations alone, however, do not necessarily create a conflict of interest sufficient to exclude the evaluator from a unit of non-supervisors." New Jersey Turnpike Auth., P.E.R.C. No. 98-28, 23 NJPER 511 (¶28249 1997). "Recommendations for another's evaluations which might then serve as recommendations for another's personnel decisions are too far removed from the personnel decisions to create a conflict of interest substantial enough to remove [a] title[] from the unit." Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987).

The College has not demonstrated that academic specialists have the authority to hire, discharge, discipline, or to effectively recommend those actions, particularly with respect to petitioned-for unit members. See Cherry Hill Tp., Dep't of Public Works; Monmouth Cty. Sheriff's Office. The College acknowledges that academic specialists do not have the authority to recommend applicants for hire and have neither created nor completed any documents as part of the hiring process for instructor/librarian unit. An academic specialist's

recommendation (provided that he/she is selected to serve on a search committee) is subject to an assessment by superior College officers before action is taken. The hiring processes for unit members and academic specialists reveal no inherent conflict(s) of interest. See Cavise Certification, ¶¶38-39, 40, 41-46. The College has also acknowledged that the Vice President of Academic Affairs has final authority to non-renew a unit member's employment and that the Board of Directors has final authority to file tenure charges against tenured unit members. Academic specialists are involved in discharge matters only to the extent that a dean of a particular discipline considers his or her reported facts and recommendations in an evaluation. See Cavise Certification, ¶¶47-49. The College also acknowledges that academic specialists do not independently recommend disciplinary action. They are involved in discipline only to the extent that a dean of a particular discipline may review facts and recommendations they provide in an evaluation of a unit employee. They may be called upon to testify against a charged employee only when he/she witnesses an incident. See Cavise Certification, ¶¶28, 48, 50.

I also find that the College has not shown that academic specialists' role in evaluating unit employees is closely connected to unit personnel actions, or that the historical relationship between academic specialists and unit members

reveals compromised interests or rights. See Westfield Bd. of Ed.; State of New Jersey (Montclair State University); Trenton Comm. Charter School; Monmouth Cty. Sheriff's Office. The College acknowledges that evaluations conducted by academic specialists are provided to the dean of a particular discipline for consideration in making personnel decisions related to hiring, retention, promotion, non-renewal, post-tenure review, and disciplinary action. Although College representative Cavise certifies that academic specialists are responsible for observations and evaluations, the College has not provided any document or specific example of evaluations of unit members. See Cavise Certification, ¶¶24, 28, 31-32, Ex. F (n.b., blank evaluation forms). The record similarly omits any document or specific example showing that the professional relationship between academic specialists and unit members is compromised or conflicted by their respective duties.

Accordingly, I find that academic specialists are not supervisors within the meaning of the Act and have no actual or potential substantial conflict with unit members.

Community of Interest/Recognition Clause Discussion

The Commission has a "preference for broad-based units and reluctance to form units along occupational or departmental lines [that] is well established." Gloucester Cty., P.E.R.C. No. 2011-69, 37 NJPER 141 (¶42 2011) (citing State v. Prof'l Ass'n of N.J.

Dep't of Educ., 64 N.J. 231 (1974)). In Somerset Cty., D.R. No. 2014-14, 40 NJPER 527 (¶172 2014), the Director of Representation wrote:

The Act mandates that the Commission define the negotiations unit "with due regard for the community of interest among the employees concerned." N.J.S.A. 34:13A-5.3. To determine whether the requisite community of interest exists in a proposed unit, the Commission examines a number of factors, such as common employer, shared goals, common supervision, location of employment, job duties, and similarity in wages, hours and terms and conditions of employment. See State of New Jersey (State College Locals), D.R. No. 97-5, 24 NJPER 295, 297 (¶29141 1996); West Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218, 219 (¶56 1971). '[T]he importance of any one factor in a particular case depends upon how it interrelates with other factors.' Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272, 273 (¶15134 1984).

Several other considerations are also relevant with respect to unit determinations. The New Jersey Supreme Court has affirmed the Commission's policy favoring broad-based negotiations units over units structured along departmental or occupational lines. State v. Prof'l Ass'n of N.J. Dep't of Educ., 64 N.J. 231 (1974). The Commission has explained that broad-based units streamline negotiations by reducing the potential for such problems as 'competing demands, whipsawing, and continuous negotiations . . .' that could result from negotiations with numerous smaller units. Id. at 241 (quoting State of New Jersey (Prof'l Ass'n), P.E.R.C. No. 68, NJPER Supp. 273 (¶68 1972)). The Commission also examines whether a proposed unit would lead to undue unit fragmentation or proliferation. Id. See also New Jersey State Coll. of Medicine & Dentistry, D.R. No. 77-17, 3 NJPER 178

(1977); Teaneck Tp., P.E.R.C. No. 88-20, 13 NJPER 721 (P18270 1987). Additionally, the Commission considers the history of the negotiations units, the extent of organization of the petitioned-for titles, the desires of the parties and the Act's purpose. See Passaic Cty., P.E.R.C. No. 87-123, 13 NJPER 298 (¶18125 1987) recon. den. P.E.R.C. No. 87-141, 13 NJPER 483 (¶18179 1987); State of New Jersey (Human Services), D.R. No. 95-1, 20 NJPER 308 (¶25154 1994); Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12228 1981). Lastly, the Commission must balance the need to find the most appropriate unit with the public employees' right to obtain representation. Univ. of Medicine and Dentistry of N.J., P.E.R.C. No. 84-28, 9 NJPER 598, 600 (¶14253 1983); Bergen Cty. (Physicians and Dentists), D.R. No. 87-3, 12 NJPER 619, 620 (¶17234 1986).

Accord Newark State Operated School Dist., D.R. No. 2018-12, 44 NJPER 195 (¶57 2017), adopted P.E.R.C. No. 2018-39, 44 NJPER 383 (¶108 2018).

The Commission has found "that a community of interest exists among virtually all non-supervisory employees in an educational setting." Trenton Bd. of Ed., D.R. No. 2012-4, 38 NJPER 372 (¶126 2012) (citing West Milford Bd. of Ed., P.E.R.C. No. 56, NJPER Supp. 218 (1971); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 84-124, 10 NJPER 272 (¶15134 1984)). "[C]laims that a community of interest could not be demonstrated among employee groups because some groups could not attain tenure . . . or were involved in programs supported exclusively by federal funds" have been "discounted." Union Cty. Reg. H.S. Dist. #1, D.R. No. 83-

22, 9 NJPER 228 (¶14106 1983) (citing Hamilton Tp. Bd. of Ed., D.R. No. 80-23, 6 NJPER 299 (¶11051 1980); Mine Hill Tp., D.R. No. 79-4, 4 NJPER 294 (¶4148 1978), aff'd P.E.R.C. No. 78-8, 4 NJPER 416 (¶4186 1978)).

"[A] community of interest has been found to exist among those professional educational personnel who instruct pupils that comprise the normal student body, whether these personnel are considered 'regular' teachers or are employed in special programs." Union Cty. Reg. H.S. Dist. #1. Moreover, "[t]he Commission's determinations of community of interest among professional educational personnel have extended . . . to noninstructional professional Board employees who perform services related to the educational mission of a [b]oard of [e]ducation." Id.; see also Newark Bd. of Ed., D.R. No. 80-1, 5 NJPER 314 (¶10170 1979) (holding that "under its policy favoring broad-based units in school districts," the Commission has found "that a community of interest exists between regular classroom teachers and other professional and nonprofessional employees who, by performing functions which are auxiliary to the basic function of classroom teaching, are an integral aspect of the total educational service provided by the [b]oard").

I find that the requisite community of interest exists among unit members and academic specialists. See Somerset Cty.; Newark Bd. of Ed. Specifically, unit members and academic specialists

have a common employer (i.e., the College); shared goals (i.e., ensuring the total educational service provided by the College); common supervision (i.e., the Dean of a particular discipline who reports to the Vice President of Academic Affairs); shared location of employment (i.e., College campuses, although unit members may spend less time on-campus than academic specialists; unit members and academic specialists also share office space); similar/related job duties (i.e., classroom instruction and performing functions that are auxiliary to the fundamental purpose of classroom instruction); similar wages (e.g., the minimum starting salary for an assistant professor is \$66,884 and the minimum starting salary for a full professor is \$93,219; academic specialists have been hired at annual salaries between \$65,000 and \$85,000); and similar hours and terms and conditions of employment (i.e., full-time employment, although some unit members are 10-month employees and other unit members and academic specialists are 12-month employees). See Cavise Certification, ¶¶2-4, 14, Exhs. A-D; Nicoli Certification, ¶¶4-6, 8; Gilbert Certification, ¶¶4-6, 21-23, 26, 31-34; Healey Certification, ¶¶2-5, 7, 13-17, 20, 22-24; Cuttita Certification, ¶¶9-11; McConnell Certification, ¶¶2, 6-7, 11, 13-14, 17-20, 23; Belmonte Certification, ¶¶23-26, 37, 40-44, 48-49, 51.

The history of the negotiations unit supports the finding of a community of interest. See Somerset Cty.; Passaic Cty. Before

2015, instructional staff unit members performed many/all of the same duties currently assigned to academic specialists. Specifically, unit members were assigned some administrative duties and served as Department Chairs and Coordinators in exchange for additional compensation including reduction in course load, release time, or overload pay. See Gilbert Certification, ¶¶1-35; Cuttita Certification, ¶¶1-11, Exhs. A-B; McConnell Certification, ¶¶1-33, Exhs. A-H; Nicoli Certification, ¶¶1-9, Ex. A; Belmonte Certification, ¶¶1-51, Exhs. L-N; Healey Certification, ¶¶1-24; Cavise Certification, ¶¶4, Ex. D; 1984-1987 CNA, Art. XX, XXI, XXIX; 2003-2006 CNA, Art. XX, XXI, XXIX; 2012-2015 CNA, Art. XX, XXI, XXIX.

Also, the unit description in our Certification of Representative, as well as the recognition provision in the parties' expired CNA, does not prohibit an accretion of academic specialists into the existing unit. See Trenton Bd. of Ed.; Union Cty. Reg. H.S. Dist. #1. Since 1984, the negotiations unit has included "all full-time instructional and professional library staff employed by [the] College" (Dkt. Nos. RO-2015-015 and RO-83-116; 1984-1987 CNA, Art. II.A; 2003-2006 CNA, Art. II.A; 2012-2015 CNA, Art. II.A). The parties have also agreed that the terms of their CNA would "apply in full force and effect to any and all accretions of the unit and specifically to all full-time instructional and professional library staff who

perform duties which are the same as or are similar to the duties performed by full-time instructional and professional library staff [currently] employed by the Board" (emphasis added). See 1984-1987 CNA, Art. II.B; 2003-2006 CNA, Art. II.B; 2012-2015 CNA, Art. II.B. Clarifying the existing unit to include academic specialists conforms with the Commission's "preference for broad-based units" Gloucester Cty.

The College's assertion that academic specialists are excluded from the existing unit because they teach less than 14 credit hours is inconsistent with the duties, and corresponding reduced course load, assigned to unit members until recently. Before 2015, instructional staff unit members who performed administrative duties and/or served as Department Chairs or Coordinators received a reduced course load (e.g., Department Chairs typically taught 9 credit hours; Chairperson of the Faculty and other committees chairs typically taught 12 credit hours; unit members who performed administrative duties received a proportional reduction in credit hours up to a maximum reduction of 12 credit hours; unit members responsible for developing new curricula, new options of existing curricula, new courses, laboratory exercises or similar activities received a proportional reduction in credit hours) or other additional compensation. Since 2015, academic specialists - in addition to typically teaching 9 credit hours - have performed many/all of

the same administrative, Department Chair, and Coordinator duties that were previously assigned to instructional staff unit members. Acknowledging differences between the duties presently performed by unit instructional staff and academic specialists, I find that the community of interest factors set forth above (i.e., common employer, shared goals, common supervision, shared location of employment, similar/related job duties, similar wages, and similar hours and terms and conditions of employment) together with the history of the negotiations unit shows that the unit description accommodates full-time employees that perform administrative duties in addition to classroom instruction, e.g., academic specialists. See Burlington Cty. Coll., D.R. No. 2004-6, 29 NJPER 426 (¶145 2003) (clarifying the academic advisor job title into an existing unit where the recognition clause at issue defined the unit as "all full-time teaching faculty, student counselors and librarians"); contrast Newark State-Operated School Dist., D.R. No. 2016-9, 43 NJPER 19 (¶6 2016), adopted P.E.R.C. No. 2017-16, 43 NJPER 115 (¶34 2016) (holding that the "community of interest . . . prong of the clarification analysis" cannot be reached where the "parties' narrowly-defined recognition clause[] circumscribe[s] any broad-based interpretation that could encompass the subject job titles").

Finally, the Workplace Democracy Enhancement Act (WDEA), N.J.S.A. 34:13A-5.11 et seq., provides additional support for

clarifying the existing unit to include academic specialists. Under the WDEA, employees who "perform negotiations unit work shall be included in the negotiations unit represented by the exclusive representative employee organization." N.J.S.A. 34:13A-5.15.^{10/} Instructional staff unit members provide up to 15 hours of classroom instruction per week; academic specialists provide up to 9 hours of classroom instruction per week. See Cavise Certification, ¶¶2, 4, 25. These facts compel a finding that academic specialists should be included in the full time instructional and professional library staff unit.

^{10/} N.J.S.A. 34:13A-5.15, entitled "Inclusion in negotiations unit," provides in pertinent part:

- a. All regular full-time and part-time employees of the public employer who perform negotiations unit work shall be included in the negotiations unit represented by the exclusive representative employee organization.

ORDER

I clarify the Union County College Chapter of the American Association of University Professors' unit of full-time instructional and professional library staff to include the job title, academic specialist, effective immediately.^{11/12/}

/s/Jonathan Roth
Jonathan Roth
Director of Representation

DATED: December 10, 2018
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by December 20, 2018.

11/ This petition was filed pursuant to the parties' agreement preserving AAUP's right to seek clarification regarding the academic specialist job title. See Clearview Reg. Bd. of Ed., 3 NJPER at 252 (1977) ("[I]n all cases where the clarification of unit question is raised before the Commission prior to the executive of the parties' most recent contract, or where the dispute is reserved and referred to the Commission in the parties' negotiations agreement or other joint written agreement, the clarification of unit determination shall be effective immediately").

12/ "Inclusion in the unit does not mean that [academic specialists] [are] automatically covered by all of the terms of the parties' existing agreement. Rather, the title's inclusion in the unit requires the parties to negotiate over matters of salary and other terms and conditions of employment." West Essex Reg. Bd. of Ed., D.R. No. 99-13, 25 NJPER 196, 199 (¶30091 1999); Sussex Cty., D.R. No. 92-25, 18 NJPER 212 (¶23095 1992).