

H.E. NO. 2024-3

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

In the Matter of

COUNTY COLLEGE OF MORRIS,

Respondent/Charging Party,

-and-

Docket Nos. CO-2021-228
CE-2021-011

FACULTY ASSOCIATION OF
COUNTY COLLEGE OF MORRIS,

Charging Party/Respondent.

SYNOPSIS

The Hearing Examiner finds that County College of Morris (CCM) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the Act), based on an unfair practice charge filed by Faculty Association of County College of Morris (Association). Specifically, the Hearing Examiner finds that CCM violated sections 5.4a (1) and (3) of the Act when CCM retaliated against six Association officers and members by not reappointing them to their faculty positions as assistant professors for the 2021-2022 academic year in retaliation for protected union activity.

The Hearing Examiner also finds that the Association did not violate section 5.4b(2) of the Act, based on an unfair practice charge filed by CCM, when the Association engaged in various activities, including social media posts, criticizing CCM's President, as those actions and social media postings constitute protected activity under the Act.

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

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Appearances:

For the Respondent,
DiFrancesco Bateman Kuzman Davis Lehrer and Flaum,
P.C., attorneys
(Richard P. Flaum, of counsel)
Bressler Amery & Ross, attorneys
(Jed L. Marcus, On the Brief)

For the Charging Party,
Oxfeld Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On April 23, 2021, June 23, 2021, and September 20, 2021,
the Faculty Association of the County College of Morris
(Association) filed an unfair practice charge, an amended charge,
and a second amended charge, respectively, against the County
College of Morris (CCM) (Docket No. CO-2021-228). The second
amended charge alleges that CCM violated the New Jersey Employer-
Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq.,

specifically 5.4a(1) and (3),^{1/} when, CCM allegedly sent six non-tenured faculty members, including the Association's president, grievance chair, communications chair, and three other active Association members, notices that they would not be reappointed to their faculty positions for the 2021-2022 academic year in retaliation for protected union activity. The Association alleges that the reasons proffered by CCM for the six non-reappointments -- budgetary issues and the ratio of tenured to non-tenured faculty members -- are pretextual. The Association also alleges that CCM further demonstrated anti-union animus when CCM President Anthony J. Iacono (Iacono) contacted the local police department and accused the Association's communications chair of vandalism at Iacono's personal residence, and identified four of the other non-reappointed Association officers/members as persons of interest, prompting the police to contact each of these Association members for questioning.

On May 24, 2021, CCM filed an unfair practice charge against the Association (Docket No. CE-2021-011). The charge alleges that the Association violated the Act, specifically 5.4b(2) and

^{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 "(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

(3),^{2/} when the Association allegedly sent Iacono a threatening email after the non-renewal of the non-tenured faculty members; trespassed on Iacono's property and damaged certain personal property; posted lies about Iacono on social media in an attempt to get him fired from his position as CCM president; requested to follow Iacono's wife and children on Instagram and Twitter; and used CCM's Blackboard internet platform to contact CCM students and spread lies about Iacono.^{3/}

On December 22, 2021, a Complaint and Notice of Hearing was issued on Docket No. CO-2021-228, and on Docket No. CE-2021-011

2/ These provisions prohibit employee organizations, their representatives or agents from: "(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances;" and "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

3/ CCM also filed an application for interim relief with its charge in Docket No. CE-2021-011 on May 24, 2021 (C-2). In its application, CCM sought temporary restraints against the Association, which were granted in an Order to Show Cause dated May 26, 2021, and which temporarily restrained the Association from initiating or having any contact with Iacono's family members, whether face to face, virtually, or through any social media platforms, and which restrained the Association from using CCM's email system and Blackboard internet platform to communicate or solicit student support regarding the parties' labor dispute. In a decision dated June 30, 2021, a Commission designee dissolved the temporary restraints and denied the application for interim relief (C-7).

on the b(2) allegation only (C-6).^{4/} On December 22, 2021, an Order of Consolidation of the two matters was also issued (C-5). On September 23, 2021, CCM filed an Answer denying that it violated the Act in any way (C-3). On January 24, 2022, the Association filed an Answer also denying that it violated the Act in any way (C-4). A hearing was held in these consolidated matters on January 25 and 27, 2022, February 1, 2, 4, 9, 16, and 17, 2022, and March 1 and 11, 2022.^{5/6/} The parties submitted a Stipulation of Facts on March 1, 2022 (C-8), and a second Stipulation of Facts on March 8, 2022 (C-9). The parties submitted post-hearing briefs by July 15, 2022.

Based upon the record, I find the following facts:

FINDINGS OF FACT

1. CCM is a public employer within the meaning of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1, et seq., and the rules and regulations of the Public Employment Relations Commission (Commission) promulgated in accordance therewith. (1T13-1 to -8).

4/ Commission exhibits are marked "C-", while Joint, Charging Party and Respondent exhibits are marked "J-", "CP-", and "R-", respectively.

5/ The hearing was held virtually via Zoom due to the COVID-19 pandemic, which was ongoing at the time.

6/ "T" represents the transcript, preceded by a "1", "2", "3", "4", "5", "6", "7", "8", "9", or "10" signifying the corresponding day of hearing, followed by the page and line number(s).

2. The Association is a public employee organization within the meaning of the Act and the rules and regulations of the Commission promulgated in accordance therewith. (Id.)

3. CCM and the Association are parties to a collective negotiations agreement (CNA) effective from September 3, 2019 through September 2, 2022 (J-45).

Administration and Faculty Members

4. Iacono is the President of CCM and was hired in September 2016. (4T61-18 to -23). At all times relevant to this matter, Iacono did not attend any negotiations sessions or process any grievances involving the Association. (1T65-12 to -23; 1T66-4 to -13; 7T90-20 to 7T91-1; 7T92-18 to 7T93-5; 7T110-1 to -5).

5. Dr. John Marlin (Marlin) is the Vice President of Academic Affairs at CCM and was hired in July 2019. (6T10-19 to 6T11-2). As the Vice President of Academic Affairs, Marlin oversees the School of Liberal Arts; the Learning Resource Center; the Educational Opportunity Fund Program; the Tutoring Center; the Center for Teaching and Learning; and the Virtual Campus. (6T11-6 to -15). In his role, Marlin reports to Iacono. (6T11-3 to -5).

6. Patrick Enright (Enright) is the Vice President of Professional Studies and Applied Sciences at CCM, a position he has held since 2019. (7T167-17 to -22; 7T169-11 to -13). In his

role, Enright reports directly to Iacono and oversees the following areas: the School of Business, Mathematics, Engineering and Technologies; the School of Health Professions and Natural Sciences; and the Center for Workforce Development. (7T167-23 to - 7T168-4; 7T169-14 to -16). Prior to his promotion to Vice President of Professional Studies and Applied Sciences, Enright served as CCM's Dean for Business, Mathematics, Engineering and Technologies from 2006 until 2019. (7T168-25 to 7T-169-10).

6. Vivyen Ray (Ray) is the Vice President of Human Resources at CCM and was hired in January 2020. (7T168-25 to 7T169-10). As part of her duties, Ray is responsible for managing CCM's collective negotiations agreements and serving as CCM's representative at the first step of grievances. (7T10-3 to -7). In her role, Ray reports to Iacono. (7T9-6 to -8).

7. Nieves Gruneiro-Roadcap (Gruneiro-Roadcap) has been employed by CCM for 21 years and has served as the Dean of Liberal Arts since May 2021. (5T10-4 to -18). As Dean of Liberal Arts, Gruneiro-Roadcap is responsible for curriculum management and reports to Marlin. (5T10-25 to 5T11-8). Before becoming Dean, Gruneiro-Roadcap served as a Professor Program Administrator, and as the Chair of the Art and Design Department. (5T10-19 to -24).

8. Dr. Margaret Ball (Ball) is the former Dean of Liberal Arts at CCM and was succeeded in that position by Gruneiro-

Roadcap. (5T64-7 to -9). Ball reported to Marlin in her role as the Dean of Liberal Arts. (4T182-11 to -12).

9. Dr. Janet Eber (Eber) is a former professor at CCM who retired in 2022. (4T10-4 to -10). Eber was initially hired by CCM as an instructional assistant in September 1969. (4T9-19 to 4T10-3). Eber served as the Assistant Chair of the English and Philosophy Department from 1981 to 1987 and as the Department Chair from 1988 to 2022. (4T10-8 to -10; 4T11-16 to -20). As the Chair, Eber was responsible for developing a master schedule and recommending faculty for hire, reappointment, tenure, and promotion. (4T12-12 to -19). In her role as Chair of the English and Philosophy Department, Eber reported to the Dean of Liberal Arts. (4T182-3 to -10).

10. Dr. James Capozzi (Capozzi) is a former member of the Association and a former assistant professor at CCM who was employed in the English and Philosophy Department. (1T60-4 to -7; J-13; R-102). Capozzi started at CCM during the fall 2016 semester as an adjunct professor and became a full-time professor in January 2017. (1T59-18 to 1T60-3). Capozzi also served as the Association President from 2019 until June 30, 2021. (1T65-6 to -9; R-102). CCM had knowledge of Capozzi's role as Association President and his union activities through various communications with CCM's leadership. (J-52 to J-57). Capozzi was not eligible to receive tenure until January 2022. (R-13).

Capozzi's Faculty Evaluation Reports from 2018 through 2021 rated him as "Excellent" in the each of the four categories: (1) Teaching Effectiveness; (2) College/Department Service; (3) Professional Growth; and (4) Scholarly Achievement. (CP-27).

11. Dr. Geoff Peck (Peck) is a former member of the Association and a former assistant professor at CCM who was employed in the English and Philosophy Department. (4T126-11 to -14; J-17; R-102). Peck commenced his employment with CCM in August 2017 as a full-time professor. (4T126-8 to -18). Peck also served as the Chair of the Association's Grievance Committee from February 4, 2020 to June 30, 2021. (1T71-12 to -15; 4T126-19 to -23; R-102). CCM had knowledge of Peck's role as Grievance Chair and his union activities through email correspondence between the parties and as a result of Peck's self-evaluation, which Marlin read when considering Peck for reappointment. (CP-4; CP-14; 6T168-16 to -25). Peck was not eligible to receive tenure until September 2022. (R-13). From 2018 through 2021, Peck received the following ratings on his Faculty Evaluation Reports:

- a. 2018 - rated "Excellent" in the Teaching Effectiveness category and rated "Good" in the College/Department Service, Professional Growth, and Scholarly Achievement categories.
- b. 2019 - rated "Excellent" in each of the four categories.
- c. 2020 - rated "Excellent" in the Teaching Effectiveness, College/Department Service, and Professional Growth categories, and "Good" in the Scholarly Achievement category.

d. 2021 - rated "Excellent" in each of the four categories. (CP-30).

12. Dr. Robb Lauzon (Lauzon) is a former member of the Association and a former assistant professor at CCM who was employed in the Communication Department. (4T149-8 to -10; J-15; R-102). Lauzon commenced his employment with CCM in August 2018 as a tenure-track faculty member. (4T143-6 to -9). Lauzon also served as the Chair of the Association's Communications Committee from January 2020 to June 30, 2021. (1T71-7 to -11; 4T143-17 to -21; R-102). CCM had knowledge of Lauzon's role as Communications Chair and his union activities through his email exchanges with CCM's Counseling and Student Success Department, in which Lauzon identified himself as the Chair. (CP-16). Lauzon was not eligible to receive tenure until September 2023. (R-13). Lauzon's Faculty Evaluation Reports from 2019 through 2021 rated him as "Excellent" in the each of the four categories: (1) Teaching Effectiveness; (2) College/Department Service; (3) Professional Growth; and (4) Scholarly Achievement. (CP-29).

13. Anastasia Kilhaney (Kilhaney) is a former member of the Association and a former assistant professor at CCM who was employed in the Biology and Chemistry Department. (1T71-4 to -5; J-14; R-102). CCM had knowledge of Kilhaney's union activities when she brought union representation to a meeting with CCM's administration on February 11, 2020. (R-102). Kilhaney was not eligible to receive tenure until September 2023. (R-13; 8T28-23

to -25). From 2019 through 2021, Kilhaney received the following ratings on her Faculty Evaluation Reports:

- a. 2019 - rated "Satisfactory" in the College/Department Service, Professional Growth, and Scholarly Achievement Categories, and "Unsatisfactory" in the Teaching Effectiveness category.
- b. 2020 - rated "Good" in the College/Department Service category, "Satisfactory" in the Professional Growth and Scholarly Achievement categories, and "Unsatisfactory" in the Teaching Effectiveness category.
- c. 2021 - rated "Good" in the Teaching Effectiveness, College/Department Service, and Professional Growth categories, and "Satisfactory" in the Scholarly Achievement category. (CP-33).

14. Lauren Lesce (Lesce) is a former member of the Association and a former instructor at CCM who was employed in the Languages and ESL Department. (1T71-3 to -4; J-16; R-102). Lesce was not eligible to receive tenure until September 2024. (R-13). Lesce's Faculty Evaluation Reports from 2020 through 2021 rated her as "Excellent" in the each of the four categories: (1) Teaching Effectiveness; (2) College/Department Service; (3) Professional Growth; and (4) Scholarly Achievement. (CP-32).

15. Mark Schmidt (Schmidt) is a former member of the Association and a former assistant professor at CCM who was employed in the English and Philosophy Department (1T70-18 to -20; J-18; R-102). CCM had knowledge of Schmidt's union activities through his attendance at the October 2019 and November 2019 Board of Trustees meetings, where Schmidt wore union attire and sat in the front row holding Association signs.

(R-102). Schmidt was not eligible to receive tenure until January 2022. (R-13). From 2018 through 2021, Schmidt received the following ratings on his Faculty Evaluation Reports:

- a. 2018 - rated "Excellent" in the Teaching Effectiveness category, and "Good" in the College/Department Service, Professional Growth, and Scholarly Achievement categories.
- b. 2019 - rated "Excellent" in the Teaching Effectiveness and College/Department Service categories, and "Good" in the Professional Growth and Scholarly Achievement categories.
- c. 2020 - rated "Excellent" in the Teaching Effectiveness and College/Department Service categories, and "Good" in the Professional Growth and Scholarly Achievement categories.
- d. 2021 - rated "Excellent" in each of the four categories. (CP-31).

16. Laura Driver (Driver) is employed by CCM as a tenured assistant professor in the English and Philosophy Department and is also a member of the Association. (2T48-5 to -7; 4T170-7 to -9; R-102). Driver was hired as an adjunct professor in August 2013 and became a full-time professor in September 2016. (4T169-24 to 4T170-6). Driver currently serves as the Assistant Chair of the English and Philosophy Department, a position to which she was appointed by Marlin and Iacono. (4T170-10 to -18). From 2018 through 2021, Driver received the following ratings on her Faculty Evaluation Reports:

- a. 2018 - rated "Excellent" in the Teaching Effectiveness, College/Department Service, and Professional Growth categories, and "Good" in the Scholarly Achievement category.
- b. 2019 - rated "Excellent" in the Teaching Effectiveness, College/Department Service, and Professional Growth categories, and "Good" in the

Scholarly Achievement category.
c. 2020 - rated "Excellent" in the Teaching Effectiveness, College/Department Service, and Professional Growth categories, and "Good" in the Scholarly Achievement category.
d. 2021 - rated "Excellent" in each of the four categories. (4T188-23 to 4T189-3; R-103; R-104).

17. Ian Colquhoun (Colquhoun) is employed by CCM as a tenured associate professor in the Engineering Science Department. (3T9-5 to -7; 3T48-20 to -22; 3T128-17 to -23). Colquhoun commenced his employment with CCM in 2004 and has been a member of the faculty since 2011. (3T23-18 to -22). In addition, Colquhoun has served as both the Vice President and interim President of the Association. (3T24-2 to -8).

18. Michelle Altieri (Altieri) is employed by CCM as a tenured associate professor in the Communication Department and is also a member of the Association. (2T45-17 to 2T46-6; R-18). Altieri also serves as the Chair of the Association's Pride Committee, a committee responsible for promoting the Association through outreach measures. (3T128-24 to 3T129-3; 3T136-2 to -20).

19. Jason Hudzik (Hudzik) is employed by CCM as a tenured faculty member and previously served as the Treasurer of the Association. (1T95-6 to -7; 1T119-20 to -23).

20. Dymphna "Dee" McAree (McAree) is employed by CCM as a tenured associate professor in the English and Philosophy Department (1T95-3 to -5; 3T181-21 to -23). McAree was hired as

an adjunct professor in 2009 and became a full-time assistant professor in 2012. (3T181-16 to -20). McAree also serves as the Secretary of the Association. (2T20-19 to -25).

Enrollment and Curriculum

21. The total enrollment at CCM for the fall and spring semesters of the 2017 academic year through the 2021 academic year was as follows:

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
<u>Fall</u>	8067	7949	7556	7491	6697
<u>Spring</u>	7329	7249	6989	6718	5776

(J-49; J-50).

22. The total credit hours taught per department for the 2018 through 2020 academic years were as follows:

	<u>2018 Credit Hours</u>	<u>2019 Credit Hours</u>	<u>2020 Credit Hours</u>	<u>3-Year Change</u>
School of Health Professions & Natural Sciences	28670	27412	26727	-7%
Allied Health	2131	2309	2560	20%
Biology & Chemistry	16404	15299	14380	-12%
Health & Exercise Science	3998	3628	3741	-6%
Landscape & Horticultural Tech.	943	865	760	-19%
Nursing	5194	5311	5286	2%
School of Liberal Arts	76712	71019.5	68108	-11%
Anthro. Sociology & Economics	10374	9702	9078	-12%
Art & Design	8350	7546	7527	-10%
Communication	4920	4881	4761	-3%
English & Philosophy	21410	19384.5	18266	-15%
History & Political	10824	9966	9000	-17%

Science				
Languages & ESL	8449	7876	7078	-16%
Music, Performing Arts & Music Tech.	3083	2797	3178	3%
Psychology & Education	9302	8867	9220	-1%
School of Professional Studies & Applied Science	55685	54701	53706	-4%
Business	11818	11613	11985	1%
Engineering Science/Tech.	11203	10895	10918	-3%
Hospitality Mgmt. & Culinary Arts	1599	1643	1627	2%
Information Technology	9507	9985	9803	3%
Mathematics	21558	20565	19373	-10%
Grand Total	161067	153132.5	148541	-8%

(R-3).

23. CCM sets a maximum student enrollment capacity for each individual section of a course. (6T84-3 to -8). CCM takes into account factors such as the classroom size, availability of equipment, and accreditation requirements when determining course capacity levels. (6T84-14 to 6T85-6). Once the maximum course capacity is reached for any given course, any additional students trying to register for the course are placed on a waiting list. (6T110-3 to -12).

24. CCM uses a metric referred to as the fifty percent rule to determine whether a class should run or be cancelled. (6T85-7 to -18). The fifty percent rule looks at whether the number of students enrolled in a course is greater or less than fifty

percent of the course capacity, and the metric is used to determine if there is a viable class size. (6T85-19 to -25). The metric is not a strict rule and certain course sections will run at less than fifty percent capacity. (6T86-1 to -5).

25. The English Department at CCM is a service department that provides courses to fulfill college degree requirements, but there is no degree program or major in English at CCM. (6T31-20 to -22; 6T32-1 to -10).

26. ENG 111 (English Composition I) and ENG 112 (English Composition II) are courses required by the State of New Jersey for graduation. (5T18-21 to 5T19-4). In the summer of 2020, CCM lowered the course capacity from 22 to 15 in English Composition I and from 25 to 20 in English Composition II, in an effort to improve the student success rate. (6T88-10 to -24; 6T89-23 to 6T90-1; R-105). The student success rate is based on the number of students earning a grade of "C" or better. (5T101-3 to -9). The student success rate declined after the course capacities were lowered, and the prior course capacities were reinstated for the fall 2021 semester. (6T92-14 to 6T93-14). During the fall 2021 semester, the student success rates increased. (6T93-14 to -17).

27. ENG 022 (Writing Skills) and ENG 025 (Developmental Writing) are developmental/skill building courses that are required to be taken by some students before they are permitted

to enroll in English Composition I. (5T18-4 to -14; 6T115-3 to -18).

Faculty and Staffing

28. CCM Policy 3.4011.1 provides that full-time tenured faculty generally cannot represent more than 90% of the total full-time faculty and/or more than 70% of the full-time faculty equivalent. (J-3). The full-time equivalent (FTE) is calculated by dividing the total number of adjunct faculty by three and then adding all of the full-time faculty to that amount. (3T63-2 to -11; J-46). In addition, Policy 3.4011.1 states that at least 60% of all credit hours taught college-wide, but not more than 70% of the total credit hours taught in a particular discipline, must be taught by tenured faculty members. (J-3). The Policy also states that “[t]enure appointment recommendations will take into consideration the percentage of faculty who may be tenured and the percentage of credit hours taught by tenured faculty.” (Id.)

29. During the fall 2020 semester, CCM employed 107 full-time tenured faculty members, which accounted for 72.78% of the 147 full-time faculty members and 42.46% of the 252 FTE faculty members. (J-1). During this semester, full-time faculty taught 40.89% of the total credit hours college-wide. (Id.)

30. During the fall 2020 semester, the percentage of credit hours taught by tenured faculty and non-tenured/adjunct faculty

in the subjects of Biology, Chemistry, Communication, English, and English as a Second Language was as follows:

<u>Subject</u>	<u>Percentage of Credit Hours Taught by Tenured Faculty</u>	<u>Percentage of Credit Hours Taught by Non-Tenured & Adjunct Faculty</u>
Biology	34.22%	65.78%
Chemistry	59.37%	40.63%
Communication	53.29%	46.71%
English	35.18%	64.82%
English as a Second Language	57.40%	42.60%

(J-1).

31. During the spring 2021 semester, the number of full-time faculty by department was as follows:

<u>Department</u>	<u>Full-Time Faculty</u>	<u>Tenured</u>	<u>Non-Tenured</u>	<u>Tenured Percentage</u>
Art & Design	8	7	1	87.5%
Communication	6	5	1	83.3%
English	21	14	7	66.6%
Philosophy	2	2	0	100%
Languages & ESL	8	6	2	75%
History	7	6	1	85.7%
Psychology	7	5	2	71.4%
Sociology	7	5	2	71.4%

Biology & Chemistry	17	11	6	64.7%
Mathematics	14	9	5	64.2%
Health & Exercise Science	4	3	1	75%
Nursing	14	8	6	57.1%
Allied Health	5	4	1	80%
LHT	2	2	0	100%
Music	5	5	0	100%
Dance	1	1	0	100%
Engineering	9	4	5	44.4%
Business	7.5	3	4.5	66.6%
Information Technology	9	5	4	55.5%
Hospitality Mgmt & Culinary Arts	1.5	1	0.5	66.6%
Total	155	106	49	68.3%

(J-48).

32. Between March 2021 and December 2021, the number of authorized and budgeted full-time faculty positions, staffed full-time faculty positions, and staffed adjunct faculty positions at CCM was as follows:

<u>Date</u>	<u>Authorized & Budgeted Full-Time Faculty Positions</u>	<u>Staffed Full-Time Faculty Positions</u>	<u>Staffed Adjunct Faculty Positions</u>
March 2021	138	127	290

April 2021	138	127	290
May 2021	138	127	290
June 2021	138	126	290
July 2021	138	112	290
August 2021 (no data provided)	—	—	—
September 2021	138	111	290
October 2021	138	113	299
November 2021	138	113	301
December 2021	138	113	301

(R-16).

33. During the 2021 academic year, the ratio of credit hours to full-time faculty (credit hour ratio) was as follows:

a. According to data from the CCM fact book, which captures enrollment on the tenth day of each semester:

<u>Department</u>	<u>Ratio</u>
Landscape & Horticulture	303.50
Nursing	361.14
Allied Health	464.00
Music	490.67
English - Philosophy	714.04
Communication	766.50
Languages	803.00
Art & Design	813.88
Health Exercise Science	829.25
Hospitality	942.67
Bio - Chem	999.47
Engineering Science	1001.44
Information Technology	1168.22
History	1181.14
Psychology	1242.00
Sociology & Human Services	1294.71
Math	1421.71
Business	1648.53

(6T70-25 to 6T71-20; CP-8).

b. According to data from CCM's ENST reports, which captures total enrollment data beyond the tenth day of each semester:

<u>Department</u>	<u>Ratio</u>
Landscape & Horticulture	300.00
Nursing	348.14
Allied Health	504.40
Music	591.80
English - Philosophy	669.17
Communication	706.50
Languages	768.00
Art & Design	792.75
Health Exercise Science	784.25
Hospitality	910.00
Bio - Chem	786.24
Engineering Science	1004.56
Information Technology	1099.22
History	1187.14
Psychology	1167.43
Sociology & Human Services	1268.57
Math	1305.79
Business	1376.53

(7T199-9 to -15; 7T200-10 to 7T201-6; R-111; R-112; J-48).

34. All full-time faculty are expected to teach fifteen credit hours per semester, or thirty credit hours per year.

(6T34-15 to -17; J-45).

35. Full-time faculty members must be employed with CCM for five full years plus one day in order to receive tenure.

(6T166-21 to 6T167-2).

36. Adjunct faculty are employed on an as-needed basis and have no reasonable expectation of re-employment from one semester to the next. (5T81-2 to -11). CCM has continuous job postings for adjunct faculty, and the college keeps the resumes of each applicant on file until new adjunct positions become

available. (7T36-1 to 7T37-8; CP-19). The number of adjunct faculty fluctuates based on departmental needs. (3T253-5 to -11).

37. English Department staffing is dependent on CCM's total enrollment because English is a service program and does not have its own degree program or major. (4T28-4 to 4T29:13).

38. Non-tenured faculty are required to be evaluated periodically by the Department Chair and the School Dean. (4T14-13 to -25). As part of the evaluation process, the non-tenured faculty members are required to prepare self-evaluations, which are due by February 1 of each year. (4T14-25 to 4T15-1; 4T174-14 to -19). The evaluation process also contains an evaluation conference, and it is the Chair's role to recommend reappointment or tenure to the School Dean. (4T15-14 to -16). The School Dean will then make a recommendation to the Vice President, and the Vice President will then make a recommendation to the President. (8T6-7 to -13). There is no evidence of Iacono ever disagreeing with a Vice President's recommendation for reappointment or tenure. (8T41-8 to -11). Likewise, there is no evidence of the Board of Trustees ever disagreeing with Iacono's recommendation for reappointment or tenure. (8T41-12 to -19).

39. Article XIII of the CNA contains the reduction in force procedure agreed to by CCM and the Association. Article XIII states, in relevant part:

In the event of reduction in force, the College and the Association agree the provisions of N.J.A.C. 9A:7-2.1 through 9A:7-2.6 and 9A:7-2.8 through 9A:7-2.11 will apply, as continued by the New Jersey Commission on Higher Education. [J-45]

Timeline of Events

40. Prior to Capozzi becoming the Association President in 2019, the Association was relatively dormant and inactive. (3T187-2 to -10). Under Capozzi's stewardship, the Association became more active than it had been under the previous Association President. (3T187-11 to -23).

41. On August 19, 2019, the Association sent an email to Iacono regarding its exclusion from the Professional Day agenda. The email reads:

Dear Dr. Iacono,

For the first time in CCM's memory, the [Association] has been excluded from the Professional Day agenda. The college's past practice has always allowed adequate time and space for the Association to assemble. This year's schedule not only excludes [the Association], the division lunch meetings directly interfere with our members' ability to participate in their union activities. As [the Association] transitions to new leadership, this initial meeting of its membership is crucial.

The Convocation lecture highlights the way that faculty can "foster equity" through "collaborative" methods that promote students' civic engagement. Yet CCM's own faculty begin this year out of contract, our equity eroding, now prevented from collaborative participation in our union, an organization vital to the civic strength and institutional mission of the college.

If CCM is to truly achieve excellence, its administration must be prepared to live up to the values that it earnestly esteems for its faculty. [(J-57) (emphasis added).]

The email was signed by Association President Capozzi, Association Vice President Colquhoun, Association Treasurer Hudzik, and Association Secretary McAree. (J-57).

42. In October 2019, Association members attended a CCM Board of Trustees meeting after contract negotiations stalled. (1T148-5 to -16). Prior to other faculty members speaking at the meeting, Capozzi gave a prepared statement to assure everyone that their speech at the meeting was protected and that they should not fear retaliation for making statements. (1T154-7 to -18). Schmidt attended the meeting wearing an Association shirt and holding a sign in support of a fair contract. (R-102). Peck was also in attendance at the meeting. (4T132-23 to 4T133-9). Iacono was present at this meeting but did not respond to the Association members in attendance. (2T71-20 to 2T72-3; 3T190-19 to -22).

43. In November 2019, Association members attended a Board of Trustees meeting to support CCM student journalists who complained that they were being subjected to harassment by CCM's administration. (1T151-10 to -18; 1T153-2 to -11). Capozzi and Peck attended the meeting but did not speak. (2T73-1 to -3; 4T133-15 to -24). Schmidt also attended the meeting, where he

sat in the front row wearing an Association shirt and held a sign. (R-102).

44. On November 26, 2019, the Association sent an email with the subject "FACCM Position" to Iacono (with Marlin and Enright copied), which reads:

Dear Dr. Iacono,

As we begin sixteen months off contract, FACCM membership has voted to work to our strictest contractual obligations.

The email was signed by Association officers Capozzi, Colquhoun, Hudzik, and McAree. (J-52). The email was intended to inform the CCM administration that Association members would not be performing any work beyond what was required by the parties' CNA. (2T15-1 to -5).

45. On December 6, 2019, the Association sent an email with the subject "Statement of Clarification" to Iacono (with Marlin copied), which reads:

President Iacono,

We wish to issue two brief corrective statements regarding yesterday's School of Liberal Arts meeting.

As the administration is already aware, the student quoted in the Youngtown Edition article to which you referred ("CCM Students Encourage Change," Nov. 6) is not and has never been a Communication major. Her negative experience, as depicted in that article, is in no way uniquely reflective of the Department of Communication or its faculty.

Second, though the Liberal Arts mission statement was drafted collaboratively by that school's faculty, it is not in its final state a product of that faculty alone, as you

seemed to imply. For example, your office edited the drafted statement post facto to include the term "workforce."

We note this for the sake of clarity as we move forward in service of our students.

The email was signed by Association officers Capozzi, Colquhoun, Hudzik, and McAree. (J-56).

46. On January 20, 2020, the Association sent an email with the subject "Convocation" to Iacono (with Marlin and Enright copied), which reads:

Dear Dr. Iacono,

As we communicated to you in our email of Nov. 26, FACCM has voted to work to its strictest contractual obligations for as long as we remain off-contract. Though we hope to ratify a new contract in the very near future, we have not yet done so. As such, we expect that a number of our members will be absent from the convocation portion of tomorrow's schedule. NJEA has advised that our members' absence is well within the provisions and protections of our contract.

The email was signed by Association officers Capozzi, Colquhoun, Hudzik, and McAree. (J-55).

47. On February 28, 2020, the Association sent an email with the subject "FACCM Position" to Iacono (with Enright, Marlin, and Ray copied), which reads:

Dear President Iacono,

Our presence at College Council yesterday should impress upon you the faculty position regarding the college's most urgent priorities. Every initiative central to CCM's mission depends upon the administration's ability to demonstrate leadership that reflects accountability and

good faith. You chose to adjourn the meeting rather than respond to, or even hear, questions about the administration's failure of leadership. You lied in characterizing a "mutual error" as the cause of the delay in the board's approval of the faculty contract, when the facts of the situation are plain: the college has chosen to table the contract rather than honor the results of the collective bargaining process. FACCM stands by its offer to include a Letter of Intent as an addendum to the ratified contract, indicating our sincere willingness to work collaboratively, alongside administration, to promote attendance at the May ceremony. We propose this as a positive, unifying initiative - in celebration of student achievement - to close out a challenging year.

Though we find ourselves facing serious challenges that compromise the future of the college, we remain hopeful that you will use the power of your office to encourage the imminent approval of this contract and salvage a good faith working relationship with the faculty. [(J-54) (emphasis added).]

The email was signed by Association officers Capozzi, Colquhoun, Hudzik, and McAree. (J-54)

48. On April 13, 2020, the Association sent an email with the subject "Student Complaints" to Iacono (with Enright and Marlin copied), which reads:

Dear Dr. Iacono,
As you know, faculty have been under tremendous pressure to transition courses to an online format, many while dealing with their own safety concerns, family transitions, and economic disruptions. We have a talented faculty committed to doing the best we can for our students under such strenuous circumstances.
It has come to our attention that select faculty members have been asked to respond to

"complaints" that have arisen during student web conferencing sessions with your office. As you know, the CCM handbook outlines clear procedures for student complaints and these begin at the chair level. We appreciate your encouraging students to resolve any specific course or faculty complaints by following procedures already in place. We have advised faculty that any student complaints should come to them directly from the student or their chairperson.

We are all fielding an unprecedented volume of student correspondence at the moment, many from students who are understandably overstressed and impatient. In the interest of surveying student needs during this crisis, we encourage the college to disseminate a student-wide questionnaire that can more completely detail the college's response to our students' needs. We are working on our own survey by the faculty. (J-53).

The email was signed by Association officers Capozzi, Colquhoun, Hudzik, and McAree. (J-53).

49. During the spring 2020 semester, the contracts of Capozzi, Lauzon, Peck, Schmidt, Kilhaney, and Lesce were renewed for the 2020-2021 academic year. (2T34-22 to 2T35-22; 3T225-1 to -19; 4T160-22 to -24).

50. In August 2020, McAree was promoted from assistant professor to associate professor. (3T181-24 to 3T182-1). Hudzik was also promoted from assistant professor to associate professor. (2T35-23 to 2T36-8).

51. On September 22, 2020, the Association filed a grievance regarding faculty pay cycles for the 2020-2021 academic

year. (CP-1). The grievance was subsequently withdrawn by the Association on December 13, 2020. (CP-2).

52. On November 19, 2020, Iacono addressed the College Council during its Zoom meeting and stated that CCM is "in a very solid position" financially and that CCM did not anticipate a need to reduce staffing. (C-9).

53. In or around January 2021 and February 2021, Marlin and Enright were asked by Iacono to review faculty and enrollment data to see if adjustments could be made to faculty size, and they devised a 1200 credit hour ratio as a metric to evaluate staffing levels. (6T18-14 to 6T19-15; 6T20-13 to -22; 8T12-15 to 8T13-5). The 1200 credit hour ratio is determined by dividing the total number of credit hours generated by a department by the number of full-time faculty in that department. (8T14-24 to 8T15-22). Adjunct faculty are not included in the computation of the ratio. (8T15-23 to 8T16-1). The 1200 credit hour ratio is not a strict rule and is not applied uniformly across all departments because of factors such as regulatory requirements and space/equipment limitations. (6T20-16 to -18; 6T21-11 to 6T22-21).

54. On March 4, 2021, a Personnel Recommendations Chart was compiled based on the 1200 credit hour ratio, which included the names of faculty members recommended for renewal and non-renewal for the 2021-2022 academic year. (R-13). Iacono, Marlin, and Enright jointly created the document, but Iacono dictated what

information needed to be included. (8T59-12 to 8T60-11). The chart contained the following recommendations:

- a. Capozzi, Schmidt, and Peck were recommended for non-renewal in the English Department and four other faculty members were recommended for renewal in that department. Capozzi's tenure date was January 2022, Schmidt's tenure date was January 2022, and Peck's tenure date was September 2023. Capozzi, Schmidt, and Peck had the earliest tenure dates of the seven English faculty members listed on the chart. At the time the chart was compiled, three faculty retirements had already been tendered in the English Department during the spring 2021 semester.
- b. Lauzon was recommended for non-renewal in the Communication Department. Lauzon had a tenure date of September 2023.
- c. Lesce was recommended for non-renewal in the ESL and Languages Department. Lesce had a tenure date of September 2024.
- d. Kilhaney was recommended for non-renewal in the Biology and Chemistry Department. (8T28-23 to -25). Kilhaney had a tenure date of September 2023. Another faculty member in the Biology and Chemistry Department, Caitlin Burns, was recommended for renewal with a September 2021 tenure date.

e. Melissa Kazmin, a faculty member in the Education Department, was recommended for renewal despite a reported credit hour ratio of 563 in that department.

(R-13).

55. On March 22, 2021, an anonymized version of the Personnel Recommendations Chart was prepared to present to the CCM Board of Trustees. (8T27-15 to -20; R-13).

56. On March 17, 2021, Marlin recommended to Iacono that Altieri be promoted from assistant professor to associate professor. (R-109). Altieri's self-evaluation referred to her union activities and union leadership roles. (Id.)

57. On March 18, 2021, the Association drafted a letter to the Board of Trustees and Iacono, which acknowledged CCM's achievements and thanked Iacono for his leadership during the COVID-19 pandemic. (J-4).

58. On March 19, 2021, Enright recommended to Iacono that Colquhoun be promoted from assistant professor to associate professor. (R-108). Colquhoun's self-evaluation referred to his union leadership role as the Association's Vice President. (Id.)

59. In April 2021, Driver was recommended and approved to receive tenure after initially being told by Marlin in December 2020 that she was not being recommended for tenure due to concerns over her scholarly achievement. (4T170-19 to 4T171-9; 4T184-19 to 4T185-4; 6T172-20 to -24). After being informed by Marlin in December 2020 that she was not being recommended for

tenure, Driver sought the advice of Dean Ball, and Ball told Driver to remove all references to union participation in her annual self-evaluation, which is due every February, because it might incite anti-union animosity. (4T171-10 to -14; 4T174-14 to -19; 4T178-1 to 4T180-2). Accordingly, Driver removed all references to her union participation in her February 2021 self-evaluation. (4T180-22 to 4T181-3).

60. On April 16, 2021, Iacono sent an email with the subject "College Update," in which he stated that CCM recommended that several faculty members not be reappointed for the 2021-2022 academic year. (J-6). In the email, Iacono cited a steady and unforeseeable decline in enrollment, which required CCM to take a closer look at the mix of tenured to non-tenured faculty. (Id.) That same day, Capozzi, Peck, Lauzon, Kilhaney, Lesce, and Schmidt received notices from CCM that the Board of Trustees would take action on their non-reappointment during its public meeting on April 20, 2021. (J-7 to -12; 2T99-5 to -9). There is no evidence that CCM had ever previously considered the ratio of tenured to non-tenured faculty for determining faculty contract renewals. (3T57-3 to -15; 4T32-17 to -24; 4T33-19 to -25; 6T176-6 to -11). The non-renewal of these faculty members represented the first time since Eber became Chair of the English and Philosophy Department in 1988 that she had not been consulted on the non-renewal of a faculty member in her department. (4T25-12 to -16).

61. Also on April 16, 2021, the Association sent an email with the subject "Our Unified Response" to Iacono (with Marlin, Enright, and Ray copied) expressing displeasure with CCM's recommendation not to renew the six faculty members. The final paragraph of the email reads, "We urge the college to consider the consequences of undermining the faculty who are a cornerstone of this institution and its mission. We look forward to engaging HR toward immediate resolution." (J-19) (emphasis added).

62. Two days later, on Sunday, April 18, 2021, Iacono contacted the Mount Olive Police Department to report vandalism at his home, i.e., that the tires of a cart in his backyard had been slashed. (CP-6).

63. The police report details the police response as follows:

I responded . . . and met with Mr. Iacono outside of his residence. Mr. Iacono advised me that his the President of [CCM]. He recently laid off six employees and received an email from the teachers union. He states that in the email, the union advised him there would be consequences for his actions. In February of 2020 he laid off employees and received a similar email stating that there would be consequences. After receiving the email in 2020 he noticed that there was damage to the siding of his house measuring approximately 12 inches by 4 inches. He did not report the incident. This time, he believes they slashed his tires to his yard cart. He believes the incident occurred between Friday afternoon [April 16, 2021] and today.

Mr. Iacono and I went to the backyard to look at the yard cart. The yard cart was upside

down and both tires were flat. They had rips on the sidewall that went half way around the tire. The wiring inside of the tire did not appear to be punctured. He stated that his son went out to utilize the cart and noticed the popped tires. I advised Mr. Iacono that the tires could have potentially ripped due to them being flat.

Mr. Iacono stated that he had no security cameras on the property but believes that they targeted his cart and not his vehicles due to the vehicles being under a spotlight in the front yard. The ground was muddy and I did not notice any footprints. There was no further damage to his property located.

Mr. Iacono stated that one of the union members, Rob Lauzon, lives in town and knew his address. He believes that Mr. Lauzon could have been the one to slash his tires. Mr. Iacono stated that he will be having the security manager of CCM get in contact with me to produce contact information for Mr. Lauzon as well as the four union presidents.

I made contact with [Iacono's neighbors] to see if they had any security cameras or information regarding the incident. They did not have cameras and stated that their dog would typically bark at night if anyone was walking around. They did not hear their dog bark.

[(CP-6) (emphasis added).]

64. After Iacono identified Lauzon to the police, later that same evening, the local police were contacted by CCM's assistant director of public safety with contact information "for faculty members that were non-renewed as well as union members who may have caused the property damage." (CP-6). These included Capozzi, Peck, Schmidt, Kilhaney and Najib Iftikar as persons of interest in this alleged vandalism, prompting the

police to contact each of them for questioning. (CP-6). Iftikar was not renewed for performance reasons. (8T30-2 to -13). Also noted in the police report, during the police questioning, Capozzi "uttered 'you guys are unbelievable,'" and Peck stated that "he does not know the address of Mr. Iacono" and the "consequences was in reference to the college's reputation, specifically the faculty's [sic] trust in leadership." (CP-6).

65. When the local police contacted Lauzon at his home on April 22, 2021, Lauzon "expressed frustration with Mr. Iacono for his actions and the difficulties that he is causing his family," stated that "he spent Friday and Saturday applying for jobs as well as buying a suit" so that he "could go on a job interview" after being laid off, denied knowing Iacono's home address, and stated that he only knew Iacono was a town resident because he "saw him at the post office." (CP-6).

66. On April 20, 2021, CCM's Board of Trustees took official action not to renew the contracts of Capozzi, Peck, Lauzon, Kilhaney, Lesce, and Schmidt for the 2021-2022 academic year. (2T99-5 to -9). CCM's decision not to renew the contracts of the six professors was not based on financial considerations, as the college was not facing financial hardship at the time. (6T145-23 to 6T146-14). Since the non-renewal of the six faculty members, CCM has not hired anyone to replace the eliminated positions. (7T28-16 to -20; R-17). However, CCM hired one adjunct professor for the fall 2021 semester to teach an English

class after another adjunct professor gave one day's notice that she was resigning. (7T34-23 to 7T35-11). In addition, Justine Protusky was hired as an adjunct in the English Department in the spring of 2021. (3T243-9 to -21).

67. On April 23, 2021, CCM's labor and employment counsel sent a letter to the Association in response to the alleged vandalism of Iacono's yard cart and complaints from Association members that they were being contacted by the police concerning the alleged vandalism. In the letter, CCM's counsel denies that Iacono identified anyone as a possible perpetrator. (J-20).

68. On May 4, 2021, Capozzi sent an email with the subject "Open Letter to CCM Students From Faculty" to CCM students from his CCM email account via Blackboard, CCM's online learning platform. The email asks for the students to show their support for the Association and the non-renewed faculty members by attending a Zoom virtual meeting on May 10, 2021. (J-23).

69. On May 5, 2021, CCM's labor and employment counsel sent a letter to the Association in response to Capozzi's May 4, 2021 email. CCM maintained in the letter that Capozzi violated the following policies and agreements by using Blackboard and CCM's email systems to solicit student support for the Association and the non-renewed faculty members: (1) CCM's Policy Governing Access to and Use of Copyrighted Works; (2) CCM's Policy Limiting Solicitation on College Property; and (3) Article XIX (Academic Freedom) of the parties' CNA. (J-37).

a. CCM's Policy Governing Access to and Use of Copyrighted Works provides, in relevant part:

Blackboard Compliance Declaration

By accessing Blackboard, I certify that I am a CCM student, instructor, faculty member, employee or other user authorized by CCM to access Blackboard. I acknowledge and agree that my access to Blackboard, including any posting or downloading of content is governed by federal copyright law and the terms of this Declaration. Any copyrighted material(s) that I upload to, download from, or otherwise access or make available on Blackboard, whether visual, audio-visual, or auidial in nature, shall be for use solely by CCM students, faculty or other authorized users. My use shall be for purposes directly related to a regularly scheduled CCM course of study and may not be used or disseminated for any other purpose. Access to copyrighted materials posted on, uploaded to or otherwise made accessible to CCM users of the Blackboard system shall expire at the conclusion of the course to which the material corresponds. (J-40).

b. CCM's Policy Limiting Solicitation on College Property provides, in relevant part:

Except for use of CCM Forum, the College communications systems including email, fax, phone and interoffice mail shall not be used for Solicitations, except by the CCM Foundation. (R-88).

c. Article XIX (Academic Freedom) of the parties' CNA states, in relevant part:

a. It is the policy of the College to maintain and encourage, within the law, freedom of inquiry, teaching, publishing and research. The exercise of this freedom extends to the faculty member's classroom discussion of the course and inquiries which relate thereto. A faculty member may not claim as his/her

right the privilege of discussing in the classroom controversial matters which have no relationship to the course subject. (J-45).

70. Capozzi's May 4, 2021 email violated CCM's Policy Governing Access to and Use of Copyrighted Works; CCM's Policy Limiting Solicitation on College Property, and Article XIX (Academic Freedom) of the parties' CNA. (J-40; J-45; R-88).

71. On May 10, 2021, Schmidt sent an email from his CCM email address to CCM students via Blackboard, which criticized CCM's decisions and reminded the students to attend the Association's Zoom virtual meeting scheduled from 6:00-7:00 p.m. that evening. (7T85-2 to -25; J-24). The Association did not authorize Schmidt to send this email on its behalf. (3T172-16 to -19). Schmidt's email violated CCM's Policy Governing Access to and Use of Copyrighted Works; CCM's Policy Limiting Solicitation on College Property; and Article XIX (Academic Freedom) of the parties' CNA. (J-40, J-45; R-88).

72. On May 12, 2021, Capozzi, Peck, Lauzon, Kilhaney, Lesce, and Schmidt received identical letters from CCM's Vice President for Business and Finance, Karen VanDerhoof (VanDerhoof), which provided CCM's reasoning for not renewing their appointments. The letters cited CCM's need for "flexibility" and noted that the decision "was made after a review of the College's steadily declining enrollment, the current proportion of tenured to non-tenured faculty and low credit hours taught by faculty members in your department." (J-13

to J-18). There is no evidence showing that CCM had ever previously considered the need for flexibility or the proportion of tenured to non-tenured faculty when making recommendations for reappointment or tenure. (3T57-3 to -15; 4T32-17 to -24; 4T33-19 to -25; 6T176-6 to -11; 8T8-20 to 8T9-2; 8T11-4 to -14).

73. On or about May 15 and 17, 2021, the Association sent Iacono's wife and children requests on Instagram and Twitter to follow the Association's "Save CCM Faculty" account. (2T123-13 to -17; C-2; C-4). All postings and follow requests made from the Association's social media accounts were done with authority from and on behalf of the Association, and the Association's intent with the relevant social media postings and follow requests was to get Iacono to resign or be fired. (C-8).

74. On July 16, 2021, Iacono sent an email with the subject "County College of Morris Update, July 2021." (J-5). In the email, Iacono explained that the decision not to reappoint the six non-renewed faculty members was made following a comprehensive and objective analysis that revealed diminished enrollment and a ratio of enrolled students to full-time faculty that was "well below the typical ratio of 1,200 credit hours." (Id.) The 1200 credit hour ratio is not a Board of Trustees policy and, prior to this email, had not been contained in any memorandum or communicated to the faculty. (6T177-21 to 6T178-15). Depending on the data set used, only three or four out of eighteen academic departments at CCM have a credit hour ratio

equal to or greater than 1200. (CP-8; R-112). Accordingly, 1200 credit hours is not the typical ratio at CCM. Also, after these six April 2021 non-renewals, the 1200 credit hour ratio analysis was never prepared again at CCM, nor was it used in any further renewal or non-renewal determinations at CCM. (9T13-21 to 9T15-23; 9T17-23 to 9T18-11).

75. On August 19, 2021, the website Tap into Madison published a letter to the editor from the Association titled "CCM Reopening Plan in Chaos." The letter criticized CCM's plans to reopen the campus amidst the COVID-19 pandemic. (J-26).

76. On August 26, 2021, the Association conducted a meeting via Zoom, during which an Association member put forth a motion for a vote of "no confidence" in the Association's officers. (3T197-9 to -25). Alex Kuscma (Kucsma), John Soltes (Soltes), Debra DeMattio (DeMattio), and McAree all made statements in opposition to the vote of no confidence. (3T199-19 to -23; 3T201-18 to 3T202-2).

77. On August 27, 2021, Kuscma, DeMattio, and McAree all had their courses cancelled for the fall 2021 semester and were reassigned to teach other courses. (3T202-3 to -9; 3T202-15 to 3T203-10; 5T30-4 to -7; J-61).

a. Kucsma's cancelled class, American Literature from the Colonial Era, was an elective course and only had eight students enrolled, which represented less than fifty percent of the course capacity. (4T78-1 to -15;

5T34-8 to -18; 5T35-10 to -12). In addition, there was another section of the course being taught that semester by McAree. (4T78-16 to 4T79-7).

b. DeMattio's cancelled class, *Short Stories*, was an elective course and only had eight students enrolled, which represented less than fifty percent of the course capacity. (4T80-21 to 4T81-8; 5T30-8 to -25).

c. McAree's cancelled class, *Children's Literature*, only had seven students enrolled, which represented less than fifty percent of the course capacity. (4T83-5 to 4T84-4; 5T25-15 to -20). In addition, there was another section of *Children's Literature* being taught that semester that had twenty-three students enrolled and seven open seats. (5T26-2 to -11).

d. After the courses were cancelled, the three professors were reassigned to teach the following required courses: ENG 025 (Developmental Writing), ENG 111 (English Composition I), and ENG 112 (English Composition II). (J-61).

e. As of August 26, 2021, Developmental Writing had 26 students on the waiting list; English Composition I had 81 students on the waiting list; and English Composition II had 48 students on the waiting list. (CP-20).

78. More than 50 additional courses were cancelled on or after August 27, 2021 for the fall 2021 semester. (R-79). In total, 115 course sections were cancelled college-wide for the fall 2021 semester, including 26 in English. (6T97-5 to -13).

79. On August 30, 2021, CCM's labor and employment counsel sent the Association a letter demanding that the Association cease and desist from "falsely claim[ing] to both the CCM community and the public that CCM does not have a 'Return to Campus Plan'" and from "solicit[ing] people with questions about the 'Return to Campus Plan' to contact [the Association] and not CCM." (J-41). The letter demanded that the Association provide an immediate written retraction of its statements and advised that CCM may try to obtain judicial relief if the Association did not issue a retraction. (Id.) The parties' CNA provides that nothing in the agreement shall be construed to restrict or limit CCM's ability to obtain judicial relief. (J-69). The Association did not issue a retraction, and CCM did not bring any legal action against the Association on this issue. (3T74-12 to -22).

80. On September 7, 2021, CCM's labor and employment counsel sent the Association a letter demanding that the Association refrain from holding its "Meet and Greet," which was scheduled for September 9, 2021 at 12:00 p.m. The letter contended that the "Meet and Greet" violated COVID-19 protocols

and also interfered with and disrupted CCM's operations. The letter also stated that failure to cancel the event "will result in CCM exercising its right to seek and obtain appropriate judicial relief, including, without limitation, an Order to Show Cause." (J-42).

81. The Association proceeded to hold its "Meet and Greet" on September 9, 2021, but CCM did not bring any legal action related to this event. (7T159-17 to -24).

ANALYSIS

N.J.S.A. 34:13A-5.3 guarantees to all public employees the right to engage in union activities, including the right to form or join a union, negotiate collectively and make their concerns known to their employer. Specifically, it provides that:

[a] majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership.

[N.J.S.A. 34:13A-5.3.]

Section 5.4a(3) of the Act prohibits an employer from retaliating against an employee or majority representative for exercising these rights. The legal standards set forth in In re Bridgewater Tp., 95 N.J. 235 (1984), determine whether an employer's actions violate section 5.4a(3) of the Act. There,

the Court determined that if the charging party proves by a preponderance of evidence on the record that protected conduct was a substantial or motivating factor in the adverse action, a violation will be found. Id. at 246. Such a violation can be proven by direct evidence or by circumstantial evidence establishing that the employee was engaged in protected activity, the employer knew of this activity and was hostile toward the exercise of protected rights. Id.

If the employer does not present any evidence of a motive not illegal under our Act or if its explanation is rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Id. at 242. Sometimes, however, the record demonstrates that both motives unlawful under our Act and other motives contributed to a personnel action. Id. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected the conduct. Id.

Timing is an important factor in determining motivation and may give rise to an inference that a personnel action was taken in retaliation for protected activity. Tp. of West Orange, P.E.R.C. No. 99-76, 25 NJPER 128 (¶30057 1999); City of Margate, P.E.R.C. No. 87-145, 13 NJPER 498 (¶18183 1987); Bor. Of Glassboro, P.E.R.C. No. 86-141, 12 NJPER 517 (¶17193 1986).

However, each situation requires a factual analysis to determine whether hostility can be inferred from timing. Timing alone cannot support such an inference. See Camden Bd. of Ed., P.E.R.C. No. 2003-77, 29 NJPER 223 (¶68 2003) (timing of transfer within 6 months of grievance filing together with conflicting reasons for transfer support inference of hostility).

In Black Horse Pike Regional College of Education, P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981), the Commission defined protected speech and conduct under the Act. There, the Commission determined that the employer violated sections 5.4a(1) and (3) of the Act, when it placed in the personnel file of a teaching staff member two letters critical of the teacher's comments while the teacher was serving as an Association representative in a meeting with the principal about another teacher's resignation from her job. The Commission explained:

When an employee is engaged in protected activity, the employee and the employer are equals advocating respective positions, one is not the subordinate of the other. If either acts in an inappropriate manner or advocates positions which the other finds irresponsible, criticism may be initiated to halt or remedy the other's actions. [Id. at 503.]

The Commission continued:

The College may criticize employee representatives for their conduct. However, it cannot use its power as employer to convert that criticism

into discipline or other adverse action against the individual as an employee when the conduct objected to is unrelated to that individual's performance as an employee. To permit this to occur would be to condone conduct by an employer which would discourage employees from engaging in organizational activity. [Id. at 504 (emphasis added).]

The Commission has held that "an employer action that tends to interfere with a public employee's statutory rights without a legitimate and substantial business justification violates 5.4a(1)." Union Tp., P.E.R.C. No. 2008-20, 33 NJPER 255 (¶95 2007) (citing New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421 (¶4189 1978); New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979); Mt. Olive Tp. Bd. of Ed., P.E.R.C. No. 90-66, 16 NJPER 128 (¶21050 1990)).

The Commission has held that employees have "the right. . . to communicate with each other about employment conditions." State Operated School District, City of Newark, P.E.R.C. No. 2017-14, 43 NJPER 106 (¶32 2016) (citing State of New Jersey (Dep't of Transp.), P.E.R.C. No. 90-114, 16 NJPER 387 (¶21158 1990)). "The Act confers a statutory right of communication between majority representatives and unit members, and same is considered a 'term and condition of employment.'" Id. (citing City of Newark, H.E. 2001-3, 26 NJPER 407 (¶31160 2000)).

In Union Cty. Reg. Bd. of Ed., P.E.R.C. No. 76-17, 2 NJPER 50 (1976), the Commission stated:

School Boards . . . [are] charged . . . with the authority and responsibility for the conduct of schools in their districts. . . [which includes] control over bulletin boards, mail boxes, and all the other facilities included within the various contract provisions under discussion. The School Boards have an interest in conducting the schools, including the efficient use of these school facilities, in as stable a manner as is legally possible. Their authority is effected, however, by the Act's requirement that they negotiate in good faith with the majority representatives of their employees concerning terms and conditions of employment. One such condition of employment is the ability of employees to communicate in furtherance of the rights guaranteed by the Act. The School Boards thus have an obligation to negotiate over access to school facilities by its employees in furtherance of their legal collective activities. [Emphasis added.]

An employer independently violates subsection 5.4a(1) if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification.

Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146 1994). Proof of actual interference, intimidation, restraint, coercion or motive is unnecessary. The tendency to interfere is sufficient. Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER (¶17197

1986). Subsection 5.4a(1) will be violated derivatively when an employer violates another unfair practice provision, including subsection 5.4a(3). See Galloway Tp. Bd. of Ed., P.E.R.C. No. 77-3, 2 NJPER 254, recon. granted P.E.R.C. No. 77-8, 2 NJPER 284, dec. on recon., P.E.R.C. No. 77-18, 2 NJPER 295 (1976), aff'd 157 N.J. Super. 74 (App. Div. 1978); Wayne Tp., P.E.R.C. No. 78-10, 3 NJPER 321 (1977).

Again, the Association alleges that CCM violated section 5.4a(1) and (3) of the Act when CCM allegedly sent six non-tenured faculty members -- president Capozzi, grievance chair Peck, communications chair Lauzon, and active members Kilhaney, Lesce, and Schmidt -- notices that they would not be reappointed to their faculty positions for the 2021-2022 academic year in retaliation for protected union activity. Under the Bridgewater standard, 95 N.J. at 235, CCM's actions would violate section 5.4a(3) of the Act if the Association proves by a preponderance of evidence on the record that protected conduct was a substantial or motivating factor in the adverse action, which can be proven by direct evidence or by circumstantial evidence establishing that Association members were engaged in protected activity, CCM knew of this activity, and CCM was hostile toward the exercise of protected rights.

Clearly, the Association, its officers and members were engaged in protected activity, and CCM and Iacono knew of this

activity. See Bridgewater, supra. Prior to Capozzi becoming Association president in 2019, the Association had been relatively inactive, but under Capozzi's stewardship, the Association became markedly more active, and communicated directly with Iacono numerous times over multiple issues. First, in August, 2019, the Association emailed Iacono to express its displeasure with the Association's exclusion from the Professional Day agenda, with Capozzi's name on the email. Then, in October 2019, Association members attended a Board of Trustees meeting after contract negotiations stalled, and Capozzi spoke at the meeting to assure members regarding their protected speech, and to tell them not to fear retaliation. Schmidt and Peck also attended, with Schmidt wearing an Association shirt and holding a sign in support of a fair contract. Then in November 2019, Capozzi, Peck and Schmidt attended another Board of Trustees meeting to support student journalists who were complaining of harassment by CCM's administration, with Schmidt holding a sign. Later in November 2019, the Association sent another email, with Capozzi's name on it, to Iacono advising that Association members would not perform any work beyond what was required by the CNA because of continued stalled negotiations.

In December 2019, the Association sent another email to Iacono taking issue with statements made by Iacono at a School of Liberal Arts meeting, and in January 2020, the Association sent

another email to Iacono stating that Association members would not be participating in convocation ceremonies, again signed by Capozzi. In February 2020, the Association sent another email to Iacono regarding stalled contract negotiations and CCM administration's "failure of leadership." On April 13, 2020, the Association sent another email to Iacono, expressing its concerns regarding CCM's procedures for handling student complaints during the pivot to virtual learning at the start of the pandemic. Then the Association filed a grievance on September 22, 2020, regarding faculty pay cycles for the 2020-2021 academic year, which was subsequently withdrawn on December 13, 2020. And on March 18, 2021, the Association sent a letter to the Board of Trustees and Iacono, acknowledging CCM's achievements and thanking Iacono for his leadership during the pandemic.

It is well-settled that Association officers and members have the right to engage in Association activities, such as engaging in contract negotiations, emailing the college president with concerns about those contract negotiations and other terms and conditions of employment, appearing at Board of Trustee meetings to ask questions about terms and conditions of employment and to advocate for the Association's position, without discrimination pursuant to N.J.S.A. 34:13A-5.3. Section 5.4a(3) of the Act also prohibits CCM from retaliating against Association officers and members for exercising these rights.

Under Bridgewater, no violation of 5.4a(3) will be found unless the charging party has proven by a preponderance of the evidence on the entire record that protected conduct was a substantial or motivating factor in an adverse action. 95 N.J. at 246; see also Passaic Cty. Prosecutor's Office, P.E.R.C. No. 2013-15, 39 NJPER 173 (¶52 2012).

Here, Association officers and members Capozzi, Peck, Lauzon, Kilhaney, Lesce, and Schmidt were not renewed, which constituted an adverse personnel action. Notably, five out of six of these employees had received excellent to satisfactory evaluations, with the exception of Kilhaney. Indeed, from 2018 to 2021 in four categories, Capozzi's evaluations were all excellent; from 2019 to 2020, Lauzon's evaluations were all excellent; and from 2020 to 2021, Lesce's evaluations were all excellent. From 2018 to 2021 in four categories, Peck's were all excellent with two good evaluations, and Schmidt's were all excellent with seven good evaluations. As the outlier, from 2019 to 2020, Kilhaney's evaluations steadily improved from receiving three satisfactory and one unsatisfactory in 2019; one good, two satisfactory and one unsatisfactory in 2020; and three good and one satisfactory evaluation in 2021.

Next, the record is replete with facts demonstrating CCM's hostility towards the Association's exercise of protected rights. Beyond the six non-renewals, the Association emails detailed

above demonstrate CCM's exclusion of the Association from the CCM Professional Day agenda; CCM's scheduling of division lunch meetings to directly interfere with members' ability to participate in union activities; stalled contract negotiations between CCM and the Association; Iacono's adjournment of the College Council meeting on February 27, 2020, instead of engaging with the Association; and Iacono's mischaracterization of the delay in the Board's approval of the faculty contract as "mutual error".

Notably, CCM did not call Iacono as a witness during the hearing, despite the fact that he could have provided crucial testimony regarding why CCM took the above actions regarding Professional Day, division lunch meetings, contract negotiations, and the February 27 College Council meeting. This failure by CCM to call Iacono and elicit his testimony can lead to an adverse inference against CCM. See State v. Clawans, 38 N.J. 162, 171 (1962); Int'l. Automated Machines, Inc., 285 NLRB No. 139, 129 LRRM 1265, 1266 (1987) (when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge). In the absence of Iacono's testimony, I draw a negative inference from the factual question arising from these actions by CCM, and infer

that these actions demonstrated hostility towards the Association's protected activities.

An even more extreme example of CCM's hostility towards the Association's protected activities was Iacono's contact with the Mount Olive Police Department on April 18, 2021 -- notably, two days after the six employees received notice of their non-renewal, and two days after the Association's response email. Iacono knew that Lauzon lived in Mount Olive, where Iacono also lived, because Iacono and Lauzon saw each other at the local post office. Then, on April 18, Iacono called the local police department to report that someone had "slashed his tires." The police report details that as soon as the police arrived, Iacono advised that he was CCM President, he "recently laid off six employees and received an email from the teachers union" where it advised him there would be "consequences" for his actions.

However, the Association's April 16, 2021 email response to the notice of the six non-renewals urged CCM to consider the "consequences of undermining the faculty who are a cornerstone of this institution and its mission," and how the Association "look[s] forward to engaging HR toward immediate resolution." There is no threat of vandalism or any other criminal activity at Iacono's family home mentioned or even inferred in the April 16 email. Notably, Iacono also told the officer that in February 2020, he laid off employees and received a similar email stating

that there would be consequences, and afterwards, he noticed that there was damage to the siding of his house measuring approximately 12 inches by 4 inches. However, Iacono never reported that February 2020 incident, and again, Iacono did not testify at the hearing, so there was no additional information about that alleged previous incident.

The police report further details that Iacono told the responding officer that he believed that Association members slashed the tires on his yard cart between Friday, April 16 -- the day of the non-renewal notice -- and that day, Sunday, April 18. Then Iacono identified Lauzon, "one of the union members," as a potential suspect, as Lauzon "lives in town and knew [Iacono's] address." Iacono then stated that he would have CCM's security manager contact the police with contact information for Lauzon and "the four union presidents." Later that same evening -- again, on a Sunday night -- the local police were contacted by CCM's assistant director of public safety with contact information "for faculty members that were non-renewed as well as union members who may have caused the property damage." These included Capozzi, Peck, Schmidt, Kilhaney and Najib Iftikar as persons of interest in this alleged vandalism, prompting the police to contact each of them for questioning. Iftikar was not renewed for performance reasons.

Also noted in the police report, during the police questioning, Capozzi "uttered 'you guys are unbelievable,'" and Peck stated that "he does not know the address of Mr. Iacono" and that the term "consequences was in reference to the college's reputation, specifically the faculty's [sic] trust in leadership." When the local police contacted Lauzon at his home on April 22, 2021, Lauzon "expressed frustration with Mr. Iacono for his actions and the difficulties that he is causing his family," stated that "he spent Friday and Saturday applying for jobs as well as buying a suit" so that he "could go on a job interview" after being non-renewed, denied knowing Iacono's home address, and stated that he only knew Iacono "was a town resident because he saw him at the post office."

The details of this entire police incident are so extreme and problematic, especially because the police report itself raises questions about whether the alleged tire slashing occurred at all. The report notes that the "wiring inside of the tire did not appear to be punctured," and that "the tires could have potentially ripped due to them being flat." Further, the report notes that although the ground was muddy, there were no footprints in the mud, no other damage was identified on the premises, and the neighbor's dog never barked at any trespasser.

Furthermore, the fact that Iacono immediately accused Lauzon and the "four union presidents" Capozzi, Peck, Schmidt and

Kilhaney for alleged vandalism at his home two days after they had been non-renewed by him, and two days after the Association's emailed response, is truly extreme. See Tp. of West Orange, supra, 25 NJPER at 128 (timing is important factor in determining motivation regarding retaliation). It is also extremely problematic that CCM later denied in an April 23, 2021 letter that Iacono identified Association members as suspects at all, in blatant contradiction to the police report.

Again, CCM's failure to call Iacono and elicit his testimony can lead to an adverse inference against CCM, and in the absence of Iacono's testimony, I draw a negative inference against CCM from the factual questions arising from these actions by Iacono, such as why Iacono immediately accused Association members of criminal activity when he suspected vandalism to his yard cart, and why Iacono believed that the Association's April 16, 2021 email urging CCM to consider the "consequences of undermining the faculty who are a cornerstone of this institution and its mission," and that the Association "look[s] forward to engaging HR toward immediate resolution," would constitute a threat of criminal activity at his family home.^{7/} Thus, I infer that these

^{7/} The Association's May 15 and 17, 2021 social media contacts on Instagram and Twitter with Iacono's wife and children to request that they follow the Association's "Save CCM Faculty" account were the only contacts in the record between the Association and Iacono's family. And since those occurred one month after Iacono's call to the police, (continued...)

actions demonstrated CCM's hostility towards the Association's protected activities. See Clawans, supra, 38 N.J. at 171.

The Association alleges that the reasons proffered by CCM for the six non-reappointments -- budgetary issues and the ratio of tenured to non-tenured faculty members -- appear to be pretextual. It is notable that CCM's cited reasons for the six non-renewals evolved over time. First, on April 16, 2021, CCM cited declining enrollment and the ratio of tenured to non-tenured faculty members as the reasons for the non-renewals. Then, on May 12, 2021, CCM cited the need for flexibility, declining enrollment, the ratio of tenured to non-tenured faculty members, and the low credit hours taught by faculty in the affected departments. Finally, on July 16, 2021, Iacono cited diminished enrollment and the 1200 credit hours ratio. If Iacono had testified, he could have addressed the issue of why CCM's cited reasons evolved over time, and he could have addressed each of the cited reasons substantively. However, given that Iacono did not testify, I draw a negative inference regarding CCM's evolving explanation for the Association non-renewals. See Clawans, supra, 38 N.J. at 171.

7/ (...continued)
it is unclear why Iacono would suspect that the Association would have any knowledge of or interest in Iacono's family at all.

First and foremost, with regard to the issue of declining enrollment, it is unclear why CCM would proffer this as a reason, as CCM was not facing financial hardship at the time of the non-renewals. Indeed, on November 19, 2020, Iacono addressed the College Council and stated that CCM was in "a very solid position" financially and did not anticipate a need to reduce staffing, even though CCM had been dealing with declining enrollment since 2017. Again, if Iacono had testified, he could have addressed these critical and conflicting statements regarding CCM's financial condition, but he did not. Accordingly, I draw a negative inference. See Clawans, supra, 38 N.J. at 171.

With regard to the ratio of tenured to non-tenured faculty members, it is notable that CCM had never previously considered this ratio before April 2021 when the six Association officers and members were non-renewed. It is also unclear that the ratio of tenured to non-tenured faculty members actually supports CCM's April 2021 non-renewals, if CCM's actual Board-approved policies on this ratio are considered. CCM Policy 3.4011.1 provides that full-time tenured faculty cannot represent more than 90% of total full-time faculty and/or more than 70% of the FTE faculty, and at least 60%, but not more than 70%, of all credit hours in a particular discipline must be taught by tenured faculty.

However, during the fall 2020 semester, CCM employed 107 full-time tenured faculty members, just 72.78% of the 147 full-time faculty members -- well below CCM's 90% full-time policy cap, and just 42.46% of the 252 FTE faculty -- also well below CCM's 70% FTE policy cap. During this semester, full-time faculty taught 40.89% of the total credit hours at CCM, which again falls well below CCM's 60% policy minimum. In fact, with regard to the English Department, although CCM non-renewed Capozzi, Peck and Schmidt, the tenured/non-tenured faculty ratio in spring 2021 was 66.6% - again, well below the 90% cap. In other words, although CCM cited the tenured/non-tenured faculty ratio as a reason for the non-renewals, CCM's actual Board-approved policy regarding that ratio demonstrates that CCM was operating with relatively low percentages of tenured faculty. Thus, the application of CCM's actual policy on this ratio did not support the non-renewals of non-tenured faculty that were on the precipice of becoming tenured, such as Capozzi, Peck and Schmidt.

CCM also cited its need for "flexibility" as a basis for the six non-renewals. However, like the ratio of tenured to non-tenured faculty, CCM had never previously considered a need for "flexibility" in its non-renewal decisions before April 2021, when the six Association officers and members were non-renewed.

With regard to the 1200 credit hour ratio that Iacono directed that Marlin and Enright create for the first time in early 2021, there are numerous issues. First and foremost, it is extremely problematic that this ratio was created and applied for the first time in April 2021, and has not been applied since then, as that one and only application resulted in the non-renewals of six Association officers and members. Also, although this ratio was not a strict rule and was not applied uniformly across all departments because of factors such as regulatory requirements and space/equipment limitations, it was applied with harsh results to the English Department, resulting in the non-renewal of faculty with excellent evaluations on the verge of tenure in a department with a relatively low percentage of tenured faculty, such as Capozzi, Peck and Schmidt. It is also unclear why an anonymized version of the Personnel Recommendations Chart regarding non-renewals was prepared on March 22, 2021 to present to the CCM Board of Trustees, which may have obscured the issue of the six Association non-renewals.

Again, the ratio of tenured to non-tenured faculty, the need for flexibility, the 1200 credit hour ratio, and why each were used for the first time to justify the six Association non-renewals were all important issues for Iacono to address, but he did not testify. Accordingly, I draw a negative inference. See Clawans, supra, 38 N.J. at 171.

Furthermore, as Eber described, the non-renewals in the English Department of Capozzi, Peck and Schmidt -- who all had excellent and good evaluations -- marked the first time since Eber became Chair of the English Department in 1988 that she had not been consulted regarding non-renewals in her department. After the non-renewals, CCM hired an adjunct professor for the fall 2021 to teach an English class after another adjunct resigned with one day's notice, and CCM hired another adjunct in the English Department in the spring of 2021. Furthermore, three retirements had been tendered in the English Department during the spring 2021 semester.

A comparison of the experiences of Driver and Capozzi -- both in the English Department -- is also striking. Capozzi had all excellent evaluations, was the very active and visible Association president, and was non-renewed. In sharp contrast, Driver had all excellent evaluations except for three good evaluations, was an Association member, and was originally told by Marlin in December 2020 that she would not be recommended for tenure due to concerns over her scholarly achievement. Then, at the suggestion of Ball, who was concerned that Driver might be subjected to anti-union animus, Driver deleted all mention of the Association on her February 2021 self-evaluation, and she was renewed in April 2021 and granted tenure in the English Department.

In light of these facts, I find that the Association has met the Bridgewater standard that CCM violated section 5.4a(3) of the Act that the Association was engaged in protected activity, CCM knew of the activity, and CCM was hostile toward the Association's exercise of protected rights. See 95 N.J. at 235. Accordingly, I find that CCM violated section 5.4a(3) of the Act when it interfered with the Association's right to exercise the rights guaranteed to it by the Act, and by retaliating against the six Association officers and members by not reappointing them to their faculty positions for the 2021-2022 academic year in retaliation for protected union activity.

The second issue is whether CCM violated section 5.4a(1) of the Act, either independently or derivatively, when it retaliated against the six Association officers and members by not reappointing them to their faculty positions for the 2021-2022 academic year in retaliation for protected union activity. Again, an employer independently violates subsection 5.4a(1) if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification, and derivatively violates 5.4a(1) when an employer violates another unfair practice provision, including subsection 5.4a(3). See Orange Bd. of Ed., 20 NJPER at 287; Galloway Tp. Bd. of Ed., 2 NJPER at 254. The evidence is overwhelming that CCM interfered with the Association's rights under the Act when it non-renewed

the six Association officers and members, and that CCM lacked a legitimate and substantial business justification for doing so, as all of its evolving reasons for the non-renewals appear to be pretextual. This is especially the case where CCM's main agent in the non-renewals and the alleged business justifications -- Iacono -- failed to appear at the hearing to provide any alternative explanation for numerous actions that display extreme anti-union animus.

Thus, I find that CCM violated section 5.4a(1) of the Act both independently and derivatively when it interfered with the Association's right to exercise the rights guaranteed to it by the Act, and by retaliating against the six Association officers and members by not reappointing them to their faculty positions for the 2021-2022 academic year in retaliation for protected union activity.

With regard to CCM's allegation that the Association violated section 5.4b(2) of the Act, which would require that the Association "[i]nterfer[ed] with, restrain[ed] or coerc[ed]" CCM "in the selection of his representative for the purposes of negotiations or the adjustment of grievances," I find that CCM made no such showing. To establish a violation of this section, an employer must prove "a coercive pattern of union conduct designed to interfere with the employer's choice of representative for purposes of collective bargaining." See Downe

Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3, 6 (¶17002 1985).

First and foremost, at all times relevant to this matter, Iacono did not attend any negotiations sessions or process any grievances involving the Association, and he did not testify at the hearing to demonstrate otherwise. Thus, CCM did not demonstrate that Iacono was CCM's choice of representative for purposes of collective bargaining, or that the Association interfered with CCM's choice of representative.

Furthermore, although CCM argued that the Association was hostile to Iacono, and in fact was trying to get Iacono to resign or be fired from his position, those actions, including the Association's social media postings, constitute protected activity, as the Act guarantees the Association's right to publicly express its view about labor relations. See Manalapan-Englishtown Reg. Bd. of Ed., P.E.R.C. No. 78-91, 4 NJPER 262 (¶4134 1978); Laurel Springs Bd. of Ed., P.E.R.C. No. 78-4, 3 NJPER 228 (1977); Jackson Tp., H.E. No. 88-49, 14 NJPER 293 (¶19109 1988) adopted P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988). See Emarco, Inc., 284 NLRB No. 91, 125 LRRM 1311, 1313 (1987). In Laurel Springs, the Commission held that

it is the intent of the Act to protect public employees in their proper activities in support of their majority representative. This includes activities to inform the public of their view of a particular dispute or issue as well

as their activities at the negotiating table. [3 NJPER at 229 (emphasis added).]

Consequently, the Association's actions, including social media postings, criticizing Iacono are protected activity under the Act. This protection even extends to Capozzi's May 4, 2021 email and Schmidt's May 10, 2021 email that violated CCM's Policy Governing Access to and Use of Copyrighted Works; CCM's Policy Limiting Solicitation on College Property, and Article XIX (Academic Freedom) of the parties' CNA, as violation of those CCM policies and the CNA do not exclude these emails from protection under the Act.

In light of these facts, I find that the Association did not violate section 5.4b(2) of the Act.

With regard to individual affirmative relief, the six Association officers and members are not all similarly situated. As described above, Capozzi was the very active and visible Association President, with four years of all excellent evaluations as an assistant professor in the English Department. Peck was the Association's very active and visible grievance chair with three years of excellent and good evaluations, and a fourth and final year in 2021 of all excellent evaluations as an assistant professor in the English Department. Schmidt was an assistant professor in the English Department with three years of excellent and good evaluations, and then a fourth and final year

in 2021 of all excellent evaluations. Schmidt was also a very active and visible Association member who attended the October 2019 and November 2019 Board of Trustees meetings wearing union attire and holding Association signs in the front row. Notably, Capozzi, Peck and Schmidt were all individually identified by Iacono in the April 18 police report.

Lauzon was the Association's very active and visible communications chair, with three years of all excellent evaluations as an assistant professor in the Communication Department. Not only was Lauzon individually named by Iacono in the April 18 police report, but Lauzon had the unfortunate distinction of being identified by Iacono as the primary suspect in the yard cart incident because he lived in the same town, despite the fact that Lauzon spent that weekend searching for new employment, and an interview suit, after being non-renewed. Clearly, Capozzi, Peck, Schmidt and Lauzon's compelling individual circumstances merit individual affirmative relief.

Kilhaney and Lesce present more nuanced sets of circumstances. Kilhaney was an assistant professor in the Biology Department who brought union representation to a meeting with CCM's administration on February 11, 2020. However, despite this singular instance of Association activity, Kilhaney's activity clearly caught Iacono's attention, as she was individually identified by Iacono in the April 18 police report.

Also, Kilhaney's evaluations from 2019 through 2021 were weaker than the others, but improved over time. Kilhaney started 2019 with three satisfactory and one unsatisfactory evaluations; followed with an improved one good, two satisfactory, and one unsatisfactory evaluations in 2020; and then continued to improve in 2021 with three good and one satisfactory evaluations. The steady improvement in Kilhaney's evaluations, and the individual attention that she received from Iacono for her protected activity, outweigh her weaker evaluations than Capozzi, Peck, Schmidt and Lauzon, and merit individual affirmative relief for Kilhaney as well.

Lesce presents materially different circumstances. Lesce was an instructor in the Languages and ESL Department who received all excellent evaluations in 2021 for her first and ultimately final year at CCM. However, other than Association membership, there is no evidence in the record of any Association activity by Lesce, nor is there evidence of CCM's knowledge of any Association activity by Lesce, as Lesce was the only one of the six Association non-renewals who was not identified by Iacono in the April 18 police report. Thus, despite her brief but excellent performance at CCM as an instructor, there is no factual record of Association activity to support individual affirmative relief for Lesce.

CONCLUSIONS OF LAW

Based upon the above findings of fact and legal analysis, I make the following conclusions of law:

CCM violated section 5.4a(1) and (3) of the Act when it interfered with the Association's right to exercise the rights guaranteed to it by the Act, and by retaliating against James Capozzi, Geoff Peck, Mark Schmidt, Robb Lauzon and Anastasia Kilhaney by not reappointing them to their faculty positions as assistant professors in the CCM English, Communication, and Biology Departments, respectively, for the 2021-2022 academic year in retaliation for protected union activity.

The Association did not violate section 5.4b(2) of the Act.

RECOMMENDED ORDER

I recommend that the Commission order that the County College of Morris:

A. Cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., particularly by interfering with the Association's right to exercise the rights guaranteed to it by the Act, and by retaliating against James Capozzi, Geoff Peck, Mark Schmidt, Robb Lauzon and Anastasia Kilhaney by not reappointing them to their faculty positions as full-time

assistant professors in the CCM English, Communication, and Biology Departments, respectively, for the 2021-2022 academic year in retaliation for protected union activity.

B. Take the following affirmative action:

1. Offer to reinstate Capozzi, Peck, Schmidt, Lauzon and Kilhaney, who were non-renewed on April 20, 2021, as full-time assistant professors in the CCM English, Communication, and Biology Departments, respectively, as soon as practicable after the date of this decision, with substantially the same terms and conditions of employment including, but not limited to, salary, work hours, benefits, employment responsibilities, and eligibility for tenure consideration as they had prior to their non-renewal.

2. Make Capozzi, Peck, Schmidt, Lauzon and Kilhaney whole for all salary and benefits (e.g., leave time that would have accrued, out-of-pocket healthcare expenses that otherwise would have been covered by employer-provided healthcare benefits, etc.) that they would have accrued as CCM assistant professors from April 20, 2021 to their date of reinstatement, less mitigation, with interest at the rate set by R. 4:42-11.

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by

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

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

/s/ Lisa Ruch

Lisa Ruch

Hearing Examiner

DATED: September 19, 2023

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 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. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by September 29, 2023.



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 New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., particularly by interfering with the Faculty Association of the County College of Morris' right to exercise the rights guaranteed to it by the Act, and by retaliating against James Capozzi, Geoff Peck, Mark Schmidt, Robb Lauzon and Anastasia Kilhaney by not reappointing them to their faculty positions as full-time assistant professors in the County College of Morris English, Communication, and Biology Departments, respectively, for the 2021-2022 academic year in retaliation for protected union activity.

WE WILL take the following affirmative action:

Offer to reinstate Capozzi, Peck, Schmidt, Lauzon and Kilhaney, who were non-renewed on April 20, 2021, as full-time assistant professors in the County College of Morris English, Communication, and Biology Departments, respectively, as soon as practicable after the date of this decision, with substantially the same terms and conditions of employment including, but not limited to, salary, work hours, benefits, employment responsibilities, and eligibility for tenure consideration as they had prior to their non-renewal.

Make Capozzi, Peck, Schmidt, Lauzon and Kilhaney whole for all salary and benefits (e.g., leave time that would have accrued, out-of-pocket healthcare expenses that otherwise would have been covered by employer-provided healthcare benefits, etc.) that they would have accrued as County College of Morris assistant professors from April 20, 2021 to their date of reinstatement, less mitigation, with interest at the rate set by R. 4:42-11.

Docket No. CO-2021-228
CE-2021-011

Morris County College
Morris County Faculty Association
(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