

P.E.R.C. NO. 2018-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
KEAN UNIVERSITY,

Respondent,

-and-

Docket No. CO-2014-193

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

Charging Party.

SYNOPSIS

The Public Employment Relations Commission adopts the Hearing Examiner's recommended decision concluding that the University violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4a(5), and derivatively 5.4a(1), by failing to negotiate with the Council upon demand over additional compensation and the impact of mandatory training during winter break for 2014 and 2015.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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COLLEGE LOCALS, AFT, AFL-CIO,

Charging Party.

Appearances:

For the Respondent, Christopher S. Porrino, Attorney
General (Marolhin D. Mendez, Deputy Attorney General)

For the Charging Party, Bennett Muraskin, Staff
Representative

DECISION

On February 24, 2014, the Council of New Jersey State
College Locals, AFT, AFL-CIO (Council) filed an unfair practice
charge against the State of New Jersey (State), Kean University
(University) alleging that the University violated subsections
5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations

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. . . . (5) Refusing
to negotiate in good faith with a majority representative of
employees in an appropriate unit concerning terms and
conditions of employment of employees in that unit, or
refusing to process grievances presented by the majority
representative."

Act, N.J.S.A. 34:13A-1 et seq. (Act), by refusing to engage in negotiations regarding additional compensation for, and the impact of, faculty attendance at mandatory training during winter break. On September 4, the Council amended its charge to allege that despite indicating a willingness to negotiate and placing this item on the agenda for March 18 and April 22, 2015 negotiation sessions, the University ultimately took the position that additional compensation was not negotiable because mandatory training during winter break was part of the normal duties of faculty.

On October 28, 2014, the Director of Unfair Practices issued a complaint and notice of pre-hearing. On November 6, the University filed an answer. On January 21, 2015, the Council amended its charge to allege that despite sending a request to negotiate dated December 8, 2014, the University refused to negotiate additional compensation for faculty attendance at mandatory training during winter break. On June 22, 2015, the University filed an amended answer.

On May 16, 2016, the Hearing Examiner denied the parties' motions for summary judgment [H.E. No. 2016-22, 42 NJPER 573 (¶160 2016)]. The Hearing Examiner found that although mandatory training was a managerial prerogative, the University had to negotiate upon demand over additional compensation for faculty attendance. However, the Hearing Examiner also determined that

there were material disputed facts as to: whether the parties had negotiated upon demand over compensation for training; whether compensation for the training was already covered by the parties' collective negotiations agreement; whether the Council may have waived the right to negotiate compensation for the term of the parties' most recent collective negotiations agreement; and whether the University was acting consistently with past practice in not paying additional compensation for the 2014 and 2015 training because it was first instituted in 2012.

On February 8 and March 20, 2017, a hearing was held. On August 28, the Hearing Examiner issued a report and recommended decision [H.E. No. 2018-2, 44 NJPER 104 (¶34 2017) (H.E.)]. The Hearing Examiner concluded that the University violated subsection 5.4a(5), and derivatively 5.4a(1), of the Act "by failing to negotiate upon demand over compensation and impact regarding mandatory winter-break training beginning in January 2014 and thereafter" and recommended that the University be ordered to negotiate with the Council.

On September 1, 2017, the Council filed the following exception to the Hearing Examiner's report and recommended decision:

Upon review of the official transcript of the hearing, the Council finds no support for the Hearing Examiner's [determination within finding of fact no. 13] that "[a]ccording to Castiglione and corroborated by other witnesses, the academic year runs from

September 1 through June 30, with July and August designated as vacation for faculty.”

The Council requests that the Commission delete this sentence from the Hearing Examiner’s findings of fact.

On September 7, 2017, the University filed the following exceptions to the Hearing Examiner’s report and recommended decision:

[T]he University takes exception to paragraph 21 of the Findings of Facts The Hearing Examiner correctly finds that the University took a zero-pay position but incorrectly finds that “the University did not engage in negotiations taking the position that it had already done so and/or that the interim settlement agreement preempted negotiations.”

* * *

The University also takes exception to the Hearing Examiner’s waiver analysis. The Hearing Examiner finds that “the January winter-break training was mandatory from its inception in 2012.” Yet, the Hearing Examiner disregards the fact that the Union undeniably failed to request negotiation for the training.

We have reviewed the record. Except as supplemented or modified below in the summary of facts, we find that the Hearing Examiner’s findings of fact (H.E. at 4-21) are supported by the record and we adopt them.

SUMMARY OF FACTS

The Council represents nine State colleges including Kean University and negotiates a global collective agreement, or master agreement, with the State on behalf of its members. The

Kean Federation of Teachers (KFT) is a local within the Council that negotiates local agreements with the University. The State and the Council are parties to successive collective negotiations agreements (CNA) having respective terms of July 1, 2007 through June 30, 2011 and July 1, 2011 through June 30, 2015.

Article XII of the parties' 2007-2011 CNA, entitled "Faculty Responsibilities," Section C, entitled "Other Responsibilities," provides:

Faculty responsibilities which have been traditionally performed by the faculty and are reasonable and consistent with sound academic practice shall be continued consistent with previous practice. Disagreements concerning their specific nature shall be resolved by the Local UNION and the College/University. These responsibilities shall be performed within the academic year, provided that assignments outside the thirty-two (32) weeks of instruction referred to above shall not be made individually or collectively on an inequitable basis.

During negotiations for a successor agreement, the parties exchanged proposals regarding this contract provision.

Initially, the University proposed deleting the provision in its entirety. The Council counter-proposed retaining the provision in its entirety and adding language about performing non-teaching duties between the end of the spring semester and June 30. The University responded with modifications to existing language, adding training and other related responsibilities as the University deemed appropriate or necessary to faculty

responsibilities. Ultimately, all proposals regarding this contract provision were withdrawn.

Accordingly, Article XII of the parties' 2011-2015 CNA includes the same language set forth above as paragraph two and adds the following:

1. Non-teaching duties include scholarly, research and artistic activities; service through sharing their professional expertise both within and beyond the College/University; and the mentoring and advisement of the students in their courses and programs. During the period of instruction faculty shall be present on campus as necessary to their professional responsibilities and shall also be accessible to students, faculty and staff colleagues through whatever normal, electronic, telephonic or written modes they find most convenient during the academic year. Nothing contained herein shall in any way affect the terms and/or continued application of any locally negotiated agreements and/or previous practices pertaining to non-teaching responsibilities, nor shall anything contained herein affect the rights of the College/University, [Council] or Local Union under the New Jersey Employer-Employee Relations Act.

Historically during winter break, University faculty have had no teaching responsibilities and are normally not required to be on campus. However, they are expected to "finish their course work from the fall semester," which includes calculating and submitting grades, and to "prepar[e] for the courses that they'll be teaching during the spring semester." University faculty also perform other non-teaching duties during winter break including,

but not limited to, "professional development," "community service," "writing," "attendance at . . . [academic] conferences," "research or scholarship, curriculum development," and "other activities as is needed by their departments or specific to their particular situation." The University acknowledges that prior to 2012, faculty were not required to attend mandatory training during winter break.^{2/}

However, in 2011 the University was reaccredited by the Middle States Commission on Higher Education. In response to the reaccreditation report's finding that assessment programs were a critical area in need of improvement, the University's Board of Trustees (Board) passed a resolution dated June 27, 2011 directing "the President and/or his designee to establish and implement a program of annual assessment for every employee of Kean University." As a result, the University established mandatory bi-annual training as part of its annual assessment program. Starting in January 2012 and every January thereafter, the University scheduled mandatory on-campus training for faculty during winter break.

2/ Notably, the parties have an ongoing dispute regarding whether the University can require faculty members to attend training after undergraduate commencement. Although the Council filed a related grievance (OER 9840) on June 19 and August 28, 2008, the parties reached an interim settlement agreement in August 2010. However, under the agreement, either party has the option to resume arbitration of OER 9840. (J-3; 1T71:16-23; H.E. at 5-6)

In 2012 and 2013, training during winter break was scheduled for two and a half days and focused on the areas of institutional assessment, assessment of student learning, and other related topics. Although attendance was taken via sign-in sheets, no discipline was imposed for non-attendance. According to the KFT, it did not demand negotiations after the training was scheduled for 2012 and 2013 based upon its conclusion that although the training was mandatory, "the University would not discipline faculty for non-attendance, namely because there was no statement issued that attendance would be kept or used for disciplinary purposes or other personnel decisions."

In the fall of 2013, the Board passed a resolution dated September 16, 2013 indicating that "participation in biannual training [was] mandatory . . . and [would] be a relevant part of annual employment reviews, reclassifications, reappointment processes, promotion decisions, additional benefits such as travel, overload, scheduling preferences, and other personnel matters so determined by the President and/or his designee." Accordingly, in 2014, 2015, 2016, and 2017, training during winter break was increased to five full days and its focus was broadened to include campus security, technology, and areas of training specific to each college within the University.

Based upon these changes and his understanding that the Board was now serious about requiring attendance, James A.

Castiglione (Castiglione), the President of the KFT, demanded "negotiations over compensation for attendance at [the 2014] training and over the impact and other negotiable aspects of these changes" by correspondence dated October 14, 2013. Castiglione made similar demands to negotiate regarding attendance at the 2015, 2016, and 2017 training by correspondence dated December 8, 2014, December 15, 2015, and December 7, 2016, respectively. Castiglione testified that "the [U]niversity did not negotiate over compensation in any of the four years that [the KFT] demanded negotiations" and that "[the KFT] never received a counterproposal from the [U]niversity."

Castiglione also testified that there was "a long history of [faculty receiving compensation for performance of non-teaching duties]" at the University. Specifically, "when faculty members take on the coordination of an academic program they receive compensation for those additional duties" that may "come[] in the form of additional pay . . . [or] in the form of release time in load from some amount of existing teaching duties." With respect to faculty receiving additional pay for non-teaching duties, Castiglione testified that "the KFT signed a local letter of agreement with the [U]niversity that provides for one teaching credit of compensation for faculty that take on the additional responsibility of being the assessment coordinator for a particular program or department." However, Castiglione also

admitted that training is a non-teaching responsibility like scholarly research and artistic activities for which faculty "are not compensated" over and above their regular compensation.

Patrick McManimon (McManimon), the Chair of the KFT Negotiations Committee, also requested the University's "compensation offer . . . relative to mandatory training" by correspondence dated December 13, 2013. In a subsequent letter dated January 9, 2014, McManimon reiterated the KFT's October 14, 2013 demand to negotiate, the KFT's December 13, 2013 request for the University's compensation proposal, and renewed the KFT's demand to negotiate. McManimon testified that the University only provided a verbal response that "[additional compensation] had already been negotiated . . . in the master contract" and that the KFT "[was] being compensated . . . in accordance with the contract." McManimon disagreed with the University's position, testifying that although "[faculty] are . . . responsible for . . . professional development" - which "generally include[s] training" - during winter break, "attendance on campus . . . was an increased workload."

Steve Young, the Council's Executive Director, was "one of the lead negotiators" for the KFT with respect to parties' 2007-2011 and 2011-2015 CNAs. Young testified that the parties did not "bring up the issue of mandatory faculty training during winter break" during negotiations and "the issue of compensation

for faculty who are assigned work on campus during winter break" was not addressed within Article XII. He went on to testify that to his knowledge, Kean University is the only other state college/university covered by the master agreement that requires faculty to attend professional training on campus during winter break; other colleges/universities that hold training during winter break provide additional compensation to faculty.

Philip Connelly (Connelly), the University's Executive Vice President for Operations and Chief Negotiator during the time in question, testified that "[training was] something . . . already included in the compensation for the faculty" but the University "was . . . certainly willing to negotiate" and that he "was available to negotiate twelve months out of the year." Connelly went on to testify that despite the fact that the University "[w]as . . . prepared to respond to the [KFT] . . . [if] they made a counteroffer," he "never heard back from [the KFT] with what they were demanding" after he provided the University's initial "zero pay position" as "a negotiation tactic." However, Connelly also admitted that faculty "were not . . . relieved of [their other non-teaching] duties" during winter break while they attended mandatory training. Further, he could not recall "tak[ing] the position . . . that negotiations were preempted by an interim settlement agreement in [the OER 9840 matter]" despite

an email dated February 4, 2014 from the KFT's representative to Connelly indicating that Connelly took that position.

Based upon the parties' inability to resolve this dispute, the instant unfair practice charge was filed.

STANDARD OF REVIEW

With respect to the Hearing Examiner's findings of fact, we cannot review same de novo. Instead, our review is guided and constrained by the standards of review set forth in N.J.S.A. 52:14B-10(c).^{3/} Under that statute, we may not reject or modify any findings of fact as to issues of lay witness credibility

3/ N.J.S.A. 52:14B-10(c) provides, in pertinent part:

The head of the agency, upon a review of the record submitted by the [hearing officer], shall adopt, reject or modify the recommended report and decision . . . after receipt of such recommendations. In reviewing the decision. . . , the agency head may reject or modify findings of fact, conclusions of law or interpretations of agency policy in the decision, but shall state clearly the reasons for doing so. The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. In rejecting or modifying any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record.

unless we first determine from our review of the record^{4/} that the findings are arbitrary, capricious, or unreasonable or are not supported by sufficient, competent, credible evidence. See also, New Jersey Div. of Youth and Family Services v. D.M.B., 375 N.J. Super. 141, 144 (App. Div. 2005) (deference due factfinder's "feel of the case" based on seeing/hearing witnesses); Cavalieri v. PERS Bd. of Trustees, 368 N.J. Super. 527, 537 (App. Div. 2004).

Public employers are prohibited from "[i]nterfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act." N.J.S.A. 34:13A-5.4a(1). "It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate and substantial business justification." State of New Jersey (Corrections), H.E.

4/ N.J.A.C. 19:14-7.2 provides:

The record shall consist of the charge and any amendments; notice of hearing; answer and any amendments; motions; rulings; orders; any official transcript of the hearing; and stipulations, exhibits, documentary evidence, and depositions admitted into evidence; together with the hearing examiner's report and recommended decision and any exceptions, cross-exceptions, and briefs and answering briefs in support of, or in opposition to, exceptions and cross-exceptions.

2014-9, 40 NJPER 534 (¶173 2014) (citing New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421 (¶4189 1978)). We have held that a violation of another unfair practice provision derivatively violates subsection 5.4a(1). Lakehurst Bd. of Ed., P.E.R.C. No. 2004-74, 30 NJPER 186 (¶69 2004).

Public employers are also prohibited from “[r]efusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. . . .” N.J.S.A. 34:13A-5.4a(5). A determination that a party has refused to negotiate in good faith will depend upon an analysis of the overall conduct and attitude of the party charged. Teaneck Tp., P.E.R.C. No. 2011-33, 36 NJPER 403 (¶156 2010).

ANALYSIS

Council’s Exception

The Council contests the first sentence of finding of fact no. 13, claiming that the Hearing Examiner mistakenly found that “[a]ccording to Castiglione and corroborated by other witnesses, the academic year runs from September 1 through June 30, with July and August designated as vacation for faculty.” (H.E. at 11) The University has not contested this exception. We have reviewed the record and agree that it does not support the first sentence of the Hearing Examiner’s finding of fact no. 13 as written.

In that regard, it was Connelly, not Castiglione, who testified that "[t]he academic year is from September 1st through June 30th." (2T12:8-11; 2T28:3-6) This testimony was elicited in order to establish that during the academic year, which includes the month of January, faculty members are "required to do . . . other aspects of their duties and responsibilities." (2T12:12 thru 2T13:6; 2T28:7 thru 2T35:24) Castiglione did not testify regarding the beginning or end dates of the academic year (1T33:7 thru 1T59:7). He testified that "according to the contract, faculty are supposed to be on campus as necessary to the performance of their duties during the 32 weeks of instruction." (1T33:20-25; 1T48:3-14)

As for other witnesses, Young testified that the contract proposals exchanged by the parties regarding Article XII - in particular the State's counter-proposal - "identifie[d] the academic year . . . [as] September 1st to June 30th." (1T75:23 thru 1T76:6; 1T78:2-21; CP-8; CP-9; CP-10) However, he also testified that "[b]oth parties withdrew their proposals and the status quo on the contract remained." (1T68:11 thru 1T71:15; J-1; J-2). He clarified that the context for the parties' counter-proposals "was an arbitration on [Article XII] regarding [faculty] duties after the commencement to June 30th" and that ultimately there was no change in the language. (1T71:16 thru 1T72:23; J-3) Young's testimony is consistent with the

stipulated facts (1T15:23 thru 1T18:1) and other documentary evidence (J-1; J-2; J-3) indicating that the parties' have an ongoing dispute regarding the length of the academic year for purposes of training scheduled after undergraduate commencement. (H.E. at 5-6).

Given that the parties do not dispute that "the month of January . . . falls in the middle of the academic year," we find that beginning and/or end dates are not germane to the instant dispute. See Council's September 1, 2017 Br. at 2. Accordingly, we grant this exception as clarified above.

University's Exceptions

The University contests finding of fact no. 21, claiming that the Hearing Examiner mistakenly determined that the University did not engage in negotiations. (H.E. at 17-18) The University maintains that it "justifiably took a hardball . . . approach" when "respond[ing] to the [Council's] demand to negotiate and communicat[ing] its position" and "was prepared to respond to the [Council] had they made a counteroffer." See University's September 7, 2017 Br. at 2-4. We disagree.

As the Hearing Examiner did, we acknowledge Connelly's testimony regarding the University's response to the KFT's demand to negotiate. In particular, Connelly testified that "[training was] something . . . already included in the compensation for the faculty" but the University "was . . . certainly willing to

negotiate" and that he "was available to negotiate twelve months out of the year." (2T21:8-19; 2T22:5-10; 2T22:22-25; H.E. at 17-18) He went on to testify that despite the fact that the University "[w]as . . . prepared to respond to the [KFT] . . . [if] they made a counteroffer," he "never heard back from [the KFT] with what they were demanding" after he provided the University's initial "zero pay position" as "a negotiation tactic." (2T21:24 thru 2T22:25; H.E. at 17-18) However, Connelly also admitted that faculty "were not . . . relieved of [their other non-teaching] duties" during winter break while they attended mandatory training. (2T32:9 thru 2T33:2; H.E. at 17) Further, he could not recall "tak[ing] the position . . . that negotiations were preempted by an interim settlement agreement in [the OER 9840 matter]" despite an email dated February 4, 2014 from the KFT's representative to Connelly indicating that Connelly took that position. (2T39:15 thru 2T41:9; CP-13; H.E. at 18)

Notwithstanding this testimony, we find substantial support in the record for the Hearing Examiner's finding. Castiglione testified that "the [U]niversity did not negotiate over compensation in any of the four years that [the KFT] demanded negotiations" and that "[the KFT] never received a counterproposal from the [U]niversity." (1T54:20 thru 1T55:9; H.E. at 15-16) McManimon testified that in response to the KFT's

demand to negotiate, the University only provided a verbal response that "[additional compensation] had already been negotiated . . . in the master contract" and that the KFT "[was] being compensated . . . in accordance with the contract."

(1T62:2-20; H.E. at 16)

Moreover, the Hearing Examiner credited the testimony of Young - one of the Council's lead negotiators for the parties' 2007-2011 and 2011-2015 CNAs - that "Article XIIC2 does not address the issue of compensation for faculty who are assigned work on campus during winter break" as corroborated by McManimon and Castiglione. (H.E. at 20, 26; 1T45:15 thru 1T47:22; 1T64:16-19; 1T67:23 thru 1T68:10; 1T72:24 thru 1T73:4; 1T78:7-20) She noted that the University failed to offer any witness who participated in the parties' contract negotiations. (H.E. at 20)

We find that the Hearing Examiner's finding is supported by sufficient, competent, credible evidence. See N.J.S.A. 52:14B-10(c); accord New Jersey Div. of Youth and Family Services v. D.M.B., 375 N.J. Super. 141, 144 (App. Div. 2005); Cavalieri v. PERS Bd. of Trustees, 368 N.J. Super. 527, 537 (App. Div. 2004). Further, in response to having the same issue raised before her by the University, we agree with the Hearing Examiner's legal analysis:

The University argues that its zero-pay response to the union's negotiation[s] demand fulfilled its 5.4a(5) obligations. This position is disingenuous because the

University's response to the KFT's negotiations demand was that it had no duty to negotiate since the parties' collective agreement covers training as a non-teaching duty for which compensation was already provided and/or that an interim settlement agreement of a grievance relieved it of its negotiations obligation. I have already discussed that the parties' collective agreement does not cover compensation for training.

The uncontroverted testimony of Steve Young, the lead negotiator for the Council, confirms that negotiations for the current master agreement, specifically Article XIIC covering non-teaching duties, did not encompass compensation. Also, the parties' interim settlement agreement covered the issue of training between the end of Spring semester and June 30. It does not address the issue of compensation for training during winter-break. Basically, the University refused to negotiate mistakenly believing that it had no obligation to do so.

[H.E. at 26-28.]

Accordingly, we reject this exception.

The University also contests the Hearing Examiner's waiver analysis. (H.E. at 22-23) In particular, given that the Hearing Examiner found that "the January winter-break training was mandatory from its inception in 2012," the University maintains that the Hearing Examiner "disregard[ed] the fact that the [Council] undeniably failed to request negotiation[s]" and therefore "waived its right to negotiate compensation for training[] occurring during the academic year." See University's September 7, 2017 Br. at 4.

The Commission has held that a change in terms and conditions of employment imposed without negotiations violates subsection 5.4a(5) unless the employer can prove that the employee representative waived its right to negotiate. See South River Bd. of Ed., P.E.R.C. No. 86-132, 12 NJPER 447 (¶17167 1986), aff'd, NJPER Supp.2d 170 (¶149 App. Div. 1987) (citing Elmwood Park Bd. of Ed., P.E.R.C. No. 85-115, 11 NJPER 366 (¶16129 1985)). Specifically, the Commission stated:

A waiver can come in a number of different forms, but must be clear and unequivocal. For example, if the contract explicitly allows the employer to make the changes, the employee representative has waived any right to negotiate the changes during the term of the contract. In addition, if the employee organization has been apprised of proposed changes in advance and declines the opportunity to negotiate, or has routinely permitted the employer to make similar changes in the past, it may have waived its right to negotiate those changes.

[12 NJPER at 447.]

In the instant matter, despite the fact that training during winter break was mandatory from its inception in 2012, "the scope of the training was broadened" in 2014 as a result of the Board's September 16, 2013 resolution. (H.E. at 12-15) In fact, it was doubled, increasing from two and one-half days to five days. (1T20:7 thru 1T22:21; 1T35:11 to 1T36:15; J-5; J-6)

While we conclude that the Council waived negotiations over additional compensation for the winter training mandated in 2012

and 2013 given its failure to demand negotiations regarding that training, we also conclude that the University was required to negotiate over additional compensation for, and the impact of, the training as of 2014 given that the Council did demand negotiations after the University doubled the training that year.^{5/} Accordingly, we reject this exception with respect to the training required for 2014 and 2015.

ORDER

The State of New Jersey, Kean University is ordered to:

A. Cease and desist from:

1. Interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to negotiate upon demand with the Council of New Jersey State College Locals, AFT, AFL-CIO, over additional compensation and the impact of training during winter break beginning in January 2014 and thereafter.

2. Refusing to negotiate with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, particularly by refusing to negotiate upon demand with the Council over

^{5/} We also find that the University has a managerial prerogative to establish evaluation criteria and take into consideration for personnel decisions an employee's failure to attend lawfully-mandated professional development activities including training. See N.J.S.A. 34:13A-5.3 ("[n]othing herein shall be construed as permitting negotiation of the standards or criteria for employee performance"); accord Bethlehem Twp. Bd. of Educ. v. Bethlehem Twp. Ed. Ass'n, 91 N.J. 38, 46-47 (1982).

additional compensation and the impact of training during winter break beginning in January 2014 and thereafter.

B. Take the following affirmative action:

1. Negotiate in good faith with the Council on demand over additional compensation and impact regarding training during winter break from January 2014 and thereafter.

2. 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.

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

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Jones and Voos voted in favor of this decision. None opposed. Commissioners Bonanni and Eskilson were not present.

ISSUED: November 30, 2017

Trenton, New Jersey



NOTICE TO EMPLOYEES

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

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by the Act and from refusing to negotiate with a majority representative of employees in the appropriate unit concerning terms and conditions of employment in that unit, particularly by refusing to negotiate upon demand with the Council of New Jersey State College Locals, AFT, AFL-CIO, over additional compensation and the impact of mandatory training during winter break beginning in January 2014 and thereafter.

WE WILL negotiate in good faith with the Council over additional compensation and impact regarding mandatory training during winter break from January 2014 and thereafter.

State of New Jersey
Kean University

(Public Employer)

Docket No. CO-2014-193

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