

H.E. NO. 2024-10

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

In the Matter of

NEW JERSEY STATE (WILLIAM PATERSON
UNIVERSITY),

Respondent,

-and-

Docket No. CO-2022-162

COUNCIL OF NJ STATE COLLEGE LOCALS,
AFT, AFL-CIO,

CHARGING PARTY.

Appearances:

For the Respondent,
Matthew J. Platkin, Attorney General
(Ian M. Fiedler, Deputy Attorney General)

For the Charging Party,
Mets Schiro and McGovern, LLP, attorneys
(Kevin P. McGovern, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On February 1, 2022, and March 28, 2022, the Council of New Jersey State College Locals, AFT, AFL-CIO ("Council" or "Charging Party") filed an unfair practice charge and an amended unfair practice charge respectively, against the State of New Jersey William Paterson University ("University" or "Respondent"). The charge, as amended, alleges that the University violated sections 5.4a (1) and (5)^{1/} of the New Jersey Employer-Employee Relations

^{1/} These provisions prohibit public employers, their
(continued...)

Act ("Act"), N.J.S.A. 34:13A-1 et seq., when it failed to provide information requested by the Council on or around July 28, 2021, and March 7, 2022, regarding the University's decision to lay-off certain unit employees.

On October 28, 2022, the Director of Unfair Practices issued a Complaint and Notice of Pre-Hearing on the 5.4a(1) and (5) allegations. On November 23, 2022, the University filed an Answer denying that it violated the Act and asserting that the Council sought privileged information.

On December 19, 2022, the Council made a discovery demand for a revised version of information it initially requested on July 28, 2021 and March 7, 2022. As will be explained in more detail below, this demand was more narrow in scope than the original information requests. The Council also requested that if the University refused to release any document based on an assertion of privilege, then the University should create a privilege log that identified the document, the nature of the privilege asserted and the underlying facts that supported the

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

asserted privilege. On May 15, 2023, the University responded by providing documents it previously provided as part of pre-complaint resolution efforts and a privilege log that covered documents it decided to withhold on the basis of both attorney-client privilege and deliberative process privilege.

On June 9, 2023, the Council filed a Motion to Compel the Production of Documents, which was supported by the certification of Council's attorney and accompanying exhibits A through I. The University filed its opposition on July 5, 2023, which was supported with exhibits and certifications from the University's attorney and the following individuals: Vice President of Human Resources Allison Boucher-Jarvis; Dean Wartyna L. Davis; Dean Amy Ginsberg; Dean Venkatanarayanan Sharma. On the same day, the portion of the Deans' exhibits that the University considered to be privileged were submitted to me separately by email for the purpose of in camera review. On July 28, 2023, the Council submitted its reply brief in support of its motion to compel.

Although the parties' filings were made as part of the discovery process, they effectively seek to litigate the underlying substantive merits of the unfair practice charge. Since I cannot decide whether the withheld documents that are the subject of the unfair practice charge should be produced without first determining that the University was statutorily obligated

to provide them to the Council, I sought the parties' permission to treat their submissions as cross-motions for summary judgment. By email dated March 6, 2024, the parties consented.

Accordingly, I have reviewed the parties' submissions and the disputed documents in camera. Based upon the record, I make the following:

FINDINGS OF FACT

1. The Council is the majority representative for a unit comprised of faculty, librarians, professional staff and adjunct faculty for nine State colleges and universities, including the Respondent University. (Complaint at ¶1)

2. The State and the University are employers within the meaning of the Act. (Complaint at ¶3)

3. The Council and the University are parties to a collective negotiations agreement for the period of July 1, 2019 through June 30, 2023. (Complaint at ¶3)

4. In 2020, the University had a significant budget deficit as a result of a drop in enrollment, which was exacerbated by the COVID-19 pandemic. (Boucher-Jarvis Cert. at ¶2)

5. One of the University's responses to the deficit included layoffs. (Boucher-Jarvis Cert. at ¶3)

6. On or around July 23, 2021, the Council filed individual grievances on behalf of retrenched faculty members at the

University. (Council Motion Ex. A)

7. Each grievance contained the same information request that essentially^{2/} sought all information that the University relied upon in making its retrenchment determinations. (Council Motion Ex. A)

8. The University provided some information in response including staffing levels and a link to the Provost's website that published program enrollment numbers. (Council Motion Ex. A)

9. The parties conducted Step 1 grievance hearings in September 2021. At each hearing, the Council asserted that the University's response was incomplete and restated its request for information, which the University denied on privilege grounds. (Council Motion Ex. A)

10. On March 7, 2022, the Council filed grievances on behalf of an additional twenty-one faculty members at the University. The Council once again requested information to assist it in processing those grievances. (Council Motion Ex. B)

11. By email dated March 17, 2022, the University's

2/ The Council sought in pertinent part "any and all materials, memoranda, financial and/or programmatic reports, financial and/or programmatic studies, communiques, emails on which the University relied to make these retrenchment decisions." (Council Motion Ex. A) Since the parties agree that the central legal question in the legal dispute is the revised information request made on December 19, 2022, I will not analyze the original request.

Director of Compliance and Employee Relations, Regina A. Tindall, advised that the University had provided all of the non-privileged documents. (Council Motion Ex. B)

12. Before complaint issued in this matter, the Council sent an amended request for documents on August 3, 2022, in the interest of reaching a settlement. This revised request targeted documents relied upon by specific individuals, including department Deans, and sought the retrenchment formula used by the University and how it was applied. (Council Motion Ex. C)

13. Director of Labor and Employee Relations and Compliance, Regina Tindall, replied by letter dated August 29, 2022. Some information was provided, but with respect to other information, the University repeatedly asserted that "[it] further objects to the extent that this request is seeking information that is privileged." No further details were provided by the University that would elaborate upon or otherwise support its assertion of privilege. (Council Motion Ex. D)

14. After complaint issued, in an effort to settle the instant matter, the Council issued another amended information request by letter dated December 19, 2022 to the University. The request sought three groups of information: (1) documents relied upon by management pertaining to the allocation of courses into sub-specialities within the departments for the purpose of

retrenchment; (2) documents relied upon pertaining to the selection of the sub-specialities that would be subject to the retrenchment; and (3) documents relied upon by management pertaining to the selection of which faculty in the sub-specialities would be retrenched. (Council Motion Ex. F) The Council further requested that should the University assert a privilege regarding any document covered by the amended request, then the University should identify the document in a privilege log that specifies the nature of the privilege being asserted and the underlying factual basis for the asserted privilege. (Council Motion Ex. F)

15. The University responded on May 15, 2023. It provided documents that had been previously provided to the Council in August 2022. Its privilege log identified documents Bates-stamped WP039 through WP048 as being withheld on the basis of both attorney-client privilege and an advisory, consultative and deliberative privilege. (Council Motion Ex. H) The withheld documents were described as follows in pertinent part:

Bates Stamp	Created By	Document Description
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WP039-WP041	Dean Wartyna Davis	PDF document with institutional needs justifications/retrenchment recommendations for the College of Arts, Humanities and Social Sciences, which was considered during meetings between Provost Powers, General Counsel Melissa K. Reardon Henry, Vice President of Human Resources Boucher-Jarvis and Dean Davis.
WP042-WP044	Dean Amy Ginsberg	Excel spreadsheet with institutional needs justifications/retrenchment recommendations for the College of Education , which was considered during meetings between Provost Powers, General Counsel Melissa K. Reardon Henry, Vice President of Human Resources Boucher-Jarvis and Dean Ginsberg
WP045-047	Dean Venkatanarayanan (Venkat) Sharma	PDF document with institutional needs justifications/retrenchment recommendations for the College of Science and Health, which was considered during meetings between Provost Powers, General Counsel Melissa K. Reardon Henry, Vice President of Human Resources Boucher-Jarvis and Dean Sharma

WP048	Dean Venkatanarayanan (Venkat) Sharma	PDF document with institutional needs justifications/ retrenchment recommendations for the College of Science and Health, which was considered during meetings between Provost Powers, General Counsel Melissa K. Reardon Henry, Vice President of Human Resources Boucher-Jarvis and Dean Sharma
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16. The University provided certifications from each of the above-named Deans and the certification of Allison Boucher-Jarvis, the Vice President of Human Resources at the University.

17. Boucher-Jarvis certified that in response to the University's significant 2020 budget deficit, she sought the advice of the University's General Counsel, Melissa Reardon Henry, to ensure that lay-offs were in compliance with any laws and contract provisions. Boucher-Jarvis does not specify when she reached out to General Counsel Reardon Henry. (Boucher-Jarvis Cert. at ¶¶1-4)

18. In response to Boucher-Jarvis' request, General Counsel advised Boucher-Jarvis and University Provost Joshua B. Powers to obtain lay-off recommendations that included "institutional/programmatic needs analyses" from the University's Academic Deans. Boucher-Jarvis certified that the "analyses were necessary to help General Counsel determine whether the proposed

layoffs would violate any laws or contract provisions. Additionally, Boucher-Jarvis certified that she and General Counsel Henry also sought the Dean's recommendations and analyses for a disparate impact analysis that was conducted by outside counsel. (Boucher-Jarvis Cert. at ¶5-6 & 10)

19. Wartyna L. Davis is the Dean of the College of Arts, Humanities and Social Sciences (AHSS). She certified that on an unspecified date, she prepared a three-page document that contained her layoff recommendations, including her institutional/programmatic needs analyses. She provided this document as Exhibit A for in camera review. (Davis Cert. Ex. A) She emailed this document to General Counsel Reardon Henry on December 23, 2021 and labeled the email "confidential and privileged." (Davis Cert. Ex. B)

20. Amy Ginsberg is the Dean of the College of Education at the University. She certified that around November 2021 she began preparing her layoff recommendations and institutional/programmatic needs analyses for the College of Education. The recommendation and analyses were incorporated into a spreadsheet that she attached to her certification as Exhibit A for in camera review. In an email labeled "confidential and privileged," she sent her recommendations and analyses to General Counsel Henry on December 23, 2021. (Ginsberg

Cert. Ex. A& B)

21. Venkatanarayanan Sharma is the Dean of the College of Science and Health (CSH) at the University. He certified that he prepared a three-page document and one-page chart that contained his layoff recommendations and institutional/programmatic needs analyses, which he attached as Exhibit A for in camera review. It is unclear the manner in which his recommendation and analyses were sent to the General Counsel and when they were sent. (Sharma Cert. Ex. A)

22. All three Deans certified that their respective "layoff recommendations and institutional/programmatic needs analyses reflected an ongoing thought process regarding the potential layoffs, future areas of growth, enrolment issues, and other high-level policy concerns." (Davis Cert. ¶6; Sharma Cert. ¶6; Ginsberg Cert. ¶6)

23. On January 13 and/or January 14, 2022, the University conducted separate meetings with each of these Deans. During these meetings, their layoff recommendations and institutional/programmatic needs analyses were discussed with Vice President for Human Resources Boucher-Jarvis, General Counsel Henry and outside counsel. (Davis Cert. ¶9; Sharma Cert. ¶8; Ginsberg Cert. ¶9)

24. On January 14, 2022, outside counsel provided a verbal

disparate impact analysis. (Boucher-Jarvis Cert. at ¶11)

25. On January 21, 2022, the Deans' lay-off recommendations were finalized. (Ginsberg, Davis and Sharma certs.)

26. Article XLI of the parties' contract addresses retrenchments. It provides in pertinent part:

8. In the event of a reduction in force due to a fiscal crisis, each teaching library or administrative area to be reduced shall constitute a layoff unit. Layoff units need not be coincident with established departments or other subdivisions or units but may include identifiable programs or further subdivisions or specialities within programs as appropriate.

9. To the extent it is not inconsistent with the preservation of the institution's academic integrity and educational purpose, layoffs within a layoff unit shall be made in order of years of service laying off employees with the fewest years of service first.

(Council Motion Ex. I)

27. My in camera review of the disputed documents reveals that they essentially contain the Deans' recommendations for retrenchment of specific unit employees based on the application of contractual considerations and the University's operational needs for programs and specialities. The Deans reflect on the contributions, expertises, and abilities of specific unit employees within the context of the University's broader course offerings provided by other staff, institutional need and/or future areas of anticipated growth. Any analysis by the Deans

regarding institutional needs is relatively brief and often conclusory in nature. For example, frequently, a Dean in making his or her recommendation, simply asserted that a unit employee's academic area is not essential or does not meet institutional need. At other times, the recommendation may involve a few sentences that comment upon seniority ranking of specific employees, their areas of contribution and how those contributions may support institutional need or overlap with contributions of other staff members.

STANDARD OF REVIEW

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); see also, Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954).^{3/} In determining whether summary judgment is appropriate, we must ascertain "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the

^{3/} N.J.A.C. 19:14-4.8(e) provides:

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

applicable evidentiary standard, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party." Id. at 523. "Although summary judgment serves the valid purpose in our judicial system of protecting against groundless claims and frivolous defenses, it is not a substitute for a full plenary trial" and "should be denied unless the right thereto appears so clearly as to leave no room for controversy." Saldana v. DiMedio, 275 N.J. Super. 488, 495 (App. Div. 1995); see also, UMDNJ, P.E.R.C. No. 2006-51, 32 NJPER 12 (¶6 2006).

ANALYSIS

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). An employer violates this subsection derivatively when an employer violates another unfair practice provision. Lakehurst Bd. of Ed. and Lakehurst Ed. Ass'n, P.E.R.C. No. 2004-74, 30 NJPER 186 (¶69 2004), aff'd 31 NJPER 290 (¶113 App. Div. 2005).

Under section 5.4a(5) of the Act, public employers are 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" Generally, a refusal to provide relevant

information to the majority representative constitutes a refusal to negotiate in good faith, in violation of Section 5.4a(5). In re Univ. of Medicine and Dentistry of New Jersey, 144 N.J. 511, 530-531 (1996) (citing State of New Jersey (Office of Employee Relations)), P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284 1987), aff'd NJPER Supp. 2d 198 (¶177 App. Div. 1988); see also, State of New Jersey (Dept. of Higher Ed.), P.E.R.C. No. 87-149, 13 NJPER 504, 505 (¶18187 1987). A public employer must "provide its employees' union with the information that the union needs to evaluate the merits of an employee's complaint about employer conduct unless such information is 'clearly irrelevant or confidential.'" Id. at 531 (quoting State of New Jersey (Office of Employee Relations)), supra. Thus, the right to relevant information is not absolute as "the duty to disclose turns upon the circumstances of the particular case." State of New Jersey (Office of Employee Relations), supra (internal quotations omitted).

In the instant matter, the University asserts that since the retained documents are protected by attorney-client privilege and the deliberative process privilege, it did not violate its statutory duty to furnish information. Generally, "[c]ommunications between lawyer and his client in the course of that relationship and in professional confidence...." are

protected from disclosure. N.J.S.A. 2A:84A-20(1); N.J.R.E. 504(1)
“The deliberative process privilege is a doctrine that permits the government to withhold documents that reflect advisory, opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” In re Liquidation of Integrity Ins. Co., 165 N.J. 75, 83 (2000). In the context of information requests under the Act, the party asserting the confidentiality interest bears the burden of demonstrating that it applies. Bergen County College, H.E. No. 2013-6, 39 NJPER 260 (¶89 2012)

Attorney-Client Privilege

The University did not meet its burden in establishing that the retained documents identified in the privilege log are protected by attorney-client privilege. In ascertaining whether attorney-client privilege applies, New Jersey courts must examine the “exact role that an attorney played regarding each particular document for which the privilege is asserted” and the purpose of the attorney’s involvement. Payton v. N.J. Tpk. Auth., 148 N.J. 524, 550 (1997). As will be discussed in further detail, the University did not demonstrate that the retained documents were generated for the provision of legal advice or the preparation of litigation. Accordingly, the privilege does not apply to the documents the University withheld. Id. at 550-551 (explaining that

attorney-client privilege only applies where an attorney's purpose conducting an investigation is to provide legal advice or prepare for litigation).

As the Council points out in its submissions, the University's certifications do not demonstrate that the retained documents were prepared at the direction of an attorney as the University claims. Instead, the certifications from the three Deans establish that they created the documents in November 2021 and that the documents were discussed roughly two months later in January 2022. But the Deans' certifications are otherwise silent regarding who requested that they create these documents, when that request was made, and the attendant circumstances in which that request arose. While at some unspecified point after the budget deficit formed in 2020 due to a drop in enrollment, General Counsel Henry advised Boucher-Jarvis and University Provost Powers to obtain the Deans' lay-off recommendations, I cannot conclude that the documents were prepared at the direction of General Counsel Henry without more information clarifying the specific circumstances in which the General Counsel's request was eventually communicated to the Deans who created the disputed documents.

Assuming that the University did establish that the documents were prepared at the direction of General Counsel

Henry, my in camera review of those documents and consideration of the University's certified facts, lead me to conclude that the documents are not protected by attorney-client privilege because they were generated for compliance purposes as opposed to legal advice or litigation. Importantly, Boucher-Jarvis acknowledges that the Deans' analyses were needed to help the General Counsel ascertain whether the proposed layoffs might potentially violate laws or the parties' contract. My review of the documents also supports the conclusion that the purpose of the documents was to provide information that would facilitate the General Counsel's subsequent effort to evaluate compliance with contractual obligations—exactly as Boucher-Jarvis certified.

Courts have distinguished between documents generated for legal advice and litigation^{4/} versus compliance in recognizing that attorney-client privilege attaches in the former situation

^{4/} The University's reliance on Hannan v. St. Joseph's Hosp. & Med. Ctr., 318 N.J. Super. 22 (App. Div. 1999) is misplaced. In Hannan, the plaintiff first retained his attorney for the specific purpose of instituting a medical malpractice lawsuit, who then directed the plaintiff to create the notes about his medical treatment in anticipation of the litigation for which the attorney had been retained. Id. Citing Payton, the court in Hannan explained that "[i]f the purpose of the communication is to aid the attorney in giving legal advice to his client or to prepare for litigation, then the [attorney-client] privilege applies." Id. at 27. Thus, the facts in Hannan clearly established that the purpose of the plaintiff's communication was to assist or prepare for the litigation that the plaintiff retained the attorney to pursue.

but typically does not attach in the latter. Payton, 148 N.J. at 551. More specifically, attorney-client privilege generally does not attach to documents created during internal investigations, even where attorneys are involved, since the main purpose of those investigatory documents is to assess compliance with internal policies. Id. at 551-553. The fact that an internal compliance investigation was initially prompted by a complaint regarding alleged violations of internal policies and then subsequently led to litigation does not necessarily transform the purpose of the internal investigation from one of compliance to litigation preparation. Payton, 148 N.J. at 551 (explaining its doubts that attorney-client privilege attached to internal sexual harassment investigation where lawsuit was filed months after the investigation began).

I find that the documents at issue in this case are analogous to those created during the course of internal investigations. As is the case with internal investigations, the University's compliance-driven considerations motivated the development of the retained documents as opposed to legal advice or anticipated litigation. Boucher-Jarvis' certification essentially characterizes the General Counsel's role as compliance-oriented. The fact that it was the General Counsel's idea to have the Deans' make lay-off recommendations and that

those recommendations and analyses were subsequently shared with her, is insufficient support the conclusion that the disputed documents were generated for legal advice or in anticipation of litigation. Similarly, I cannot glean from my in camera review of the documents that the General Counsel or outside counsel were "truly or primarily acting in their legal capacities" with respect to each of the withheld documents. Id. at 551. Accordingly, given the particular factual circumstances of this matter and the specific documents in dispute, I conclude that the attorney-client privilege does not attach to the retained documents.

Deliberative Process Privilege

I also conclude that the deliberative process privilege does not attach to the documents that the University retained. For the privilege to apply, the University needed to establish that the retained documents satisfied the following two requirements:

"First, it must have been generated before the adoption of an agency's policy or decision. In other words, it must be pre-decisional. Second, the document must be deliberative in nature, containing opinions, recommendations, or advice about agency policies."

In re Liquidation of Integrity Ins. Co., 165 N.J. 84-85 (2000)

(internal citations omitted). If those two elements are satisfied, the presumption is in favor of non-disclosure. Id. at

85. Nonetheless, materials protected by the deliberative process privilege may still be disclosed if a party's substantial need for the materials outweighs the government's interest in non-disclosure. Id.

The disputed documents are not "pre-decisional." The University's certifications establish that the choice to respond to the budget deficit with lay-offs occurred first, as it served as the basis for Boucher-Jarvis subsequently reaching out to General Counsel Henry in an effort to make sure the lay-offs did not violate the contract or applicable laws, who in turn then sought the recommendations and analyses that are contained in the disputed documents. Therefore, the decision to institute lay-offs necessarily occurred before determining precisely who should be subject to them.

Assuming, the documents could be properly characterized as pre-decisional since the specific lay-off decisions were not finalized until January 2022, the disputed documents do not qualify as "deliberative" as applicable case law has defined it. "The privilege is properly limited to 'communications relating to policy formulation at the higher levels of government; it does not operate indiscriminately to shield all decision-making by public officials.'" Scott v. Bd. of Educ. of E. Orange, 219 F.R.D. 333, 337 (D.N.J. 2004) (quoting Grossman v. Schwarz, 125

F.R.D. 376, 381 (S.D.N.Y. 1989)). Therefore, the "privilege shields deliberations that contribute to the formulation of important public policy not routine operating decisions...." Id. at 338 (concluding that the deliberative process privilege does not protect Board's deliberations over the decision to discharge HVAC supervisor). See also Bergen County College, H.E. No. 2013-6, 39 NJPER 260 (¶89 2012) (deliberative process privilege did not relieve the employer of its obligation to provide requested information involving its investigation of sexual harassment allegations against a unit employee who was subsequently terminated).

While the University's submission and the Dean's certifications characterize their documents as containing high-level policy concerns such as potential layoffs and future areas of growth, such labeling does not shed light on the specific aspects of the disputed documents that they believe contribute to the formulation of important public policy for the University. Moreover, it is not readily apparent from my review of the documents what aspects of their recommendations and analyses qualify as contributions to important public policy formulation. As noted above, the recommendations and analyses were frequently conclusory in nature. Instead, the retained documents reflect routine operating decisions, since choices regarding which

employment relationship should be terminated are a fundamental responsibility of any governmental or non-governmental employer. My review shows that they were applying contractual and operational need considerations in order to support their recommendations regarding why certain employees should be subject to retrenchment instead of other employees. Applying contractual and operational need considerations to staffing determinations constitutes routine decision-making, which does not implicate the protection of the deliberative process privilege. Therefore, no further analysis is warranted.

CONCLUSION

Accordingly, I find that the University violated subsection 5.4a(5) and subsection a(1), derivatively, of the Act when it refused to provide the retained documents. Therefore, I grant the Council's Motion for Summary Judgment and deny the University's Cross-Motion for Summary Judgment.

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That State of New Jersey (William Paterson University) 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 failing to provide relevant information needed to investigate a potential

contract violation regarding retrenchments; and

2. Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment in that unit, particularly by failing to provide relevant information needed to investigate a potential contract violation regarding retrenchments.

B. Respondent, State of New Jersey (William Paterson University) take the following affirmative action:

1. Within ten (10) days of a final agency decision in this case, provide the withheld recommendations and analyses regarding retrenchment, which are Bates stamped WP039 through WP048 in its privilege log, to the Council of New Jersey State College Locals, AFT, AFL-CIO;

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 what steps the Respondent has taken to comply with this Order.

/s/ Christina Gubitosa
Hearing Examiner

DATED: March 28, 2024
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by April 9, 2024.



NOTICE TO EMPLOYEES

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

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to provide relevant information needed to investigate a potential contract violation regarding retrenchments; and

WE WILL cease and desist from refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment in that unit, particularly by failing to provide relevant information needed to investigate a potential contract violation regarding retrenchments.

Respondent, State of New Jersey (William Paterson University) will take the following affirmative action:

1. Within ten (10) days of a final agency decision in this case, provide the withheld recommendations and analyses regarding retrenchment, which are Bates stamped WP039 through WP048 in its privilege log, to the Council of New Jersey State College Locals, AFT, AFL-CIO;

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 what steps the Respondent has taken to comply with this Order.

Docket No. CO-2022-162

NJ/State (William Paterson Univeristy)
(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