

In the Matter of Arbitration Between:

**THE STATE OF NEW JERSEY
(KEAN UNIVERSITY)**

“Employer,”

- and -

**COUNCIL OF NEW JERSEY
STATE COLLEGE LOCALS, AFT**

“Union.”

OER-9840
(Academic Year Grievance)

**OPINION
AND
AWARD**

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Christopher S. Porrino, Esq.
Attorney General of New Jersey
By Anthony DiLello, Esq.
Deputy Attorney General

For the Union:

Kevin P. McGovern, Esq.
Mets Schiro McGovern & Paris, LLP

On June 19, 2008, the Council of New Jersey State College Locals, AFT [the “Council” or “Union”] filed a grievance asserting that the State of New Jersey, Kean University [the “State” or “University”] violated the July 1, 2007 through June 30, 2011 collective negotiations agreement [the “Agreement”] when it mandated all faculty to attend training sessions during June 2008. The grievance was amended on August 28, 2008 by requesting a remedy seeking “the University to cease and desist from assigning work to faculty outside the academic year and to compensate those who have been assigned such duties.” The grievance was denied and was then submitted to arbitration pursuant to the terms of the parties’ Agreement. Thereafter, I was designated to serve as arbitrator.

The arbitration hearings were held in two separate segments. Initially, arbitration hearings were held at Kean University in Union, New Jersey on September 17, 2009 and May 17, 2010. Shortly after the completion of the May 17, 2010 hearing, the parties requested time to engage in voluntary efforts to resolve the grievance. When these efforts did not succeed, they jointly requested a resumption in the hearing process. In the interim, the parties successfully concluded terms for a new Agreement effective July 1, 2011 through June 30, 2015. Based upon their request for a resumption of the arbitration, additional hearings were held on January 28, April 26, May 3, May 4, June 20 and December 12, 2016. At the hearings, the University and the Union argued

orally, examined and cross-examined witnesses and submitted documentary evidence into the record. Testimony was received from Timothy Haresign, Professor at Richard Stockton College, Karen Teresa Siefring, Assistant to the Vice President for Student Advisement in the College of Business at Rowan University, Joseph Moskowitz, Political Science teacher at New Jersey City University, Charles Kelly, Professor of Political Science at Kean University, Brian Lees, retired Chemistry teacher, James Castiglione, Physics teacher, Susan Davenport, Interim Provost and Executive Vice President of Stockton College, Martha Ecker, Professor of Sociology, Lewis Chakrin, PhD, Dean of Anisfield School of Business, Jeff Osborn, Dean of the School of Science and Professor of Biology at the College of New Jersey, Daniel Julius, Senior Vice President and Provost for New Jersey City University, Jerry Cutler, Vice President for Human Resources at Montclair State University, Robert Zazzali, Senior Vice President for Community Economic Development at Rowan University, Stephen Hahn, Associate Provost for Academic Affairs at William Paterson University, Dawood Farahi, President of Kean University, and Linda Bradbury, Professional Services Specialist II at Kean University. Both parties filed post-hearing briefs, the last of which was received on or about September 5, 2017. The record was closed on that date.

ISSUE

At the hearing, the parties agreed to frame the issue to be heard and decided as follows:

Did the University violate Article XII of the Agreement between the State of New Jersey and the Council of New Jersey State College Locals, AFT, AFL-CIO dated July 1, 2007-June 30, 2011? If so, what shall be the remedy?

CITED CONTRACT PROVISIONS
2007-2011 Agreement

ARTICLE X – UNION RIGHTS

- H. The academic calendar at each College/University shall be prepared in consultation with the Local UNION at such College/University. The Local UNION shall be given an opportunity to provide its views and a cooperative effort to resolve differences shall be made prior to the adoption of the calendar. Final responsibility for the academic calendar is a matter of academic judgment of each College's/University's administration and Board of Trustees.

ARTICLE XII – FACULTY RESPONSIBILITIES

- A. 1. Institutional responsibilities of the faculty shall include teaching responsibilities and other responsibilities as defined below. The basic academic year teaching load shall be assigned over thirty-two (32) weeks of instruction and shall occur during the period of payment which commences September 1 and ends on June 30, and may not exceed such thirty-two (32) week period unless otherwise agreed to by the concerned faculty member.
2. a. After consultation with the Local UNION, a College/University may begin classes up to one calendar week prior to September 1, in which case the commencement of the period of payment for 10-month employees may be advanced pursuant to negotiations with the Local UNION subject to the provision that the period of payment shall not commence prior to the beginning of classes. When there is an advancement, the end of the period of payment shall be correspondingly advanced such that the annual salary will be distributed over the same, number of days as it would have been had there been no advancement, and the second part of the across-the-board salary increase for the fiscal year

shall be advanced so that affected employees receive the same annual compensation as they would have received had there been no advancement.

- b. Policies and practices at a College/University granting (or not granting) compensation for employees performing duties prior to the beginning of classes shall not be affected by the application of this Subsection.

B. Teaching Responsibilities

1. The basic academic year teaching load for full-time faculty shall be twenty-four (24) teaching credit hours. All overload for full-time faculty shall be voluntary and overload rates shall be paid for all voluntary teaching assignments beyond twenty-four (24) teaching credit hours. No full-time faculty member may be assigned more than fifteen (15) teaching credit hours per semester within load. The teaching load for part-time faculty shall be a minimum of one half the teaching load for full-time faculty.
2.
 - a. The teaching assignment of a faculty member shall not require more than three (3) different course preparations in any semester, except where it can be demonstrated that the course offerings and class sections in a department cannot reasonably be scheduled on this basis, or where a faculty member's schedule includes one or more two (2)-student-credit-hour courses. Under such circumstances one additional course preparation may be assigned.
 - b. It is recognized that one-student-credit-hour courses and activities such as, but not limited to, supervision of or instruction in independent study, internships, practice teaching, studio or physical activity programs do not lend themselves to compensation of numbers of preparations under Subparagraph (a) above. However, it is recognized that every effort will be made when assigning such activities to arrive at an overall assignment of responsibilities which substantially and equitably equates to the model set forth in Subparagraph (a).

Disputes concerning this subparagraph may be submitted to binding arbitration pursuant to Article VII. In the event that a violation is found, the remedy shall be the award of a payment equal to one overload credit for

each additional preparation found to have been improperly imposed.

3. Overload compensation shall be established at the following minimum rates per teaching credit:

Title	Sept 2007	Sept 2008	Sept 2009	Sept 2010
Professor, Associate Professor, Assistant Director in the Library (Professor in the Library) Librarian I (Associate Professor in the Library)	\$1150	\$1200	\$1250	\$1300
Assistant Professor, Instructor, Librarian II (Assistant Professor in the Library) Librarian III (Instructor in the Library)	\$1100	\$1150	\$1200	\$1250
Professional Staff	\$100	\$1150	\$1200	\$1250

4. Definitions

- a. Student credit hours are defined as: the number of credit hours earned by a student successfully completing a given course.
- b. Average weekly class hours are the total number of regularly scheduled class meeting hours for a course divided by the number of weeks in the program.
- c. Teaching credit hours are defined as:
 - (1) When the number of regularly scheduled average weekly class hours equals the number of student credit hours, teaching credit hours shall equal student credit hours.
 - (2) When the number of regularly scheduled average weekly class hours is greater than the number of student credit hours, those class meetings typically designated as "laboratories" or "studios" shall be equated on the basis of two-thirds (2/3) of a teaching credit hour for each such class hour.
 - (3) When the number of average regularly scheduled weekly class hours is less than the number of student

credit hours, teaching credit hours shall not be less than the number of average weekly class hours; and additional teaching credit hours may be granted, provided that the total does not exceed the number of student credit hours.

(4) The above provisions apply to normal sixteen (16) week semesters. For semesters of different lengths, the above formulae shall be applied on a pro rata basis.

5. Faculty members assigned duties involving modes of instruction other than classroom, such as, but not limited to, independent study, supervision of internships or practice teaching, or assigned to teach regularly scheduled courses for which college credit is not granted, shall receive teaching credit hours for such activities according to the policies and practices currently in force at the respective Colleges/Universities unless specified otherwise in this Agreement.

a. In the event that any College/University makes an assignment of any activity covered herein for which there is no current practice or policy or intends to change a practice or policy, the College/University shall notify the Local UNION in writing of such action and, upon written request of the Local UNION, the President shall designate an official of the College/University to consult with the Local UNION concerning the new or changed policy or practice. Such written request must be received by the President within thirty-one (31) days of the College's written notice to the Local UNION. The consultation shall be completed within thirty (30) days of the Local UNION's written request to the President, unless said time limitation is extended by mutual consent of the parties.

b. In the event that, after consultation, the Local UNION is of the opinion that the involved policy or practice is unreasonable, the Local UNION, within seven (7) calendar days, may request negotiation of those matters which it deems to be mandatorily negotiable. Disputes as to the negotiability of such matters shall be resolved in the manner prescribed by the New

Jersey Employer Employee Relations Act, as amended.

- c. Nothing contained herein shall limit such authority as the College/University may have under law to direct that workload assignments be implemented during the pendency of consultation.
6. The specific assignments for student teaching shall be equitable in regard to travel time and distance. Disagreement concerning the teaching credit hour load for supervision of student teachers shall be resolved between the Local UNION and the College/University.
7. Assignment of non-teaching duties within load for any faculty member, for any purpose, is a matter of academic/managerial judgment of the College/University. The President, or his or her designee, prior to the commencement of each semester, and prior to the allocation of non-teaching assignments to various purposes and individual faculty members, will consult with the UNION as to such allocations and the contemplated manner of selecting individual faculty members who will receive them. In the event that any faculty member feels that he or she is being treated in an inequitable manner in regard to alternate assignments within load, he or she may bring the matter to the attention of the President, who either in person or through a designee will conduct a prompt administrative review of the matter.

C. Other Responsibilities

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.

Letter of Agreement XVII
Alternative Period for Faculty Workload

It is agreed by and between the State and the Union that notwithstanding the provision of Article XII (Faculty Responsibilities) which sets forth the basic academic year teaching load and teaching credit hours, if a State College or University determines that it is in the best interests of the College or University, the students it serves and/or certain academic programs to schedule the twenty-four (24) teaching credit hours and the thirty-two (32) weeks of instruction for particular faculty member or members for a period other than between September 1 and June 30, the College or University shall negotiate with the Local Union a procedure for changing the twenty-four (24) teaching credit hours and the thirty-two (32) weeks of instruction for particular faculty member or members for a period other than between September 1 and June 30. If a local procedure is negotiated and a faculty member performs his or her responsibilities over such a period, the faculty member shall not suffer any penalty as a result of such election, including but not limited to the right to receive pension and health benefits as if he or she worked between September 1 and June 30. Participation in an alternate period program shall be on a voluntarily basis only.

CITED CONTRACT PROVISIONS
2011-2015 Agreement

ARTICLE XII – FACULTY RESPONSIBILITIES

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 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, UNION, or Local Union under the New Jersey Employer-Employee Relations Act.

2. 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.

BACKGROUND

The grievance arose after Kean University issued a mandatory assignment to full-time faculty to attend one of many training sessions in June 2008. The events that eventually led to the grievance began early in May 2008. At that time, Dr. Charles Kelly, Chief Negotiator for the Kean Federation of Teachers ["KFT"], received correspondence from Faruque Chowdhury, Kean University's Director of Human Resources, concerning faculty duties and responsibilities for the Fall 2008 semester. The correspondence included the statement that faculty would be required to engage in certain types of activities "after commencement and until June 30th" including "training programs for advisement." Although Dr. Kelly testified that faculty had never been mandated in the past to perform non-teaching duties in the time period between graduation and June 30, no grievance was filed at the time in the absence of any specific duty that was mandated to be performed by faculty. However, a grievance was filed soon after all full-time faculty at Kean received a directive on May 29, 2008 mandating them to select and attend one two-hour advisory training session

offered on various dates in June but prior to June 30, 2008. This directive was included in an e-mail sent to all Kean faculty from Dr. Mark Lender, Interim Vice President for Academic Affairs. The e-mail stated, in pertinent part:

As many of you already know, one of the single-most important factors in the success of our students is effective advisement. In order to enhance our effectiveness in this critical effort, over the month of June, the Office of Academic Affairs will sponsor a series of advisement-training sessions for all full-time faculty members. Attendance at a session is required on the part of all full-time faculty in order to assure the maximum benefit to our students. Chairpersons also should arrange to have department administrative assistants or other appropriate support staff attend one of the training sessions.

The sessions will focus on the following areas:

- Interpreting and making effective use of the Degree Audit system
- Assuring that program guide sheets are up to date and clearly presented
- Effective use of the DataTel system
- Encouraging a four-year path to graduation for all undergraduates

We realize that these issues hardly exhaust the concerns inherent in making the most of advisement, and the Office of Academic Affairs will be talking with faculty and staff in order to develop long-range technical and other support for advising activities. But the June training sessions at least make a start.

The e-mail continued specifying the dates and times of the twenty-two (22) training sessions and instructions for faculty to reserve a place by selecting the session that each was required to attend.

The Union alleges that the above directive violated the Agreement by compelling faculty to perform non-teaching duties after the “academic year” had

concluded. Although the parties' arguments are comprehensive and address many points of contention, the central issue raised by the Union is whether Article XII, and practices pursuant to this article authorized or precluded the University from mandating attendance at training sessions after commencement. In the Council's view, the "academic year" at each university concludes at the end of the Spring Semester after commencement activities and limits the University's right to mandate duties. The University disagrees and contends that the "academic year" ends annually on June 30 and that it can mandate the faculty to perform non-teaching duties through that date. Because the parties disagree on the meaning and application of the term "academic year", their reference to "academic year" in testimony and argument reflect their meaning of the term as expressed in their respective conflicting interpretations.

Substantial testimony was offered by many witnesses concerning the Union's objection to the mandatory training sessions being held after the completion of the spring semester and graduation, including but not limited to, prior practices, work that faculty performs that is required, work that is performed but not mandated after graduation and other facts and circumstances each party deemed relevant to support their different contract language interpretations. Although the grievance was filed at Kean University, the record includes testimony from many witnesses employed at various universities in the State College higher education system. The State objected to the relevancy of Union testimony that went to the issue beyond the scope of Kean University.

Witnesses offered by both parties testified to practices at the various universities/colleges. I allowed the inclusion of the testimony offered by both parties because the contract language at issue exists in a state-wide agreement and that experience under the Agreement at institutions other than Kean was potentially relevant to interpretation of the language at issue.

KEAN UNIVERSITY

Initially, testimony was received by Union witnesses were employed at Kean University where the grievance was filed. Dr. James Castiglione is an Associate Professor of Physics at Kean University. Dr. Castiglione was the President of the KFT in 2008 and was a representative of the KFT for 16 of his 18 years at the University. At the time of the 2009 hearing date, he had been teaching at Kean for 18 years. On June 19, 2008, Dr. Castiglione filed a grievance with Dr. Dawood Farahi, President of Kean University. It stated:

Pursuant to Article VII B 1 of the Agreement, the union hereby files this grievance alleging a violation of Article XII C with respect to assignments outside the academic year.

On May 6, 2008 and in subsequent memos dated May 27, May 29 and June 3, 2008, the Kean administration has assigned faculty to duties beyond the end of the academic year or announced its intent to make such assignments, including but not necessarily limited to -- student advisement, open houses, course revision, new course development, training programs for advisement and learning of new instructional technologies or preparation of program documents, accreditation reports or related activities.

Article XII C, which deals with faculty responsibilities other than teaching, states that these responsibilities “shall be performed within the academic year...” According to Kean’s Academic

Calendar, the 2007-2008 academic year ended on May 15 with undergraduate Commencement. This end date is consistent with the definition of "academic year" throughout NJSA 18A. Furthermore, the consistent practice throughout our system has been for faculty to receive no assignments outside the academic year.

The remedy requested is for the University to cease and desist from assigning work to faculty outside the academic year.

Please schedule a Step One hearing within 20 days of the receipt of this grievance.

On August 28, 2008, KFT amended the grievance to alter the remedy as follows:

The remedy requested is for the University to cease and desist from assigning work to faculty outside the academic year and to compensate those who have been assigned such duties.

According to Dr. Castiglione, this was the first time that he had been mandated to perform non-teaching duties after graduation without receiving additional compensation. He further testified that although he had been a Union representative for some sixteen (16) years, he had never received a prior complaint from any member over being mandated to perform a non-teaching duty after graduation.

Dr. Castiglione testified that the academic year is a course of study consisting of two semesters, fall and spring, that concludes with commencement. He also stated that nonteaching duties have not been mandated to be performed by faculty between graduation and June 30 without some form of additional compensation. Dr. Castiglione recalled in both 2000 and 2001 he received compensation for attending training and performing student advisement services

relating to a freshman seminar class that faculty volunteered to teach. He testified that after accepting this assignment, the training and advisement were compensated at a rate of one-half credit each in addition to the compensation received for teaching the seminar. In 2000, Dr. Castiglione attended the training, did the advisement and received a full credit hour of compensation. In 2001, he only did the advisement and received one-half credit compensation. The services were performed in May or June and the compensation was paid the following October.

Dr. Castiglione also testified that compensation has been paid to faculty during the period between graduation and June 30 for grant writing, program coordination and assessment, service as a department chair, and service on other committees including the Middle States Steering Committee. With regard to what non-teaching duties faculty have performed without dispute after graduation, he testified:

Faculty have work that they do, they chose what tasks that they work on according to their own discretion. It might be scholarly or research activity. They might be doing some curriculum development, well, program development. They might be doing preparation for their teaching work in the fall. There might be some other service activity, whether it's for the University or for their profession or for their discipline, perhaps, they serve on a board of a professional society that meets and conducts business over the summer, but these work tasks are done at the –on the timing of it is done – is left up to the discretion of the faculty member. It's essentially, unassigned work or unstructured work time up until June 30.

The State introduced five consecutive employment contracts into evidence for Dr. Castiglione when he was not tenured. Each contract provided for an “academic year” appointment from September 1 through June 30.¹ This is said by the State to reflect that the academic year does not end at the conclusion of the spring semester. Each contract was signed by Dr. Castiglione acknowledging “I accept this Contract on the conditions listed above.”

Dr. Charles Kelly is a Professor of Political Science at Kean University. He has been a member of the faculty since 1972. He testified that he is also the Chair of the Negotiating Committee and Vice President of the Kean Federation of Teachers. He also served as President approximately thirty years ago. He described the main duties and responsibilities of full-time faculty as teaching courses and meeting with students to “advise them, help them, assist them in any way.” According to Dr. Kelly, the academic year begins in early September with meetings and the assignment of classes and ends with the graduation ceremony after the conclusion of the spring semester which normally occurs during May. At the graduation ceremonies Dr. Kelly recalled public announcements by the President or the Chairman of the Board declaring that the academic year had come to an end. According to Dr. Kelly, the academic year is the period over which faculty complete their contractually required instructional load of twenty-four (24) credit hours over thirty-two (32) weeks of instruction. He testified that shortly after the completion of the academic year teaching load, and

¹ September 1, 1997 to June 30, 1998; September 1, 1998 to June 30, 1999; September 1, 1999 to June 30, 2000; September 1, 2000 to June 30, 2001; and September 1, 2001 to June 30, 2002.

after graduation, summer semesters and classes (May and June) begin. Faculty who volunteer to teach summer courses are paid additional compensation beyond their annual salaries per the collective negotiations agreement.

Dr. Kelly testified to events occurring prior to June 2008. He testified neither he nor his faculty colleagues had ever been mandated to perform nonteaching duties between graduation and June 30. Prior to June 2008, he said faculty were compensated if they attended training after graduation. Dr. Kelly recalled one instance when he received training in order to teach a general education course. While the training was mandatory, it was only for the faculty members who first had volunteered to teach a general education class. He was provided a stipend between \$50 and \$75 to attend the training. Kelly stated he had never been mandated to perform any nonteaching duties between graduation and June 30. He recalled that there was training in the early 1990s, but it was not mandated and he did not attend. The training was for faculty interested in integrating computers into their curriculum which, at the time, was not a widespread practice. When he was a Department Chairperson, Dr. Kelly was required to be available during the period between graduation and the start of summer school. He was compensated one credit for these duties. When Dr. Kelly was informed of the mandate to attend the June 2008 training at issue, he was “surprised and shocked” because he believed it was understood that faculty who do not teach summer courses cannot be mandated to perform non-teaching duties after commencement.

The State introduced Dr. Kelly's signed 1973-1974 and 1974-1975 non-tenure employment contracts into evidence. The 1973-74 contract provides that the Kean Board of Trustees approved his faculty appointment for the 1973-74 academic year with specific reference to September 1, 1973 to June 30, 1974. The contract further states that this time period is for one "academic year." The 1974-75 contract is identical except for updated dates. The contract provides that assignments are arranged by the appropriate dean or department chair and may include "research and development, committee work, advisement of students, and other activities essential to the efficient administration of the College." Tenured faculty do not receive individual employment contracts.

Dr. Bryan Lees was a Chemistry Professor at Kean for 36 years. He retired on July 1, 2015. Dr. Lees held several positions within the University including: Chair of the Faculty Senate; Vice Chair of the Faculty Senate; Coordinator of General Education and Learning Assistance Programs; ex officio member of the Council of Deans; member of the University Planning Council; President of the New Jersey Academy of Sciences; and a member of the Middle States Steering Committee. Dr. Lees testified that the former President of the University, Nate Weiss, as part of the graduation ceremony, would declare that the academic year had come to an end. Dr. Lees testified that it was his experience that after graduation he was free to perform research elsewhere and did not have to be mandated to perform duties at Kean. In his 37 years at Kean,

Lees testified he was never mandated to perform nonteaching duties during the period between commencement and June 30. Dr. Lees testified that when he accepted the job at Kean, he was informed by his dean that he would be autonomous after graduation.

Dr. Lees was appointed to the Middle States Steering Committee in April 2009. In February 2011, the committee produced a document titled "Toward World Class Education: Kean University in Transition." The document was presented to the Board of Trustees. Dr. Lees and Director of Research Susan Gannon, a representative of management, co-authored Chapter Six of the document focusing on faculty. The pair published the results of a faculty survey establishing that faculty increased their "academic year" work hours from 69.2 to 73.9 hours per week during the five-year period since the prior survey. The "academic year" was the period of academic instruction.

Dr. Dawood Farahi commenced his employment at Kean as a professor in 1983. He has served as President of the University since 2003. He previously served on the executive committee of the KFT. Dr. Farahi testified that full-time faculty, as ten-month employees, are required to be present at the University from September 1 to June 30. Dr. Farahi acknowledged that Kean's Chairman of the Board of Trustees typically made an announcement at the close of the student commencement stating that the academic year was concluded. However, he testified that this referred to an end to the students' "academic year"

and not to the faculty's responsibility to be available throughout the faculty's "academic year" that concludes on June 30. He said that the administration is solely responsible for choosing the dates on which commencement is held and that there are at least two ceremonies – one for graduate students and one for undergraduate students. One of the factors considered by administration for the timing of graduation is the availability of the venue. Although Kean presently schedules commencement during May, Dr. Farahi testified that commencement could be scheduled in June as it has done in the past.

Dr. Farahi testified that Kean's published 2007-2008 academic calendar did not provide for the end date of the academic year. The purpose of the calendar is to "inform the students and faculty and staff where the semester begins and where summer sessions begin ... it tells you when classes are in session, when legal holidays are in place. ... it's to inform the students, the faculty, and staff about the major calendar events."

In addition to the individual employment contracts of Dr. Kelly, Dr. Castiglione and other faculty, Dr. Farahi testified regarding a more recent contract Kean uses for full-time tenure-track faculty appointees. These contracts do not refer to the "academic year" and provide for appointments effective September 1 through June 30. The contracts specify duties as follows:

Please be aware that this position requires teaching assignments, keeping office hours, advising, conducting research, continuing your professional development and providing service to your

department, the college and the University as assigned by your Chair and Dean. It also includes other activities normally associated with faculty responsibilities such as participating in graduation ceremonies, open houses and related assignments. This is a ten-month, full-time position that may require teaching assignments each day during the five day work week. Please contact your Dean for any additional information.

According to Dr. Farahi, the newer contract does not reference the academic year because the contract reads "September 1 to June 30." He testified that the terms of work and responsibilities for tenure and non-tenured faculty are the same. He testified that the school deans have the authority to mandate assignments to faculty throughout the September 1 through June 30 term. As to the nonteaching responsibilities of faculty that extend beyond commencement, Dr. Farahi testified "They order their books. They create new courses. They prepare accreditation documents. They provide advisement to the students ... they work on committees and on different problematic assignments provided to them by their Dean and department heads. ... These are the traditional functions that they need to provide in that time period." Dr. Farahi explained that faculty do not receive additional compensation for performing such nonteaching duties. In addition to being a contractual responsibility, Dr. Farahi testified, "advisement is a fundamental part of the responsibility of faculty, it is something that makes or breaks a university."

Dr. Farahi further testified that the advisement training that led to the instant grievance was developed to combat low graduation rates. In the mid 2000s, approximately 16% to 17% of Kean's students graduated in four years.

Approximately 45-49% were able to graduate in six years. Dr. Farahi explained that each year that it takes a student to graduate beyond four costs the student an additional \$65,000 in tuition, fees, and lost income opportunity due to delayed career start. It also puts a stress on the University as that student's seat is not vacated to allow for new students to be put in the system. There is financial stress on the students and their families as financial aid terminates after five years. The issue of declining graduation rates "became a major issue in 2007, '8,'9 at the legislature levels. They brought up the graduation rates and the rules were changed on the transfer students from community colleges into the four-year institutions." According to Dr. Farahi, there is a direct correlation between student advisement and graduation rates. He elaborated on the consequences of inadequate advisement:

Let's say, a student took nine credits of courses that he or she shouldn't have taken, and ignore taking nine credits or so of courses that she should have taken, meaning that advisement, not appropriate advisement, not being available to be advised, that almost, essentially, delayed their graduation by a full year. That's the biggest problem we face, them taking courses out of sequences, out of system, and taking the ones that they shouldn't be taking and not taking the ones that they should be taking. It's a major issue and it's as important, if not more important than classroom instruction.

According to Dr. Farahi, the above concerns led Kean to develop a program to train faculty on its computerized advisement system. The new legislation provided that all community college graduates automatically be accepted as juniors upon successful transfer to a four-year institution with between 60 and 64 community college credits. Dr. Farahi explained that

attendance at the training in June 2008 was required because faculty are the students' primary advisors and if they did not understand the Data Tel system² the students suffer. According to Dr. Farahi, the training was fundamental for the faculty to meet their contractual and professional obligation to the University. Advisement training is one of several types of training that is associated with the faculty's obligation to the University and students.

Dr. Farahi said he was disappointed after learning that some faculty members opposed the requirement to attend the advisement training. He did not expect that response. Dr. Farahi testified he needs the faculty for the full ten months. He explained the reasons why the training was scheduled in June: "The faculty have obligations to teach their classes and some of them are teaching overload courses. They have other committee assignments. And you can't create the time blocks that are suitable to all of them, because there are 18 sessions and different kinds of things. It is logistically impossible to do it during April and March ... May would be very difficult, too."

Dr. Farahi recalled that when he was a member of the Kean faculty, he was often required to perform various duties, including training, between September 1 and June 30. One instance was in the early 1990s when he attended training on the DataTel system. It was Dr. Farahi's recollection that all faculty was required to attend the training. The two other trainings related to

² DataTel is Kean's computerized system that monitors a student's course load to help ensure they are on track to receive their degree. It is updated each year or two to conform to federal regulations.

teaching general education courses which he stated were mandated. Dr. Farahi testified that when he was a faculty member, he was present on campus most, but not all days, between graduation and June 30. He acknowledged that he sometimes engaged in private consulting work outside of the University between graduation and June 30.

STOCKTON UNIVERSITY

Dr. Tim Haresign is a full-time professor at Stockton University and a representative of the local union. He began working at Stockton in 1993. Dr. Haresign testified that the Stockton academic calendar runs from when classes start in September until graduation. He testified that mandatory faculty responsibilities conclude on the day faculty turn in their grades. After the submission of grades for non-graduation students, faculty at Stockton are free to go and pursue scholarship in any way they see fit until classes begin in September. Dr. Haresign testified that he had never “been mandated to perform nonteaching from when I submit grades for non-graduating students and June 30.” He was unaware of any other faculty member that had ever been mandated to perform such duties during that period. At Stockton, he said faculty may volunteer for activities, but no member is compelled to participate without receiving payment.

The State entered Dr. Haresign’s individual employment contract for the term beginning September 1, 1997 and ending June 30, 1998. The contract

provides that Dr. Haresign would teach courses, supervise the work of independent study students and student seminars, as well as “other duties as assigned by the Dean of Natural Sciences and Mathematics or the Vice President of Academic Affairs.”

Dr. Susan Davenport has served as Stockton University’s Interim Provost and Executive Vice President for three years on the date of her testimony. She reports directly to the President of the University. Prior to her employment at Stockton, she was the Dean of Arts and Sciences and Vice Provost at Thomas Edison State College for 16 years. At the time of her testimony, Dr. Davenport served for two years as Stockton’s chief labor negotiator. She testified that full-time faculty serve Stockton for a ten-month academic year between September 1 through June 30. In her experience, she has never understood the academic year to be anything other than September 1 through June 30. She testified that faculty are requested to participate in research, scholarly activity, and provide service to the University during this period. As to nonteaching duties, Dr. Davenport noted they include “serving on committees, mentoring junior faculty, [and] participating in accreditation activities.” She testified that these responsibilities do not end until June 30. She expects faculty to be available through this time as the need for them to provide nonteaching services arise. Faculty at Stockton typically do not receive any extra compensation for performing their duties through June 30. Assignments are generally made through the solicitation of volunteers. Two instances where faculty received

compensation were when they assisted with student registration and taught summer session. Dr. Davenport explained that the student registration duties were previously completed in July and August and when these duties were moved to June, the practice of payment to those who performed this duty in July and August was continued. According to Dr. Davenport, she has the authority to mandate assignments, but does not need to do so because of higher education's collegial environment. She acknowledged that she has never requested faculty at Stockton return to campus between graduation and June 30.

In regard to commencement, Dr. Davenport testified that it's a celebration of the student's completing their degree programs. For this reason, it is scheduled shortly after students complete their academic requirements. When presented with Stockton's academic calendar, Dr. Davenport noted it is geared towards students to enable them "to have information about dates relating to instruction, so they can have some of the milestones that they need to know in order to be successful throughout the year." She testified that the academic calendar does not fix the date for the end of the academic year. During the 2008-2009 year, final grades for non-graduating students were due from faculty five days after commencement. The grade appeal process also extends past graduation as students at Stockton have 30 days from receipt of a grade to file an appeal. Faculty participate in the appeal process without additional compensation. Dr. Davenport recalled that the University once disciplined a faculty member who was non-responsive to a student's grade appeal. She

opined that if faculty's professional responsibilities ended at commencement, the post-commencement needs of the University could go unmet. "You wouldn't be able to continue the work of the University without their input."

ROWAN UNIVERSITY

Karen Teresa Siefring is the Vice President for Student Advisement in the College of Business at Rowan University and is President of AFT Local 2373. She defined the academic year as "the period of time from when classes start until commencement." According to Siefring, faculty have "never been required to perform non-teaching duties after commencement." At Rowan, faculty had never been mandated to attend any training between commencement and June 30. Faculty members volunteer for the activities. If activities could not be completed, faculty are then compensated for performing the work according to an "extra service contract" that is entered into with the faculty member. When asked about whether statements were made concerning the academic year at commencement, Siefring responded, "We talk about students graduating and their academic career being concluded."

Robert Zazzali is the Senior Vice President for Community Economic Development. He has been employed by Rowan University since 1973. Prior to his current position, he was the Alumni Director, Associate Provost, and Chief of Staff. He has served as the administrative negotiator who negotiates with the local union since 1988. He reports to the University President. Mr. Zazzali

testified that he has never understood the academic year to be anything than the period between September 1 and June 30. He has signed hundreds of appointment letters for faculty which define a September 1 through June 30 term for ten-month employees. As to full-time faculty responsibilities, Zazzali testified:

The work of the faculty ...entails really dealing with all academic matters ... For instance, the department has a curriculum committee, contracting committee, promotion committee, policies and procedures committee, so it runs the gamut there. Likewise, college committees and university committees, university Senate, so there is many, many service opportunities within the university. Beyond the university, faculty are supposed to be involved in their discipline, professional memberships, attendance at conferences. That's not necessarily considered scholarship, it's considered service. In order for a faculty member to be reappointed and tenured, they have to really have a full portfolio and success in teaching, scholarship, and service.

As to faculty service obligations after commencement through June 30, Zazzali testified:

June often times provides a good opportunity to do some of these things, because there are no classes, per se, unless faculty is teaching summer sessions. ... There's grade grievance procedures that are held. There's academic dismissal procedures that are held, oftentimes, in June. Students have a right to file a grade grievance which means the faculty member has to be involved, and that typically is – there's an opportunity to do that 20 days after the semester ends. There's strategic planning. I know the College of Engineering engages in a lot of strategic planning after the semester ends, because, again, it's a good opportunity for them to meet. So it really runs the gamut.

According to Zazzali, deans have the authority to assign work to the faculty they supervise and it is not necessary to mandate the Rowan faculty to fulfill their obligations. He elaborated, "It's not an issue for us to have to force

them to do it, that's their responsibilities, they take it seriously. ... They accept that as part of their responsibilities. I hope we never have to be in a situation where we're assigning or forcing people to do their work that they need to do." He testified that faculty at Rowan do not receive additional compensation for their nonteaching obligations unless they undertake an assignment that is beyond the scope of their duties and there is a funding source. For example, these types of assignments include grant writing and serving as yearbook advisors. When questioned about graduation, Zazzali testified that Rowan has nine separate commencement ceremonies over a period of five days. Rowan faculty often do not submit final grades until after commencement. With regard to the Rowan academic calendar, Zazzali testified that it is not meant to define the academic year and typically provides key dates like holidays and when classes are in session.

NEW JERSEY CITY UNIVERSITY

Dr. Joseph Moskowitz is a full-time professor at New Jersey City University (NJCU) and the president of the local union. He began at NJCU as a dean in 1996 and joined the faculty in 2001. Dr. Moskowitz defined the academic year as beginning with the start of classes and ending with commencement when faculty "depart campus at the point of graduation" and are not required to return until September. Dr. Moskowitz testified he was never compelled to perform nonteaching duties between commencement and June 30 and he was not aware of any faculty member who had been mandated to perform such duties.

According to Dr. Moskowitz, NJCU never “mandated attendance at a training between commencement and June 30 of any academic year.” Faculty could volunteer for nonteaching activities and there was no penalty if they did not participate. If faculty was assigned to prepare an accreditation document or other task after graduation, they would be compensated for that work. The terms of the compensation are not set forth in the local agreement. Dr. Moskowitz testified that “the past practices generally provide that compensation.”

Dr. Daniel Julius is the Senior Vice President and Provost at NJCU. At the time of his testimony, he held this title for two years and reports directly to the President. He previously served as provost at several learning institutions in other states. He holds a doctorate in industrial labor relations from Columbia University. In his current role, he is responsible for NJCU’s academic program, including all of the deans, faculty, and directors. Dr. Julius testified that full-time faculty at NJCU are required to work an academic year that runs from September 1 through June 30. He is unaware of any agreement or contract that established the academic year as ending at commencement. Dr. Julius was questioned regarding four NJCU faculty appointment letters that all provide for an appointment from September 1 through June 30. Two of the letters state that the appointment is for an “academic year” after setting forth the September 1 through June 30 appointment term.

Dr. Julius testified that he and other deans have called faculty to meetings between commencement and June 30. He has never experienced a faculty member who declined to attend. He is also unaware of any faculty receiving additional compensation for performing nonteaching duties during that time. When he was questioned about faculty duties after commencement, Dr. Julius testified:

Well, a variety of duties, responsibilities, obligations, go on after commencement, they have to do grant writing, do research, they have to do departmental planning for the following year, they have to do scheduling, they have to do a variety of other issues that go to what the institution does and how it serves students and how faculty engage in their professional lives. ... As a matter of fact, there are many students on campus at the same time as well, so who would be meeting with those students?, in addition to that, at least in my experience, at my institution, I call meetings to engage in all sorts of academic activities with faculty and to review with faculty their professional plans and their expectations, their needs, for the following year, their needs for the summer.

Dr. Julius testified that commencement is a “very important ceremonial function that goes to the student’s education.” At larger institutions there may be multiple commencements. The date for NJCU commencement is selected based on the availability of the venue. NJCU non-graduating student grades are due about a week after final exams which is after commencement. When questioned about the NJCU academic calendar, Dr. Julius stated it is geared towards the students because its purpose was to “set forth major dates related to ... the student experience.”

Dr. Julius also testified about release time. This is a practice that releases faculty from teaching a portion of their regular 24 credit course load in order to perform other services that count towards completing their load. He said the for-credit nonteaching duties are often performed between September 1 and June 30.

THE COLLEGE OF NEW JERSEY

Dr. John Krimmel is a full-time professor at The College of New Jersey (TCNJ) and President of the local association. He has been employed at TCNJ since 1994. Dr. Krimmel testified that it was his experience that the academic year ends at commencement. He testified that at TCNJ, “essentially all official expectations for faculty end at commencement.” After commencement, “the practice is faculty go about their lives, their academic lives ... our faculty agree to pursue their academic interests, research, or classroom instruction, methods on their own will.” Dr. Kimmel stated he was never mandated to perform nonteaching duties after commencement and was unaware of any other faculty member being mandated. Periodically faculty have been requested to perform nonteaching duties including training, but it was voluntary and members of faculty were compensated if they attended. The compensation was not in a specific written agreement. Dr. Krimmel testified it was, “our normal behavior, our culture.” The State presented three of Dr. Krimmel’s employment contracts.³

³ The contracts were for 1993-1994, 1994-1995, and 1995-1996.

Each of these contracts state that the appointment is for an “academic year” running from September 1 through June 30.

Dr. Jeffrey Osborn is the Dean of the School of Science and a professor at TCNJ. He has worked at TCNJ for ten years. He reports to the Provost and Vice Provost for Academic Affairs. As Dean, Dr. Osborn oversees the school’s academic program, including curriculum and degree programs, and has direct supervisory authority over 85 full-time faculty members. Dr. Osborn testified that full-time faculty serve TCNJ for a ten-month “academic year” ending on June 30. He has no familiarity with any contract or agreement with faculty that ends the academic year at commencement.

According to Dr. Osborn, the nonteaching responsibilities of faculty include various scholarship initiatives including: laboratory research; qualitative research; library work; advising; accreditation; and curriculum development. Dr. Osborn testified the above duties “absolutely” extend beyond commencement. He has convened meetings after commencement and has never had a faculty member decline to attend. Dr. Osborn opined he has the authority to mandate faculty attendance at meetings and other related professional tasks but has never had to exercise that authority. He testified, “it’s our institutional expectation and culture that members of the community, especially the faculty, are engaged in the life of the campus. I have the authority to do so, but I don’t need to do so.” With the exception of teaching summer semesters, Dr. Osborn was unaware of a practice

of paying compensating faculty for nonteaching duties at TCNJ. When asked about the impact on TCNJ if faculty's professional responsibilities ended at commencement, Dr. Osborn responded:

Our faculty are intimately engaged in the life of the campus and shaping the campus and contributing to the work of the campus. So many things in terms of faculty appointment and promotions and tenure and advancement and rank would slow down or grind to a halt. Our processes are faculty engaged through May and June. We would not have curriculum advancement. ... They would not be engaging in some of the professional travel that they do. We would not be advancing a broad range of ... things related to the life and future of our campus. Faculty engagement is central and is expected throughout the academic year.

When questioned about commencement, Dr. Osborn described it as, "a moment in time in which we award and confer degrees to students, and it's a celebratory moment for the campus community and students and their families." When asked whether commencement ends the faculty professional year, Dr. Osborn responded, "no, it's a moment, it's a milestone moment as part of the academic year." With regard to the academic calendar, he testified it is, "a set of dates that helps define, for students, particular ... milestone dates that help them understand when they have to drop, when they register for next semester ... when commencement is going to be. So it defines, you know, some frame for students in terms of semesters."

WILLIAM PATERSON UNIVERSITY

Dr. Susan Tardi is a full-time professor at William Paterson University (WPU) and the president of the local union. Dr. Tardi has been employed by WPU since 1992. Prior to joining WPU, she taught at Kean for five years. Tardi testified that the academic year ends at commencement. Specifically, the “submission of grades along with commencement to me has constituted the end of the academic year” and “summer term begins after that, so all your teaching and nonteaching responsibilities end with commencement as long as grades are handed in.”

When she first became local union president, Dr. Tardi recalled that the administration called a meeting after commencement that faculty were required to attend. The local union objected to the meeting because it was to be held after commencement. The parties resolved the issue by agreement whereby the union would recommend attendance to faculty if it concerned an important issue and faculty were available. Since that agreement, Dr. Tardi did not recall that WPU ever mandated nonteaching duties after commencement. According to Dr. Tardi, no one at WPU ever questioned that the academic year ended at commencement. Periodically faculty were requested to perform nonteaching duties, including attending workshops, but it was voluntary and the participants were compensated.

Dr. Tardi testified that when she taught at Kean, she had the same understanding that the academic year ended at commencement. She was never mandated to perform nonteaching duties after graduation. The State introduced Dr. Tardi's employment contract for the 1993-1994 school year. It states the appointment was from September 1 through June 30. On cross-examination, Dr. Tardi disagreed that the academic year was September 1 through June 30. She testified, "I don't agree. I'm sorry, but that's my pay period. That's not appointment period. My duties period don't extend to that, if that's what you're asking."

Dr. Stephen Hahn is the Associate Provost for Academic Affairs at WPU since 1996. He commenced his employment in 1984 as a professor of English and has taught at the university level since 1976. Dr. Hahn is a member of WPU's negotiating team and is responsible for the day-to-day contract management of the faculty agreement. Dr. Hahn testified that full-time faculty serve for a ten-month academic year beginning on September 1 and ending June 30. When questioned on cross-examination about summer session, he testified that summer session begins in the academic year, but it is not the same and faculty who teach summer session receive additional compensation. Faculty at WPU report to deans who, according to Dr. Hahn, have the authority to assign work to faculty including accreditation and advisement. The faculty time beyond commencement is directed towards accreditation and advisement. The faculty time beyond commencement is directed towards accreditation because they

don't have a teaching load. On cross-examination, Dr. Hahn testified that nonteaching assignments after graduation were made by a dean who requests faculty to assist in performing the tasks.

Dr. Hahn testified about the Graduate Assistant Program at WPU. The faculty graduate assistants are supervised by, and assist, faculty. The program information provides that graduate assistants work on campus with faculty and that assistantships are "awarded for one academic year, typically from September 1 to June 30."

MONTCLAIR STATE UNIVERSITY

Dr. Richard Wolfson is a full-time professor at Montclair State University (MSU) and President of the local union. He began his employment in 1982 and served as the chair of his department for five years. Dr. Wolfson testified that the academic year ends at commencement. He has never been mandated to perform nonteaching duties after commencement and is not aware of any faculty who have. While serving as department chair, he never required faculty to perform nonteaching duties after commencement. After MSU graduation, faculty continue with research, meeting with students, and developing curriculum at their discretion. MSU has offered faculty workshops after commencement that were voluntary and, according to Dr. Wolfson, faculty were paid to participate in some of the workshops.

Jerry Cutler is the Vice President for Human Resources at MSU. He is an attorney with 37 years of labor and employment experience including representing labor and management. At MSU, he is responsible for reimbursement, compensation, classification, payroll, benefits, EEO/Affirmative Action, labor and employee relations, compliance, training, and development. Cutler testified that ten-month faculty at MSU are hired to work from September 1 through June 30. He testified this is “coterminous with the academic year which also runs from September 1 through June 30.” Cutler has never known the academic year to be anything but that period and he is not familiar with any agreement or contract that defines the academic year as ending at commencement. The MSU academic calendar was described by Cutler as only a series of dates. He testified, “You’ll have the dates on which classes begin, you’ll have the dates on which classes are not held because of holidays or other breaks, you’ll have the last day of the semester, you’ll have the exam period. ... It really is ... coterminous with the 32 week period of instruction.” Cutler testified that commencement does not mark the end of the faculty’s academic year. The final decision determining the date of commencement rests with “senior leadership, the president, and her cabinet.” According to Cutler, MSU could schedule commencement in June. When questioned about the impact on MSU if the academic year ended at commencement, Cutler responded:

Well, the faculty’s duties do not end at commencement, and I interact with faculty members. I’ve talked to them about this, and they are in complete agreement that their duties don’t end at commencement. We are an academic institution, the needs of the university, obviously, go beyond commencement, and our faculty

are certainly available to address those days. If they were not available, it would have, I think, an adverse impact on our ability and faculty's ability to do student advisement, to do mentoring, to perform any of the other non-instructional work that faculty do as part of the normal course of any faculty member's job assignment. So it's research, it's scholar, it's artistic endeavors, it might be attending conferences, preparing lectures, working on a textbook. Our faculty are fully engaged through, I would say, the entire academic year and beyond.

RAMAPO COLLEGE

Dr. Martha Ecker is a full-time professor at Ramapo College and the President of the local union. She began her employment at Ramapo in 1986. From 1999-2008, she was the Vice Provost of Academic Programs and Standards. Dr. Ecker testified that the academic year is "the fall and spring semester, and our general practice is that spring semester terminates with commencement." After grades are submitted, teaching responsibilities at Ramapo are over. Dr. Ecker recalled that in 1995, the administration attempted to schedule mandated training sessions after commencement, but abandoned the effort as faculty saw "their responsibilities as ending with the end of the spring semester and commencement" and refused to attend. After commencement, faculty would perform nonteaching duties consistent with their professional responsibilities, but these activities were voluntary. According to Dr. Eckert, faculty who performed student enrollment duties were paid for that work.

Dr. Lewis Chakrin is the Dean of the Business School at Ramapo. Prior to joining Ramapo, he was an executive in the telecommunications industry. Dr. Chakrin testified the academic year began September 1 and ends June 30.

Ramapo may assign work to faculty during that period. Every year Dr. Chakrin asks all faculty to attend an assessment retreat after graduation. Dr. Chakrin testified faculty are “required, obligated, expected to attend.” He has never penalized a faculty member for not attending. He testified about the difference in working at a college as opposed to his prior career in the telecommunications industry:

Well, after 36 years in the corporate world and 10 years in academia, I recognize that there is a different atmosphere in the academic environment it’s a much more collegial, much more cooperative environment. And even though we expect students – expect faculty to perform their duties, you know, there are no immediate punishments. For example, a faculty member – I think we would all agree that a faculty member is required, expected, obligated to show up for every class they are supposed to teach. Do they show up for every class or do they cancel classes at times? They cancel class. Do I fire them? No. Do I dock them? No. In the long term, however, a non-tenured faculty member, for example, should recognize that not fulfilling their obligations can have an impact on their applications for tenure, reappointment and promotion.

Dr. Chakrin further testified that nonteaching assignments were assigned to faculty after commencement by seeking volunteers. He testified that he did not think he could compel faculty to perform nonteaching duties between commencement and June 30.

POSITIONS OF THE PARTIES

As previously indicated, the parties attribute different meanings to the language “academic year” as set forth in Article XII.C. The University sees the

directive to faculty on May 29, 2008 mandating the performance of non-teaching duties during June as not violating the Agreement because, in its view, the academic year ends on June 30 and it can mandate work to be performed through June 30. The Union submits that the academic year ends after the Spring Semester and concludes at commencement. It does not disagree that faculty perform many types of work after commencement but disputes that the University can mandate the performance of non-teaching duties after the end of the “academic year.”

Based upon the testimony of the many witnesses and the substantial exhibits submitted into evidence by each party, extensive arguments have been offered in support of their respective positions. Due to the comprehensive nature of the parties’ arguments, I will provide a concise summary of their major points of contention.

The Union

The Union initially contends that State and Federal law define the academic year as the school year or a period of study that concludes at the end of the spring semester culminating with graduation. The Union cites many statutes from which it concludes that its view of the term “academic year” is the only one that is consistent with law. Among these references are N.J.S.A. 18A:71B-4, N.J.S.A. 18A:60-1, N.J.S.A. 18A:64-1, et. seq., N.J.S.A. 18A:60-8

and N.J.S.A. 18A:60-12, 20 U.S.C.S. § 1088(a)(2)(A) and 34 C.F.R. 668.3(a).

Based upon these statutory citations, the Union argues:

Both State law and federal law lead to the same conclusion – in higher education, the academic year measures a period of study. Under State law, the academic year is essentially the “school year” and ends when summer vacation begins. Under federal law, it is the period over which at least 30 weeks of instruction takes place. Either way, the academic year ends when students depart. At the State Colleges, students depart at the end of the spring semester, which is marked by graduation. There is nothing in either State or federal law to suggest that the academic year ends on June 30th, as claimed by the State. Since Kean University mandated the performance of non-teaching duties beyond the academic year, the grievance must be sustained.

The Union further contends, citing Glassboro Board of Education v. Glassboro Edu. Support Professional Ass’n, 2014 N.J. Super Unpub. LEXIS 1375 (App. Div. 2014), that its argument as to the meaning of the term academic year is consistent with law while the meaning proposed by the State is not. On this point, the Union argues:

The State contends that the academic year always ends on June 30th, but nowhere is the term actually defined in that manner. Instead, under both State and federal law, the academic year ends when students depart. N.J.S.A. 18A:60-1 specifically provides that the academic year ends with the start of summer vacation. Since “summer vacation” begins on different dates at different State Colleges, our Legislature could not possibly have intended that the academic year ends on June 30th, every year, everywhere. Rather, the law provides that the “academic year” is what’s more commonly understood as the “school year.” At the Colleges, the school year concludes at the end of the spring semester, which culminates with graduation. The Union’s argument is the only one which comports with applicable law, and must therefore be accepted, and the grievance sustained.

The Union further contends that the meaning of “academic year” is supported by various terms set forth in the collective negotiations agreement as well as by prior practice. These provisions are said to reflect that the academic year is the period over which the faculty have satisfied their annual teaching requirement of 24 credits and that requirement is completed by the end of the spring semester.

The Union’s contract language analysis commences with paragraph 1 of Article XII.A. This contract reference states:

Institutional responsibilities of the faculty shall include teaching responsibilities and other responsibilities as defined below. The basic academic year teaching load shall be assigned over thirty-two (32) weeks of instruction and shall occur during the period of payment which commences September 1 and ends on June 30, and may not exceed such thirty-two (32) week period unless otherwise agreed to by the concerned faculty member.

Citing the above language, the Union points to linkage between the faculty teaching load and the “academic year” which is defined as being thirty-two (32) weeks in length. The Union acknowledges the contractual reference to the “period of payment” which commences on September 1 and ends on June 30 but observes that this language refers to the period of when faculty are paid rather than to the academic year teaching load that is assigned over thirty-two (32) weeks of instruction. The Union contends that had the parties intended the academic year to be defined as between September 1 and June 30, they would not have defined the academic year as something else within the same section in

Article XII. By the use of the term “period of payment” to describe the period between September 1 and June 30, this is said to be compelling evidence that the parties did not intend for this period of time to constitute, or be synonymous with, the academic year. On this point, the Union argues:

The effect of Article XII.A is to decouple faculty responsibilities from the payment of annual salary by establishing distinct periods of time for each – the academic year, which applies to faculty responsibilities, and the period of payment, which applies to compensation. This decoupling reflects the need to reconcile the unique role of college faculty with the fiscal and accounting structures created by the contract and, to a broader extent, by employment within State government. The Statewide master agreement creates two categories of employees for the purpose of compensation – 10 month employees and 12 month employees. (Exhibit J-1, p 54). Every employee covered by the contract must fall into one of these two groups. For the purpose of applying the terms of the contract, faculty are treated as 10 month employees, but this is merely an administrative construct necessary to deliver annual salary within the confines of the State system. The labeling of faculty as 10 month employees does not reflect their actual duties because those duties defy temporal limits – they exist beyond the clock. From the start of classes in September and until the close of the school year at commencement, faculty log a tremendous number of hours at all times of day and night.⁵ Their time is spent preparing lessons, grading papers, meeting with students, colleagues and scholars, communicating with students at all hours, doing scholarly research, keeping abreast of developments in their field and incorporating these developments within the curriculum being delivered, staying involved in the campus community, working on their writing and publishing, doing peer reviews, taking part in the work of faculty committees, and a host of other responsibilities relating to higher education. These responsibilities do not come with a time card. Faculty members don't punch in and out. The duties of being a professor are an ever present companion during the time that active instruction is taking place – that is, during the academic year. These duties do not fall neatly into a box labeled "10 month" or "12 month" which is why, as to faculty, the time between September 1 and June 30 is defined by the contract as what it actually is the period over which they are paid. Because Article XII.A makes it clear that the period between September 1 and June 30 is the "period of payment," it is

contractually impossible to call that period the "academic year." The grievance must be sustained, and Kean University must be directed to discontinue its practice of assigning non-teaching duties outside the academic year.

The Union also references Article XII, Section B. The Union regards the reference "the basic academic year teaching load for full-time faculty shall be twenty-four (24) teaching credit hours" as an explicit reference connecting the teaching load to the academic year. The Union points to testimony that this time period over which this requirement is satisfied beginning at the start of classes in the fall semester and ending with the conclusion of the spring semester marked by graduation:

Article XII.B is the closest we'll come to a contractual definition of the term academic year. Under that definition, the academic year is the period of time over which the faculty satisfy their obligation to teach 24 credit hours. Since that period ends with the conclusion of the spring semester, the State's claim that the academic year ends on June 30th is in conflict with the plain language of the agreement. For this reason, the union's grievance must be sustained.

In respect to the issue of non-teaching duties, the Union points to Article XII.C which is entitled "Other Responsibilities." The Union submits that the reference to "other responsibilities" in Article XII.C notes that they must be performed "within the academic year," the same time period over which the teaching load is satisfied under Article XII.B. Thus, the Union asserts that both Sections B and C contemplate that teaching and non-teaching duties are to be performed within the academic year. In respect to performance of other responsibilities outside the thirty-two (32) weeks of instruction, the Union

acknowledges that these are defined as only those that have been “traditionally performed by faculty.”

The Union also sees support in its definition of academic year in the Letter of Agreement XVII. This LOA is entitled Alternate Period for Faculty Workload. It provides that the parties can agree to an alternate time framework to satisfy the teaching load requirement. The language permits the scheduling of the twenty-four (24) teaching credit hours and thirty-two (32) weeks of instruction “over a period other than between September 1 and June 30.” If this occurs by agreement, the language states that the faculty member has a right to receive pension and health benefits as if he or she worked between September 1 and June 30. According to the Union, the language in this LOA confirms what Article XII.A sets forth, namely that the academic year is characterized by the delivery of instruction rather than being a period with a fixed start date and fixed end date such as between September 1 and June 30. The Union further contends that this LOA affirms that the September 1 through June 30 period is the time period over which faculty members are compensated. These dates are steady and fixed for the purpose of payment, even if the duties performed occur outside of that period. Thus, this time period is for the limited purpose of payment and does not define the academic year. The Union asserts an additional source of support in Article X – Union Rights, Section G.2. This section allows the President of the Council and one representative on each campus to work for a maximum of eight credits per academic year by course or semester. This language is said to

confirm that the academic year is described as a period consisting of two semesters. Because the release time referenced in Section G.2 is limited to “one course per semester not to exceed eight credits” for the “academic year”, the eight (8) credit reference is to two classes. Because the spring semester concludes with the graduation ceremony, the academic year reference in this section is supported by Section G.2’s reference to one course per semester not to exceed eight credits for the “academic year.”

The Union emphasizes that Article XI, Section L is also significant because it makes specific reference to the months of May and June. The Union offers detailed argument on this point in its post-hearing submission:

The first sentence of Article XI, Section L reads "Faculty members assigned to teach in intersessions, pre-sessions or summer sessions occurring in the month of May or June shall be compensated for such assignments at the appropriate summer session rate, or the overload rate, whichever is higher." (Exhibit J-1, page 25). By virtue of this language, the parties have recognized that the months of May and June are not includable within the academic year. The reason is simple. Recall that Article XII, Section B of the contract refers to the academic year as the period during which the basic teaching load is satisfied. (Exhibit J-1, page 26). If faculty teaching in May and June are entitled to the overload rate, or the summer rate, as called for by Article XI, Section L, it is because they have satisfied their academic year teaching load by that time. In essence, Article XI, Section L is a recognition by both parties that by the time May and June roll around, the "academic year teaching load" set forth at Article XII, Section B has already been satisfied. Were that not the case, faculty would not be entitled to receive overload pay, or the summer session rate. The entitlement to overload/summer pay for teaching in May and June each year flows from the fact that by that time, faculty have completed their basic academic year teaching load, in which case the academic year is over. If the academic year ended on June 30th every year, the language of Article XI, Section L would be both

unnecessary and nonsensical, since there would be no reason to distinguish May and June from the rest of the year. Because that distinction does exist, and is specifically recognized at Article XI, Section L, the State's assertion that the academic year continues until June 30th is at odds with the language of the contract.

The Union makes further argument by referencing the index to the contract which appears at page 138. This contains an index of terms by page reference under the heading "Faculty Responsibilities." Therein, the reference to the term "work year" is followed by the ("period of payment"). The Union argues that the parties, by use of the term "work year" consciously avoided the use of the term "academic year" to define the time period between September 1 and June 30. By referring this time period as the "work year," this is consistent with the language in Article XII.A stating that [t]he basic academic year teaching load shall be assigned over thirty-two (32) weeks of instruction during the "period of payment" which commences September 1 and ends on June 30, and may not exceed such thirty-two (32) week period unless otherwise agreed to by the concerned faculty member."

An additional point of argument by the Union is the parties' recent revision to Article XII, Section C. It submits that the State's reliance on the pre-existing Article XII, Section C as the authority to require faculty to remain on campus to perform mandated non-teaching duties through June 30 is undermined by the new language added to Article XII, Section C during negotiations for the 2011-2015 contract. The new language adds a new first paragraph to Article XII, Section C while maintaining the pre-existing paragraph as a new second

paragraph in Section C. The new language in the first paragraph of Section C states the following:

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 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, UNION, or Local Union under the New Jersey Employer-Employee Relations Act. [Emphasis added].

The Union submits:

Any claim that the Colleges have the right to require faculty to remain on campus, or to return to campus, to perform non-teaching duties after graduation is completely obliterated by the language added to the 2011-2015 contract. The current contract now provides in clear and unambiguous language that faculty are only be required to be present on campus during the "period of instruction." There is no dispute about the meaning of the term "period of instruction." It is specifically defined at Article XII, Section A as a period of 32 weeks over which the basic academic year teaching load is assigned; in other words, the time that faculty spend in the classroom, teaching. At no point has the State even attempted to argue that the "period of instruction" extends until June 30th, nor would it make any sense to do so, since that thirty-two week period clearly comes to an end when classes end in the spring semester. In effect, the parties have clarified the language of Article XII, Section C so as to specifically provide that faculty cannot be mandated to remain on campus beyond the 32 weeks of instruction, which is precisely what Kean University did in this case. Reading the new language in a way that is most favorable to the State, faculty need only remain "accessible" during the academic year through whatever electronic or telephonic means that faculty

find "most convenient." Therefore, under the language of the 2011-2015 contract, neither Kean University nor any other covered College has the right to force faculty to remain on or return to campus after the period of instruction, and faculty are only be required to remain "accessible" during the academic year. Even if the Arbitrator accepted the State's definition of the term "academic year," despite the overwhelming evidence to the contrary, the Arbitrator must still conclude that the actions of Kean University would violate the terms of the current contract.

The new language inserted into Article XII.C makes a distinction between the 32-week period of instruction, during which faculty "shall be present on campus," and the academic year during which faculty must merely be "accessible" to students and colleagues. The difference is that while the period of instruction is limited to the time that classes are actually being taught, the academic year includes time during the fall and spring semesters during which classes are on hiatus, such as the holiday break, spring break, or the week between exams and commencement. The period of instruction is shorter than but included within the academic year; in turn, the academic year is shorter than, but included within the period of payment. Management gets to see the dates for the period of instruction, and in turn the academic year, but the contract requires that it begin no earlier than September 1 and end no later than June 30. This distinction is important for another reason. Both the 2007-2011 and the 2011-2015 contracts provide that assignments made outside the 32 week period of instruction shall not be made "individually or collectively on an inequitable basis." This language gives the union the right to grieve as "inequitable" non-teaching assignments that are made within the academic year, but during periods that faculty would not be expected to be on campus. The new language added as Article XII.C.1 maintains this distinction, by providing that faculty are expected to be on campus during the period of instruction, but only need to be accessible during those parts of the academic year where active instruction has been paused. If there was any ambiguity about faculty rights and obligations during the academic year, the language inserted into the 2011-2015 CNA provides needed clarity; simply put, faculty cannot be required to remain on campus after classes end.

The Union also references sources of authority within the field of higher education. It specifically notes the definition of "academic year" used by the Middle States Commission on Higher Education. According to the Union, the

Middle States definition has been incorporated by the parties within the terms of the Agreement and defines the academic year, consistent with the Middle States definition, as concluding with the end of the spring semester marked by the graduation ceremony while rejecting the State's claim that the academic year has a fixed start and end date. The Middle States definition cited by the Union states that the academic year is:

A period of time that colleges use to measure a quantity of study. A typical academic year may consist of two semesters (fall and spring) of approximately 15 weeks each or three quarters of approximately 10 weeks each. Academic years can vary from college to college or from program to program within the same college or university. For the purposes of federal student financial assistance programs, an academic year has a minimum of 30 weeks of instructional time for a course of study that measures its program length in credit hours or a minimum of 26 weeks of instructional time for a course of study that measures its program length in clock hours.

The Union offers considerable argument, based upon witness testimony and exhibits, that Kean University has consistently handled the performance of non-teaching responsibilities between commencement and June 30 in the same manner without mandating faculty to remain on campus during this period or required to return to campus through June 30 to perform non-teaching responsibilities. The Union contends that the prior practice supports its interpretation of the contract provisions. In addition, the Union cites to language in Article XII.C that gives specific direction to the performance of responsibilities but only as consistent with previous practice. The specific cite is to "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.” The Union refers to the testimony of Dr. Charles Kelly, Dr. Brian Lees and Dr. James Castiglione to support of its position that the University’s directive in this instance was contrary to established practice.

The Union urges rejection of the testimony of Dr. Dawood Farahi, President of Kean University as to the University’s authority to mandate non-teaching responsibilities through June 30. It contends that the testimony as to alleged prior examples of mandated training was without factual support and in conflict with Union witnesses who testified in detail that such assignments were voluntary in nature. Dr. Farahi also testified to the general education class that was the subject of Dr. Kelly’s testimony as one activity that was mandated but the Union stresses that the training was mandated only after faculty had volunteered to teach the course and who were then compensated for attending the training.

The Union further submits that the testimony from its witnesses employed at other universities/colleges⁴ regarding practice was consistent with that offered by witnesses employed at Kean. They include Professor Tim Haresign from Stockton University, Professor Karen Teresa Siefring from Rowan University, Professor Joseph Moskowitz from New Jersey City University, Professor John Krimmel from the College of New Jersey, Susan Tardi from William Paterson

University, Richard Wolfson from Montclair State University, Martha Ecker from Ramapo College.

The Union acknowledges the testimony from witnesses offered by the State to offer counter testimony at each University or College but contends that their testimony does not support the State's position and instead validates its position that the State cannot require faculty to remain on campus and be mandated to perform non-teaching duties.

The Union also makes reference to the language in Kean University's academic calendar for the 2007-2008 academic year. It notes that the Spring semester ends undergraduate commencement on May 15 and that the Summer calendar consists of two summer sessions. The first summer semester is between May 19 and June 26 and the second is between June 30 and August 7. The Union submits that the definition of summer on the calendar is consistent with N.J.S.A. 18A:60-1 which provides that the academic year ends with the conclusion of the spring semester and does not extend into the summer. The Union also points to the calendar's reference to the duration of the summer session as support for its position:

According to Exhibit U-6, "Summer 2008" began on May 19th and ended on August 7th. (Exhibit U-6). The period between May and August is treated on the academic calendar as a single block of time, described as the "summer," yet, for the purpose of interpreting the law and the contract, the State would have you believe that the "summer" begins on July 1st. The State attempts to reconcile this

⁴ These witnesses served either as representatives or President of their respective local unions.

anomaly by claiming, strangely, that in 2008 all of Summer Session I and one day of Summer Session II are included within the academic year, but the remainder of Summer Session II is outside the academic year. (T6, p. 90, ln. 25, p. 91, ln. 1-16). In effect, Kean University is asserting that summer begins on a different date than what appears on its own academic calendar. There is nothing contained in Exhibit U-6 which would even begin to suggest such a mind bending result. Indeed, if the academic year truly began on September 1 and ended on June 30, then Kean University would presumably issue a calendar that clearly said so. Instead, it has published a calendar that has identified the period after graduation as the "Summer," which cannot be part of the academic year as a matter of law. The academic calendar in evidence as Exhibit U-6 is yet further proof that the academic year ends at the conclusion of the spring semester, marked by graduation.

The Union refers to academic calendars at other State institutions as being consistent with the language and structure of that at Kean University in regards to the end of the academic year linked to commencement and to when "summer" begins and ends. The Union takes particular note of the Academic Calendar for 2015-2016 at Montclair State University stating "Montclair University follows a traditional academic calendar; fall and spring terms are 15 weeks in length and the academic year is 30 weeks in length." (U. Ex. #15). The Union sees no significance in the Stockton University calendar referencing the 2008-2009 academic year as providing a deadline for the issuance of grades for non-graduating students as May 14th, five days after the 2009 commencement. This, it argues, does not support any suggestion by the State that there are mandatory duties required after commencement. The Union submits that the 14th is a deadline, that grades may be submitted before that date and that grade submission is not a new duty but an accepted one relating solely to a faculty member's prior academic year responsibilities.

The Union rejects any reliance the State places on a 1984 arbitration award. State of New Jersey (William Paterson College) and Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO, OER-1517 (Allen Isaacson) (1984) (“IMO Isaacson”). In that case, the Union points out that the Grievant had been assigned to a non-teaching administrative position due to medical reasons that prevented him from performing instructional responsibilities during the spring semester when his academic year would normally have ended. The fact that he was required to work until June 30 was due to his reassigned position and not related to the duties that can be assigned to faculty. The Union that Isaacson was required to work until June 30 not because June 30 is the end of the academic year but because he no longer occupied a teaching position having assumed administrative functions.

The Union also cites approvingly to Troy v. Rutgers, 168 NJ 354 (2001). There the academic year was defined as ending with commencement and, as the Union argues here, faculty with academic appointments were observed by the Court to only be required to be in attendance from September 1 through commencement.

The State

The State contends that the Union has not established any violation of the terms of the collective negotiations agreement and that its decision to mandate

training in June 2008 was consistent with its authority under the terms of the Agreement and laws governing higher education.

The State asserts that its authority to determine the academic year and academic calendar is non-negotiable pursuant to statutory authority and Article X of the Agreement. Article X(H) states that the final responsibility for the academic calendar is a matter of academic judgment to be exercised by Kean University and its Board of Trustees. The State also refers to a December 21, 2015 amendment to N.J.A.C. 9A:1-2.1(b) that specifically provides that “the academic year shall be determined by the institution’s governing board.” This authority is said to leave sole discretion to the governing boards of the institutions covered by the Agreement and precludes the arbitrator from issuing a decision defining the scope of the academic year. The State points out that when public comments were solicited on the proposed amendments to N.J.A.C. 9A:1-2.1(b), a representative of the Union challenged the proposed amendments on a similar basis that the Union has articulated in this arbitration proceeding. After consideration of the contention that the proposed amendment would conflict with the requirement that the basic academic year teaching load be assigned over thirty-two (32) weeks of instruction, the comments were rejected and the proposed rules were implemented. The rules were then adopted under the authority of the Secretary of Higher Education, a successor to the former State Board of Education and Commissioner on Higher Education. The response by

the Secretary of Higher Education rejected the concern that the proposed regulations would conflict with the terms of the Agreement:

The Office disagrees that the amendment in question will conflict with and violate the collective bargaining agreement (C10) referred to by commenters. While the commenters are correct that the CBA does include the language cited that governs the basic academic year teaching loads, the CBA also provides that "The academic calendar at each College/University shall be prepared in consultation with the Local UNION at such College/University. The Local UNION shall be given an opportunity to provide its views and a cooperative effort to resolve differences shall be made prior to the adoption of the calendar. Final responsibility for the academic calendar is a matter of academic judgment of each College's/University's administration and Board of Trustees." (Agreement between State of New Jersey and Council New Jersey State College Locals, AFT-AFL-CIO, State Colleges/Universities Unit, July 1, 2011-June 30, 2015, Article X, Paragraph H) (Emphasis added.) Taken together, this language and the language cited by commenters indicate that governing boards that are bound by the CBA are empowered under the CBA to set the academic calendar at their respective institutions, albeit under certain limitations, such as the language in the CBA that governs academic teaching loads. The Office believes that nothing in the amendment in question would disrupt the method by which the academic year is set pursuant to the CBA and that the amendment in question is entirely in accord with the CBA.

The State emphasizes that the final responsibility for the academic calendar is a matter of academic judgment expressed by each institution's administration and Board of Trustees. The State submits that the amended regulation referenced above did not vest new authority in the institutions but served to resolve any doubts that may be raised as to each institution's authority to set the academic calendar. The State also cites to Burlington County College Faculty Association v. Board of Trustees, 64 N.J. 10 (1973) wherein the Court found that the formulation of the academic calendar is a managerial prerogative.

The State submits that the Union has conflated the thirty-two (32) week instruction period stated in Article XII with the academic year in an attempt to confine the “academic year” to the thirty-two (32) week period set forth therein. The State views the thirty-two (32) week instruction period as a “temporal portion” of the academic year that runs from September 1 through June 30. While Article XII.A(1) speaks to teaching load, the State stresses that Article XII.C refers to other responsibilities that faculty perform outside the thirty-two (32) weeks of instruction. The State cites to the specific language in Section C which states:

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

Based on Section C, the State argues:

By its explicit terms then, the Agreement provides that faculty's other, nonteaching responsibilities, may be performed "outside the thirty-two (32) weeks of instruction." If, as the Union argues, the academic year ended at the conclusion of the 32-week instruction period, i.e., commencement, there could be no period of time outside this 32-week period during which faculty could perform their traditional nonteaching responsibilities. This, of course, makes no sense, and is in conflict with a plain reading of the Agreement. Moreover, the fact should not be lost that the Agreement's "period of payment" jibes precisely and logically with the September 1-June 30 academic year.

The State also rejects the Union's interpretation that the new section the parties added to Article XII.C in the 2011-2015 Agreement serves to support the grievance:

While the subject of this grievance is the July 1, 2007 through June 30, 2011 Agreement, its successor (July 1, 2011 - June 30, 2015) was also introduced into evidence. (U-42). In the latter agreement, section XII.C became XII.C.2. New paragraph C.1 sets forth, among other things, that faculty shall be present on campus as necessary "[d]uring the period of instruction." Ibid. However, it is important to note that the terms of the former XII.C paragraph, regarding faculty's "other responsibilities" were retained in their entirety in the latter paragraph XII.C.2. Nothing in the later-added C.1 operates to limit management rights granted in C.2, including the right to require faculty's presence on campus outside the period of instruction when such presence is necessary for faculty to perform traditional responsibilities that are "reasonable and consistent with sound academic practice."

The State also cites the many pre-tenure employment contracts in evidence stating that the academic year is between September 1 through June 30 directly that it regards as contrary to the Union's position that the academic year ends with the end of thirty-two (32) weeks of instruction and with the date of commencement. These agreements cover more than forty (40) years. The State's cites Dr. Kelly's employment contract stating that the contract is for one academic year, September 1, 1973 to June 30, 1974 as well as his succeeding year's contract. It also points to five consecutive employment contracts for Dr. Castiglione, all of which provide for an academic year appointment from September 1 through June 30. Beyond Kean, the State submits similar employment contracts at Montclair University, William Paterson University and

College of New Jersey. The State also refers to the testimony of Robert Zazzali, Senior Vice President for Community Economic Development at Rowan University, who testified that he personally reviewed hundreds of faculty appointment letters, all of which specified a term of appointment of September 1 through June 30. Based on these individual employment contracts for non-tenured faculty, the State argues:

It is well-settled that, when construing a contract, its terms must be given their "plain and ordinary meaning." Nester v. O'Donnell, 301 N.J. Super. 198, 210 (App. Div. 1997) (citation omitted). There is no ambiguity here. For at least over 40 years, faculty AFT, AFL-CIO members have been voluntarily contracting with New Jersey's institutions of higher education to serve these institutions for a fixed academic year running from September 1 through June 30. To argue now, that their obligations really only run through commencement – a concept that exists in no contract, MOU, or other writing of any sort – is disingenuous and seeks to improperly deny these institutions the benefit of their contractual bargain with faculty.

It is not surprising that the Union has never seen fit to oppose these individual employment contracts. That is because nothing in Article XII – or anywhere else – precludes Kean, and other institutions, from requiring that faculty serve for a full, September 1 – June 30, academic year. This term of employment is not inconsistent with any term in the Master Agreement, nor does it diminish any rights provided for under the Agreement. See Troy, supra, 168 N.J. at 376 ("The primary reason why plaintiffs' individual agreements would not be superseded by the collective agreement is the absence of a conflict.").

Read together with the Master Agreement, the individual employment contracts introduced during this arbitration are incontrovertible evidence that the academic year is – and always has been – the 10-month period from September 1 through June 30.

The State also cites to “ancillary evidence” to support its view of the September 1 – June 30 academic year. One such document is a “new undergraduate program proposal form” at Montclair State University stating “approval deadlines” for new programs approved “in the course of the academic year (September 1 through June 30).” Another is the Graduate Assistantship Program at Paterson University. This document states that “assistantships are awarded for one academic year, typically from September 1 through June 30.” The State also cites to prior litigation at Kean University where the Court, in its recitation of facts, refers to specific Board of Trustee meetings held during each academic year including June 29, 2015. The State also cites the health benefits provision in the Agreement as set forth in Article XIX(A) providing the State Health Benefits Program to full-time employees who are categorized in the salary schedules at Appendix V as either ten-month or twelve-month employees. The State sees no support for a category of employee that is less than ten months in length. The State also finds support in Article XII(A).2.a that provides the “period of payment” for ten-month employees as between September 1 and June 30. In sum, the State argues that the ten-month employee is a full-time employee who is eligible for State health benefits and payment over a ten-month period of time and who may be mandated to perform responsibilities during this entire time period.

The State next cites a 1984 arbitration award. The State, as well as the Union, cites to State of New Jersey (William Paterson College) and Council of

New Jersey State College Locals, NJSFT-AFT/AFL-CIO, OER-1517 (Allen Isaacson) (1984) (“IMO Isaacson”). In that case, the arbitrator rejected the Union’s grievance challenge to the College’s decision to require Dr. Isaacson to work at his desk on campus through June 30 without his receipt of additional compensation for work performed after the end of the Spring Semester. Dr. Isaacson had been released from teaching the spring semester for health reasons and instead was assigned non-teaching duties until June 30.

The State, as well as the Union, also cites to Troy v. Rutgers, 168 NJ 354 (2001). In Troy, the Court considered the relationship between individual employment contracts and collective negotiations agreements. The Court observed that the individual agreements in that case with terms of September 1 through June 30 were not in conflict with, nor superseded by, the collective negotiations agreement. Here, the State submits that because of the longstanding practice of requiring individual employment contracts for non-tenured faculty from September 1 through June 30 as the academic year, the individual employment contracts are not violative of the Agreement and reinforce the State’s position that the academic year runs through June 30 and not at the end of the spring semester.

The State also rejects the Union’s reference to the Middle States definition of “academic year” as support for its position that the academic year ends with the spring semester. According to the State, the Middle States definition only

distinguishes between the instructional period of the time in which students are engaged in classroom study, generally regarded as a thirty-two week period of time, and a faculty member's academic year which, under the terms of Article XII.C, is meant to include the performance of "other" faculty responsibilities that fall "outside of the thirty-two (32) weeks of instruction," including the mandated training in June 2008.

The State submits that the Agreement calls for a full ten-month term of employment in exchange for ten months salary. In this regard, it cites Union testimony acknowledges that in addition to teaching, full-time faculty have other responsibilities. It cites the acknowledgement of Dr. Lees that this includes "advisement, professional development, research ...". Similar testimony acknowledged that faculty perform many non-teaching duties between commencement and June 30. The State cites the testimony of Dr. Wolfson who when asked whether non-teaching duties are performed post-commencement, he responded:

Absolutely. Faculty are there doing their research. They meet with students generally ... [F]aculty get together and they develop curriculum. I mean they get together to work – you know, there's lots of work that faculty can only do on campus ... [F]aculty get together to do all sorts of things, all sorts of times, but never mandated, never instructed to by the university it's part of what we do as professionals.

The State also refers to testimony from Dr. Ecker acknowledging that as a faculty member she had performed non-teaching duties after commencement:

I probably modified my syllabus during that time period. Certainly, I started to do some research during that time period ... [I]f a student came in and asked me for advice, I probably talked to students about taking courses, internships, those kinds of activities.

The State views the grievance as contesting the State's right to require faculty to perform any professional obligation after commencement. The State contends that the Union's view that any service performed after graduation is voluntary is without contractual support. It sees faculty as working in the collegial environment of academia where the authority to direct the assignment of work gives way to a more cooperative environment where the performance of work that is obligated is normally not mandated or required. The State points to the testimony of administrators at various institutions in support of this view.

As Dr. Chakrin testified, "[t]he mere fact that in this collegial environment we don't threaten our faculty and force them [to perform nonteaching duties], the mere fact that we don't do that, does not take away from their obligation, it's just the way we operate." (3T93-94). He explained that "there is a differen[t] atmosphere in the academic environment[;] it's a much more collegial, much more cooperative environment." (3T59-60). Dr. Davenport testified that, "[w]e don't use that mandate word as part of a collegial environment." (4T134-135). Similarly, Dr. Osborn testified that, "[i]t's our institutional expectation and culture that ... faculty are engaged in the life of the campus. I have the authority to [mandate assignments], but I don't need to do so." (5T10). But just because an employer-employee relationship is collegial does not change the fact that it is still an employer-employee relationship.

The State concludes that its decision to require all full-time faculty to attend an advisement training session on one of many dates in June was consistent with the Agreement. It cites the testimony of Dr. Farahi that Kean had

declining graduation rates and that there are negative consequences associated to the inadequate advisement of students. In this instance, Dr. Farahi testified that the training was to expose faculty to a computerized advisement system for the purpose of encouraging a four year path to graduation for all undergraduates. He further testified that it was logistically impossible to schedule the training while faculty members were still teaching courses during the thirty-two (32) weeks of instruction.

DISCUSSION

The evidence and arguments submitted into the record by the University and the Union have been carefully reviewed and thoroughly considered. The Union has the burden to prove, by a preponderance of the evidence, that the University violated Article XII of the Agreement. The alleged violation is said to have occurred when the University mandated faculty to attend training sessions in June 2008. The Union does not object to the University's scheduling of the training sessions and instead grieves the University's decision to mandate faculty attendance during a time that allegedly fell outside of the academic year.

The history of this arbitration proceeding is noted at the outset. After a hearing in 2009 and one in 2010, the parties placed a hold on further hearings to pursue voluntary settlement of the grievance. Negotiation for a new Master Agreement was also underway to succeed the one that would expire on June 30, 2011. Although a new Agreement was reached through June 30, 2015 the issue

raised in the grievance remained unresolved although the parties added new language to Article XII – Faculty Responsibilities. Arbitration hearings were then reconvened during 2016. The record was closed upon receipt of post-hearing briefs on September 5, 2017.

The parties disagree on the meaning and application of the term “academic year” to the grievance. References have also been made to the “academic calendar,” and in particular, the purpose of the calendar and whether the grievance seeks to challenge its contents. For the purpose of clarity, the initial step in the analysis is noting a distinction in the terms “academic calendar” and “academic year.” The University correctly observes that the decision to construct the “academic calendar” is a non-mandatory managerial prerogative. This view is supported by Burlington County College Faculty Association v. Board of Trustees, 64 N.J. 10 (1973) and its progeny. Article X(H) confirms this prerogative by stating that “[f]inal responsibility for the academic calendar is a matter of academic judgment of each College’s/University’s administration and Board of Trustees.” Section (H) also recognizes the University’s obligation to prepare the “academic calendar” in consultation with the Union so that the Union can engage in a cooperative effort to resolve any differences the parties may have in respect to the calendar prior to its adoption. This right to consultation does not diminish the University’s authority to determine and set the “academic calendar.” The grievance, however, does not challenge the University’s prerogative to set the “academic calendar,” the thirty-two (32) week period of

instruction for the completion of the fall and spring semesters and is instead limited to contesting the time period when the University mandated and scheduled the training.

Numerous academic calendars were submitted into the record and were the subject of testimony. University testimony reflects that the purpose of the academic calendar is to notice students as to specific dates and events relevant to them and that it does not represent a contract with the Union. It sees no merit in the Union's position asserting that the academic year ends with commencement after the conclusion of the Spring Semester. It is clear that the academic calendar is not a contract with the Union. But, it shows dates and events that are consistent with contract language covering faculty basic academic year workload that appears in Article XII. The academic calendar states the dates that the fall and summer semesters begin and end. Article XII has references to "each semester," to the period of time for when the basic academic year teaching load is assigned and to the amount of teaching credit hours that constitutes the basic academic year teaching load. This load is inclusive of the fall and spring semesters and is consistent with the 2007-2008 academic calendar at Kean that is broken down into the "Fall Semester," the "Spring Semester" and dates for Commencement following the end of the Spring Semester. The academic calendar also references "Summer 2008" and the dates for the beginning of the Summer Sessions. Article XI(C) sets terms and

conditions for faculty Summer Session teaching contracts independent from the basic academic year workload covering the fall and spring semesters.

The Kean 2007-2008 academic calendar states:

Academic Calendar

Fall Semester 2007

Full-Term Courses

September 3	Labor Day (University is closed)
September 4	President's Address/Faculty Meetings
September 6	First Day of Fall Term
October 8	Columbus Day (University is closed)
November 22	Thanksgiving Recess
November 26	Classes Resume
December 22	Last Day of Fall Term

Spring Semester 2008

Full-Term Courses

January 22	First Day of Spring Term
February 18	President's Day (University is closed)
March 17	Spring Recess Begins
March 21	Good Friday (University is closed)
March 24	Classes Resume
May 12	Last Day of Spring Term
May 13	Graduate Commencement
May 15	Undergraduate Commencement

Summer 2008

May 19 – June 26	Session I
June 30 – August 7	Session II

As shown, the academic calendar codifies the start and end dates of the Fall and Spring Semesters. The 2007 Fall Semester begins on September 6 and ends on December 22 while the Spring Semester begins on January 22 and ends on May 12. Commencement dates are May 13 and 15, after the conclusion of the Spring Semester and fall after the basic academic year workload for faculty

has been fulfilled. In each semester, there are holidays when the University is closed, as well as recess periods followed by dates when classes resume after recess. The Summer Sessions, I and II, are not defined as semesters and compensation for teaching the Summer Sessions is set by the Agreement separate and apart from compensation earned for teaching the Fall and Spring Semesters and the basic academic year teaching load.

The parties disagree on what constitutes the “academic year” in the absence of a definition that appears in the Agreement. As the record reflects, the term “academic year” has different meaning and application depending on the specific context and purpose in which the term is used. The varying views on “academic year” serve as context for the dispute over the time of year that the University can mandate faculty responsibilities.

The Union contends that the meaning of “academic year” is that set forth in Article XII(A)’s definition of the “basic academic year teaching load” for faculty. That load must be assigned over thirty-two (32) weeks of instruction that falls within the “payment period” that commences on September 1 and ends on June 30. Article XII(B) goes on to define that “[t]he basic academic year teaching load for full-time faculty shall be twenty-four (24) teaching credit hours.” This is the teaching load performed within the thirty-two (32) weeks of instruction. The Union sees the “academic year” as not having a fixed date and one that concludes with the culmination of the thirty-two (32) weeks of instruction that,

pursuant to the academic calendar, ends after the dates set by the University for commencement after the Spring Semester concludes. After this occurs, the Union regards new mandated assignments that go beyond responsibilities that faculty have traditionally performed as unauthorized by the Agreement. The Union notes that the Agreement does not include language that defines the “academic year” as falling between September 1 and June 30. Instead, the Agreement identifies September 1 through June 30 as the “period of payment” [Article XII(A)]. The Union points to an index in the Agreement that refers to the September 1 to June 30 time period as a “work year” tied to this “period of payment.” Consistent with its view of what constitutes the academic year, the Union notes that the academic calendar for 2015-2016 at Montclair University refers to an “academic year 30 weeks in length...”

The University disagrees. It submits that the “academic year” is ten months in length, running from September 1 through June 30 as is stated in individual employment contracts for non-tenured faculty, in N.J.A.C. 9A:1-2.1(b) by reference to each institution setting the academic year and in many University documents such as assistantships that are awarded “for one academic year, typically from September 1 through June 30.” The University further contends that it has the authority to mandate non-teaching responsibilities throughout the time period that it deems to be the ten month “academic year” that it sees as concluding on June 30. The University further asserts that Article XII.C supports its authority to mandate faculty assignments after commencement through June

30 because Section C references “other responsibilities” of faculty that may be assigned outside the thirty-two (32) weeks of instruction that the Union regards as the end of the “academic year.”

Despite the parties’ conflicting interpretations of what constitutes an academic year, the merits of the grievance do not rest solely on the definition of the academic year. Instead, it requires careful review of the nature of the responsibilities that the University can require faculty to perform and when they can require their performance. The record reflects that the parties have addressed their respective rights and limitations as to faculty responsibilities through specific contract language, through general contract language and by conduct and practices existing at each institution. Examples of how the parties have defined faculty responsibilities are as follows.

Overall faculty responsibilities appear in Article XII. They are referred to in Section (A.1) as “institutional responsibilities” of faculty that include “teaching responsibilities” and “other responsibilities.” Section (A.1) refers to a “basic academic year teaching load” as one assigned over thirty-two (32) weeks of instruction during the period of payment commencing September 1 and ending June 30. At Kean, and at all other universities/colleges in this higher education system, this thirty-two (32) week period of instruction begins with the Fall Semester and ends at the conclusion of the Spring Semester. The specific dates of instruction appear in the academic calendar at each institution rather than being set by a contractually fixed date. Section (B.1) covers “Teaching

Responsibilities” and sets the “basic academic year teaching load” as “twenty-four (24) teaching credit hours” with no more than “fifteen (15) teaching credit hours per semester within load.”⁵ Section (B.3) establishes minimum pay rates for teaching “overload” courses. Section (B.5) grants teaching credit hours to faculty if “assigned duties involving modes of instruction other than classroom, such as, but not limited to, independent study, supervision of internships or practice teaching, or assigned to teach regularly scheduled courses for which college credit is not granted.” Section (B.7) speaks to the assignment of non-teaching duties falling “within load” and made “prior to each semester.” Section (C) addresses “Other Responsibilities” and defines them as “[f]aculty 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.” Section (C) requires these “other responsibilities” to 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.”

Given the parties’ careful construction of the above framework of faculty responsibilities, the evaluation of the grievance contesting the mandated training sessions in June 2008 clearly falls under the negotiated language in Article XII as viewed individually and in their totality and, in particular, the language that appears in Section (C). The disputed assignment does not involve the basic

⁵ Summer Sessions and compensation for teaching are set in Article XI and fall outside of the basic academic year teaching load.

academic year teaching load, when the load is taught nor the level of the load. It was not an assigned duty involving a mode of instruction for which credit hours are granted. Instead, the assignment was a non-teaching assignment that fell outside of the thirty-two (32) weeks of instruction, a period that generally corresponds with the Union's view of the academic year. Because the disputed assignment fell outside the thirty-two (32) weeks of instruction, Section (C) requires that the work assignment be evaluated based on whether it was a responsibility that had been "traditionally performed" and must be continued "consistent with previous practice."⁶ After doing so, I find that the Union has established, by a preponderance of the evidence, that the Agreement did not grant authority to the University to mandate attendance at training sessions that fell outside the thirty-two weeks of instruction without having first negotiated either an agreement to perform the work or compensation for the faculty who performed the work.

The University has argued that Article XII.C recognizes its authority to have scheduled the mandatory training sessions because the assignment was an "other responsibility" and was required to be performed outside the thirty-two (32)

⁶ The parties' reference to Troy v. Rutgers, 168 NJ 354 (2001) has been considered. I find it instructive of the meaning of the academic year because it has reference to an "academic year appointment" at Rutgers as falling somewhere between September 1 and the date of Commencement. However, Troy arose under a different set of facts and a different collective bargaining agreement. Because the parties' Agreement in the instant case contemplates the continued performance of other responsibilities outside of the thirty-two (32) weeks of instruction the merits of the grievance are governed by the relevant contract language. I do not agree that Troy supports the University's view in this case that the individual employment contracts authorize the University to mandate faculty responsibility through June 30 due to the subject matter of his responsibilities and work load being governed by the parties' collective negotiations agreement.

weeks of instruction. I am not persuaded by this argument. There is no evidence that the work mandated in June 2008 was work that had been “traditionally performed” outside the thirty-two (32) weeks of instruction and can be continued “consistent with previous practice.” The record evidence regarding previous practice at Kean and other institutions in the system is extensive and is consistent with this conclusion. The preponderance of the testimony reflects that the responsibilities that faculty have performed outside the thirty-two (32) weeks of instruction that defines the basic academic year teaching load have been performed either to complete responsibilities flowing from the completion of the instructional load, pursuant to previous practice or, as evidenced by testimony providing specific examples, after having arrived at mutually agreed upon consideration for the responsibilities faculty have agreed to perform.

The mandated duties required in June 2008 are similar in nature to the broadened training requirements that the University imposed on faculty during the winter break period in 2014 and were found to have been unauthorized by the Agreement. [See State of New Jersey, Kean University and Council of New Jersey State College Locals, AFT, AFL-CIO, P.E.R.C. No. 2018-18 (November 30, 2017)]. In that case, the Union did not challenge the timing of the assignment because, unlike the instant matter, it fell within the scope of what the Union deemed the academic year to be. After the Union challenged the imposition of the additional responsibilities, PERC held that the University failed to negotiate over additional compensation for, and the impact of, the broadened training the

University required during the winter break. In contrast, the mandated assignment in June 2008 was a new “other responsibility” and it occurred in June, after the completion of the basic academic year teaching load. The record does not show that there had been any previous similar directives mandating training prior to June 2008 that would authorize this assignment based on previous practice that could be “continued consistent with previous practice.” The record does reflect that faculty acknowledges the performance of responsibilities after the conclusion of the spring semester and commencement. These include, but are not limited to, the submission of grades, the modification of syllabi, curriculum development, professional, program and course development, service activities, research and scholarly activity, student advisement, the ordering of books and the preparation of accreditation documents. Union witnesses emphasize that they acknowledge their responsibility to engage in such work activities as part of their continuing overall responsibilities. However, the Union emphasizes that after the period of instruction has ended, they have not in the past been scheduled or mandated to perform duties such as the training sessions they were mandated to attend in June 2008 and which the University asserts it has the authority to mandate between the date of commencement through June 30.

The sustaining of the grievance does not, as the University has suggested, relieve the faculty of having to perform work after commencement. In this regard, the responsibilities of faculty cannot be said to “end” after the date of commencement. Where “other responsibilities” have traditionally been

performed pursuant to previous practice, such work may not be unilaterally withheld or abandoned. The Union does not contend that the grievance seeks faculty to eliminate work the Agreement requires, the work faculty perform as described in witness testimony and/or those covered by Article XII.C. The University has a right to continue to rely upon the performance of responsibilities required by the Agreement or those arising from practices linked to a faculty member's academic or non-teaching responsibilities. Article XII.C acknowledges the obligation to continue to perform "other responsibilities" which have "been traditionally performed" outside the thirty-two (32) weeks of instruction. I am not persuaded, in light of the language in Article XII and the evidence regarding previous practice, that the individual employment contracts stating the academic year as between September 1 and June 30 supports the University's decision to have unilaterally imposed this new mandatory work requirement without negotiations over the scheduling of the work and/or compensation for the performance of the work. [See also N.J.I.T and Newark Coll. of Eng'g Prof. Staff Ass'n, P.E.R.C. No. 80-54, 5 NJPER 491, 493 (P 10251 1979), aff'd, NJPER Supp. 2d 263 (P 218 App. Div. 1980)].

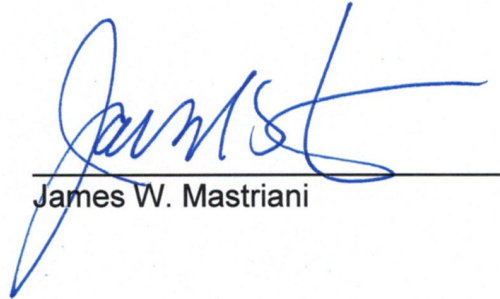
Accordingly, and based upon all of the above, I conclude that the Union has met its burden to establish that the University violated Article XII of the Agreement between the State of New Jersey and the Council of New Jersey State College Locals, AFT, AFL-CIO dated July 1, 2007-June 30, 2011. I next turn to remedy. Although a substantive remedy can be required for a contract violation such as this, under the facts and circumstances of this case, the remedy

I find appropriate is one that directs the University to cease and desist from mandating responsibilities such as the one imposed here that are not authorized by the terms set forth in the Agreement and Article XII in particular.

AWARD

The University violated Article XII of the Agreement between the State of New Jersey and the Council of New Jersey State College Locals, AFT, AFL-CIO dated July 1, 2007-June 30, 2011 when it mandated faculty to attend training sessions in June 2008. The University shall cease and desist from mandating the performance of responsibilities such as the one it imposed here that are not authorized by the terms set forth in the Agreement and Article XII in particular.

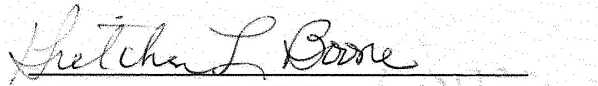
Dated: March 29, 2018
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 29th day of March, 2018, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



Gretchen L Boone
Notary Public
New Jersey
My Commission Expires 8-24-2022
No. 50066778