



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
PO Box 429
TRENTON, NEW JERSEY 08625-0429
UNFAIR PRACTICE CHARGE

For Courier Delivery
495 West State St.
Trenton, NJ 08618

File an original and 9 copies of this charge with the Director of Unfair Practices, Public Employment Relations Commission, together with proof of the simultaneous service of a copy of the charge on the respondent(s). See instructions on back.		DO NOT WRITE IN THIS SPACE	
		DOCKET NO.	
		DATE FILED:	
1. CHARGING PARTY:			
Full Name:	County:		
Union of Rutgers Administrators - AFT, Local 1768			
Address of Charging Party (Street and Number, City, State and Zip Code):			
75 Paterson St., New Brunswick NJ 08901			
Name and Title of Representative to Contact	Telephone No.		
Robert Cousins, Executive Director	(732) 745-0300		
Attorney/Consultant Representing Charging Party (if any):	Telephone No.		
Bennet D. Zurofsky	(973) 642-0885		
Attorney/Consultant Address (Street and Number, City, State and Zip Code):			
17 Academy St., Suite 1010, Newark NJ 07102			
2. RESPONDENT(S) (Public employer and/or employee organization against whom charge is made):			
Full Name:	County:		
Rutgers, The State University of New Jersey			
Address of Respondent(s) (Street and Number, City, State and Zip Code):			
57 US Highway 1, New Brunswick NJ 08901-8554			
Name and Title of Representative to Contact	Telephone No.		
Harry Agnostak, ASST VP HR	(732) 832-3020		
Attorney/Consultant Representing Respondent(s) (if any):	Telephone No.		
John Peirano, McElroy Deusch Mulvaney & Carpenter	(973) 425-8711		
Attorney/Consultant Address (Street and Number, City, State and Zip Code):			
1300 Mount Kemble Ave., P.O. Box 2075, Morristown NJ 07962-2075			
3. STATEMENT OF CHARGE (See instructions on back)			
Pursuant to the New Jersey Employer-Employee Relations Act, as amended, the charging party hereby alleges that the above-named respondent(s) has (have) engaged or is (are) engaging in an unfair practice within the meaning of N.J.S.A. 34:13A-6 A(6), subsection(s) (1) & (5) and/or N.J.S.A. 34:13A-5 4(b), subsection(s) _____ in that: _____			
See attachment.			
(indicate whether additional sheets are attached)			

4. REMEDY SOUGHT (State the remedy you request the Commission to order)

A. URA-AFT requests interim relief including expedited arbitration as is more fully set forth in the Order to Show Cause filed coincident with this unfair practice charge.

B. URA-AFT further seeks an order directing Rutgers:

- (1) To cease and desist repudiating the MOA and otherwise violating subsections 5,4(a)(1) and (5) of the EERA;
- (2) To make employees whole for all economic losses sustained as a result of its repudiation of its collective negotiations agreements with the URA-AFT;
- (3) To post all appropriate notices; and
- (4) To award all such other relief as PERC deems just and proper.

(Indicate whether additional sheets are attached)

5. CHECK ALL PETITIONS AND/OR CHARGES FILED RECENTLY OR SIMULTANEOUSLY WITH THIS CHARGE.
(Indicate date(s) filed and docket number(s) assigned, if available)

<input type="checkbox"/> Petition to Initiate Compulsory Interest Arbitration Docket No. _____ Date Filed _____	<input checked="" type="checkbox"/> Request for Submission of Panel of Arbitrators Docket No. <u>2010-869</u> Date Filed <u>Jun 11, 2010</u>
<input type="checkbox"/> Notice of Impasse Docket No. _____ Date Filed _____	<input type="checkbox"/> Scope of Negotiations Petition Docket No. _____ Date Filed _____
<input type="checkbox"/> Representation Petition Docket No. _____ Date Filed _____	<input type="checkbox"/> Petition for Issue Definition Determination Docket No. _____ Date Filed _____
<input type="checkbox"/> Petition for Contested Transfer Determination Docket No. _____ Date Filed _____	<input type="checkbox"/> Other Unfair Practice Charge(s) Docket No. _____ Date Filed _____
<input type="checkbox"/> Refused Filings At Other Administrative Agencies Docket No. _____ Date Filed _____	<input type="checkbox"/> Other (specify) _____

6. CERTIFICATION

(I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Robert Casanova Signature Executive Director Title Jun 23, 2010 Date

INSTRUCTIONS FOR FILING AN UNFAIR PRACTICE CHARGE

1. Type or clearly print all information.
2. Fill in all sections of the charge.
3. Under "Statement of Charge" provide a clear and concise statement of the facts constituting the alleged unfair practice.
Be sure to:
 - a. list the subsections of the Act alleged to have been violated.
 - b. specify the time and place the alleged acts occurred and the names of the persons alleged to have committed such acts.
4. Attach additional sheets if necessary.
5. State specifically the remedy you are asking the Commission to order.
6. Indicate all related petitions and charges by "checking" the appropriate boxes and filling in the Docket No. and Date Filed.
7. Sign the Certification above.
8. File an original and nine copies with the Director of Unfair Practices, Public Employment Relations Commission.
9. Include with your filing proof that you served a copy of the charge on the respondent(s). Proof can take the form of a statement explaining how, when and on whom the charge has been served.

STATEMENT OF CHARGE

Rutgers has repudiated the Memorandum of Agreement (MOA) dated November 18, 2009 (attached as Exhibit A) by refusing to pay the wage increases the MOA requires to take effect for the entire bargaining unit on July 1, 2010, thereby unilaterally modifying the terms and conditions of employment without reaching a negotiated agreement and without even asking URA-AFT to reopen the MOA for modification.

The MOA was itself negotiated in response to Rutgers' claim that the economic crisis required it to defer wage increases contained in the collectively negotiated agreement between URA-AFT and Rutgers for the period July 1, 2007 - June 30, 2011. Rutgers obtained the relief it sought in the MOA, which required every member of the bargaining to defer wage increases scheduled for FY 2009-2010 and FY 2010-2011 for a year each. Thus, the wages scheduled to go into effect on July 1, 2010 pursuant to the MOA were originally scheduled to go into effect a year earlier on July 1, 2009, and the wages originally scheduled to go into effect on July 1, 2010, are deferred by the MOA until June 15, 2011.

In negotiating the MOA, Rutgers specifically represented that it was necessary to meet the budgetary problems it expected for FY 2010-2011 as well as the ones it was facing in FY 2009-2010 when it was negotiated. URA-AFT therefore agreed to a two-year agreement that completely changed the wage schedule for its entire bargaining unit through the expiration date of its current CNA with the express and agreed upon purpose of avoiding any further demands for wage reductions or deferred wage increases other than in negotiations for a successor CNA.

Rutgers never approached URA-AFT with an advance request to negotiate a modification of the MOA and did not even provide URA-AFT with any advance notice of its announcement of its so-called "wage freeze." The Officers of URA-AFT did not learn of the wage freeze until they received an email memorandum addressed to the entire Rutgers Community (attached).

Certifications from Lucye Millerand, President of URA-AFT, and Robert Cousins, Executive Director of URA, in support of this charge and of URA-AFT's application for interim relief are attached.

By refusing to pay the wage increases required by the MOA on July 1, 2010, Rutgers has repudiated the MOA thereby interfering with, restraining and coercing URA and the members of its bargaining unit in the exercise of their rights guaranteed by N.J.EERA thereby violating N.J.S.A. 34:13A-5.4(a) (1) & (5).

By repudiating the MOA and proceeding without even the slightest effort to open negotiations regarding modification of the MOA with URA-AFT, Rutgers has unilaterally changed the terms and conditions of employment and has refused to negotiate in good faith thereby violating N.J.S.A. 34:13A-5.4(a) (1) & (5).

November 18, 2009

Memorandum of Agreement between Rutgers, the State University of New Jersey and the Union of Rutgers Administrators – American Federation of Teachers, AFL-CIO

Whereas the current economic crisis has caused an unforeseen and unprecedented reduction in actual State revenues for FY 2009 and in projected revenues for FY 2010; and

Whereas the State has enacted a budget for FY 2010 that conditions significant State appropriations upon public institutions of higher education realizing substantial personnel related cost savings including savings from wage deferral and furloughs, and the budget further conditions receipt of certain federal stimulus dollars upon achieving a cap on tuition and required educational and general fees; and

Whereas the Union of Rutgers Administrators – American Federation of Teachers, AFL-CIO (AFT) and Rutgers, The State University of New Jersey (Rutgers) seek to avert the layoffs of Rutgers workers while preserving the integrity of the parties' collective negotiations agreements and providing the necessary personnel-related savings for the FY 2009 and FY 2010 Rutgers' budgets; and

Whereas the parties recognize that an agreement to reduce Rutgers' salary costs during this economic crisis, while preserving the integrity of the collective negotiations agreements, is preferable to widespread layoffs and the disruption of educational services; and

Whereas the parties agree that the savings achieved through this Memorandum of Agreement (MOA) coupled with savings to be achieved through agreements with other represented collective negotiations units and with savings from non-aligned employees and managers should be sufficient to avoid the economic need for layoffs of employees represented by the URA-AFT through December 31, 2010;

Therefore the parties enter into the following agreement:

A. The Deferral of Salary Increases in FY 2010 and FY 2011

1. The 5.0% increase to annual base salaries as set forth in Article 38 .C.3 of the collective negotiations agreement between the parties that employees were due to receive the first full pay period of July 2009 as 1.5% across the board increase and 3.5% merit increase will be restructured and deferred as follows: a 2.5% across the board increase to be deferred through June 30, 2010 and shall be paid on a prospective basis effective the first full pay period after July 1, 2010 and a 2.5% merit increase to be deferred through June 30, 2010 and shall be paid on a prospective basis effective the first full pay period after July 1, 2010.

2. The 4.0% increase to annual base salaries as set forth in Article 38.C.4 of the collective negotiations agreement between the parties that employees are due to receive the first full pay period of July 2010 will be deferred as follows: a 2% across the board increase to be deferred through June 15, 2011 and shall be paid on a prospective basis effective the first full pay period after June 16, 2011 and a 2% merit increase to be deferred through June 15, 2011 and shall be paid on a prospective basis effective the first full pay period after June 16, 2011 .

B. No Layoff Pledge

1. In consideration for the substantial personnel savings achieved through the actions described in Section A of this MOA, the University agrees that there shall be no layoffs of URA-AFT bargaining unit employees during the period commencing with the ratification of this MOA and ending on December 31, 2010. For purposes of this MOA, layoff shall be defined as set forth in Article 39, Section C of the parties' collective negotiations agreement, subject to the provisions in Section C below.

2. The parties agree that the savings achieved through this MOA coupled with savings to be achieved through agreements with other represented collective negotiations units and with savings from non-aligned employees and managers should be sufficient to avoid the economic need for layoffs through December 31, 2010.

3. If any member of the URA-AFT negotiations unit is laid off prior to January 1, 2011, in violation of the no layoff pledge contained in this section B the University agrees to the following:

The deferral of the July 1, 2009 salary increases shall immediately end and on a prospective basis the salaries of all URA-AFT unit members at the University will immediately be set at the levels they would have been at had the Staff Compensation Program been implemented as provided for in the 2007-11 collective negotiations agreement prior to the ratification of this MOA.

4. The no layoff pledge set forth in this section B does not apply to separations from service that are not "layoffs" under the parties' collective negotiations agreement. Examples of such separations include the termination of an employee at the end of the probationary period set forth in Article 32 of the parties' collective negotiations agreement, and the termination of an employee for disciplinary reasons, or the termination of an employee in a grant-funded position due to a lack of funding. Employees separated for disciplinary reasons retain any rights they have to challenge such separations under the parties' collective negotiations agreement and/or under law and regulation. This provision shall not be used to circumvent the no layoff pledge contained in this section B of the MOA.

C. Enforcement of the No Layoff Pledge

- 1) Upon ratification of this MOA the parties will confer and establish a special review panel consisting of three (3) third party neutrals. A neutral shall be appointed on a rotating basis for each individual case (with the first assignment to be made at random) to perform services described below. The costs for the neutral's services shall be borne equally by the parties.
- 2) The union shall inform the Office of Labor Relations (OLR) in writing of a claimed violation of the no layoff pledge set forth in Section B of this MOA, and Rutgers shall have ten (10) working days to rescind the layoff decision and make the employee whole, or indicate in writing that the layoff will not be rescinded. If the layoff is rescinded, the provisions set forth in paragraph B (3) above shall not apply. If the layoff is not rescinded, URA-AFT may invoke the panel of neutrals as follows:
 - a. URA-AFT shall notify the OLR in writing that it is invoking the panel of neutrals. Such notification shall be submitted within ten (10) working days of receipt of the University's decision not to rescind.
 - b. Within 10 working days of receipt of the notice set forth in Section C (2) (a) above, the OLR will submit to the appropriate neutral in writing a description of the proposed layoff with an explanation and argument, including any supporting documentation. The OLR simultaneously shall furnish the union with a copy of its submission to the neutral.
 - c. The union thereafter may submit to the neutral in writing within ten (10) working days an explanation and argument, along with supporting documentation, of why the union believes that the proposed layoff violates the no layoff pledge in this section of the MOA. The union shall simultaneously furnish OLR with a copy of its submission to the neutral.
 - d. The neutral may, at his/her discretion, conduct a hearing if he/she deems it necessary. Both parties may ask the neutral to conduct a hearing, but the decision to conduct a hearing shall rest with the neutral. The neutral shall render a decision within thirty (30) days of the initial submission by the union, or the date of the hearing (if applicable). Such decision shall be based upon the written submissions of the parties, and hearing, if convened.
 - e. The issue decided by the neutral shall be whether, based upon the presentations of the parties, the proposed layoff violates the no layoff pledge set forth in Section B of the MOA.
 - f. In addition to the provisions of Section B (3) above, if it is determined by the neutral that the layoff violates the no layoff pledge the employee who was laid off will be placed back into his/her former position with no loss of salary or benefits. The employee will receive all lost wages and benefits due to such layoff.

- g. The special review panel shall remain in effect until December 31, 2010, at which time the panel expires and the process described herein shall also cease to continue.

D. Paid Leave Bank

1. In recognition of the agreement that URA-AFT unit members will defer salary increases in accordance with Section A above Rutgers agrees to establish a Paid Leave Bank (PLB) for each unit member. Each employee's PLB will be credited with four (4) days of paid leave as follows:

- a. Upon ratification of this MOA all employees will be credited with one (1) PLB day.

- b. On June 30, 2010, all employees will be credited with three (3) additional PLB days, such that by the end of FY 2010, all employees will have their PLB credited with a total of four (4) PLB days.

2. The PLB days will be maintained separate and apart from banks of other paid leave and there will be no limitations on the carryover of days in the PLBs. Specifically, the carry over restrictions that are applicable to paid vacation, administrative leave days and personal holidays will not be applicable to the PLBs.

3. Beginning July 1, 2010 and for the duration of their employment with Rutgers, employees may use days in the PLB subject to operational needs. The use and scheduling of paid leave days will be consistent with existing University and/or Departmental practices regarding the use and scheduling of Administrative Leave days. Approval for the use and scheduling of PLB days shall not be unreasonably denied. If URA-AFT finds what it believes to be a pattern of denials that raise such concerns and is unable to address such denials with department management, such issues will be addressed by OLR.

4. At the time an employee retires, resigns, passes away or is otherwise separated from Rutgers service, either voluntarily or involuntarily, any unused days in an employee's PLB will be paid upon separation. Employees who die while employed with the University shall have the balance of his or her PLB paid to his/her estate.

E. Vacation Usage During the Layoff Notice Period

1. The parties agree to amend the second paragraph of Article 20-Layoff Notice of the collective negotiations agreement commencing with the ratification of this MOA and ending on June, 30, 2011 to read as follows:

During a laid off employee's notice period, he/she may request time to seek other employment either through use of vacation, administrative leave, adjusted work schedule, or leave without pay. Such requests shall not be unreasonably denied. All vacation should be used prior to the effective date of

layoff if possible. However, the employee will be compensated for any earned vacation that might remain at expiration of notice period. Notwithstanding the above, unless mutually agreeable, an employee shall not be required to use more than five (5) vacation days during the layoff notice period.

2. URA-AFT Local 1766 agrees to withdraw with prejudice all existing grievances related to Article 20-Layoff Notice.

F. Information about Stimulus Funds

For the information of the union, the University agrees to provide the union information about the allocation of federal stimulus funds received as part of its base appropriation from the State of New Jersey in fiscal year 2009-2010. The University, upon request of the union, shall meet with the union to discuss this information with the union.

G. PERS Benefits

Rutgers agrees that there should be no diminution of benefits under PERS. The University cannot negotiate over pensions, but the University, in cooperation with URA-AFT, will take reasonable steps in an effort to help secure assurance that there shall be no diminution of PERS pension benefits on account of the actions taken to secure personnel savings described in section A of this MOA.

H. Type 4 Employees

1. Within 180 days from the ratification of this MOA, Rutgers will conduct an audit of Type 4 positions to determine whether Type 4 positions are being used in lieu of positions which should be filled by permanent employees who should be in the URA-AFT negotiations unit. The results of the audit will be provided to URA-AFT Local 1766 within fifteen (15) days of its completion.
2. Following transmission of the above-referenced audit and following the identification of issues regarding the use of Type 4 positions in lieu of positions which should be filled by permanent employees by URA-AFT Local 1766, Rutgers will meet with representatives of URA-AFT Local 1766 to discuss the issues it has identified.

I. Enforcement of the MOA

1. This Memorandum of Agreement (MOA) is incorporated into and modifies the parties' 2007-2011 collective negotiations agreement, but the terms of this MOA shall expire on June 30, 2011. The terms of this MOA and any dispute arising under this MOA, involving the application or interpretation of the terms of this MOA (except for those claims covered by Section C above), are subject to the grievance/arbitration provisions of the 2007-2011 collective negotiations agreement and shall be submitted directly to arbitration and the lower steps of the grievance procedure will be bypassed.

2. The University agrees that in the event the URA-AFT seeks to arbitrate a dispute arising under sections A-E of this MOA, the University waives any right it may have to claim that the dispute is not legally arbitrable or negotiable under scope of negotiations law. This agreement regarding the waiver of the University's right to claim that such a dispute is not legally arbitrable or negotiable under scope of negotiations law shall not have any precedential effect and shall expire, as set forth in paragraph 1 (1) above, on June 30, 2011. In the event that the URA seeks to arbitrate a dispute arising under any other provision, the University retains its right to challenge the legal arbitrability of such grievances. Except as stated above, nothing in this MOA shall be construed as a waiver by either party of its rights under the collective negotiations agreement or under scope of negotiations law.

J. Existing Collective Negotiations Agreement

This Memorandum of Agreement represents the parties' complete agreement with respect to the matters addressed herein. All provisions of the parties' 2007-2011 collective negotiations agreement not expressly modified by this MOA remain in full force and effect.

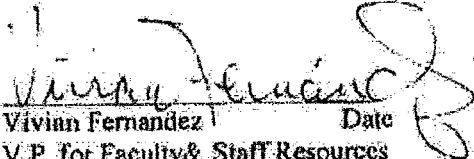
K. Withdrawal of Grievance


The URA-AFT agrees to withdraw with prejudice the grievance filed regarding alleged violations of Article 1 and Article 38 of the collective negotiations agreement (Docket No. AR-2010-109), and agree that all issues related to the non-payment of salary have been resolved by this MOA.

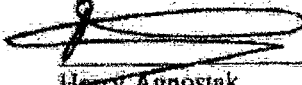
L. Memorandum of Agreement Subject to Ratification of Membership

This MOA is subject to ratification by the membership of the URA-AFT and shall become effective upon the date of ratification.

 12/2/09
 _____ Date
 Lucye Millerand,
 President, URA-AFT

 12.2.09
 _____ Date
 Vivian Fernandez
 V.P. for Faculty & Staff Resources

 12/2/09
 _____ Date
 Nat Bender,
 Executive Vice President URA-AFT

 12-2-09
 _____ Date
 Harry Agnostak
 Assistant V. P. for Human Resources