STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

PO Box 429
TRENTON, NEW JERSEY 08625-0429

Administration/Legal
(609) 292-9830
Conciliation/Arbitration
(609) 292-9898
Unfair Practice/Representation
(609) 292-6780

For Courier Delivery
495 West State Street
Trenton, New Jersey 08618

FAX: (609) 777-0089

FAX TRANSMISSION

To: **Esq.**

1609-252-9019

From: **Annette Thompson**
NJ Public Employment Relations Commission
PO BOX 429, Trenton, NJ 08625-0429
Tel: Fax: 609-777-0089

Regarding: PERC 2010-12 Decision in UMDNJ & UMDNJ Council AAUP Chapters, Dkt. Nos. CO-2005-220, CO-2007-271 & CE-2006-003

P.E.R.C. NO. 2010-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNIVERSITY OF MEDICINE AND DENTISTRY
OF NEW JERSEY,

Respondent,

-and-

Docket Nos. CO-2005-220
CO-2007-271

UNIVERSITY OF MEDICINE AND
DENTISTRY OF NEW JERSEY
COUNCIL OF AMERICAN ASSOCIATION
OF UNIVERSITY PROFESSORS CHAPTERS,

Charging Party.

UNIVERSITY OF MEDICINE AND
DENTISTRY OF NEW JERSEY
COUNCIL OF AMERICAN ASSOCIATION
OF UNIVERSITY PROFESSORS CHAPTERS,

Respondent,

-and-

Docket No. CE-2006-003

UNIVERSITY OF MEDICINE AND DENTISTRY
OF NEW JERSEY,

Charging Party.

Appearances:

For Respondent/Charging Party, University of Medicine and Dentistry of New Jersey, Anne Milgram, Attorney General of New Jersey (Michael J. Gonnella, Deputy Attorney General, of counsel)

For Charging Party/Respondent, University of Medicine and Dentistry of New Jersey Council of American Association of University Professors Chapters, Crow and Associates (Charles S. Crow, of counsel)

DECISION

This case asks whether the University of Medicine and Dentistry ("UMDNJ") had to negotiate with the University of Medicine and Dentistry New Jersey Council of American Association of University Professors Chapters ("AAUP") before it reduced the faculty practice or clinical components of the salary of certain faculty represented by AAUP. A Hearing Examiner recommended dismissing AAUP's unfair practice charge. AAUP has filed exceptions and we find that UMDNJ had an obligation to negotiate over the disputed salary reductions.

On February 22, 2005, AAUP filed an unfair practice charge against UMDNJ (CO-2005-220). The charge alleges that UMDNJ violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),[1/] when it unilaterally eliminated the faculty practice component of salary paid to Dr. Sanford Klein. On August 4, UMDNJ filed an unfair practice charge against AAUP (CE-2006-003), alleging that it

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

violated the Act, specifically 5.4b(3),[2/] by filing its unfair practice charge two weeks after ratifying the parties' 2004-2009 collective negotiations agreement. UMDNJ alleges that AAUP acted in bad faith and repudiated that agreement.

On August 23 and 24, 2005, an Order Consolidating Cases and a Complaint and Notice of Hearing issued.

On September 9, 2005, UMDNJ and AAUP filed Answers. UMDNJ denies that the clinical supplements received by faculty members had been the result of negotiations between AAUP and UMDNJ. It admits that it negotiated with AAUP concerning changes to clinical supplements and, pursuant to the understanding reached between the parties, agreed to certain notification procedures that were not incorporated into the collective negotiations agreement. It further alleges that Klein's clinical supplement was eliminated in accordance with those procedures.

AAUP denies acting in bad faith or repudiating the collective negotiations agreement. It contends that the parties negotiated over clinical salary components but reached no

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2/ This provision prohibits employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

agreement. AAUP asserts that it reserved its right to continue to negotiate the subject.[3/]

On April 23, 2007, during the course of the unfair practice hearing, AAUP was granted leave to amend the Complaint to add a new charge alleging that, on or about February 2007, UMDNJ unilaterally reduced or eliminated clinical salary components for faculty in various departments without changes to their duties or responsibilities (CO-2007-271). These unilateral reductions allegedly contravene past practice.

On May 3, 2007, UMDNJ filed its Answer to the amended Complaint generally denying that it unilaterally changed the past practice regarding clinical salary components.

Hearing Examiner Wendy Young conducted 14 days of hearing between August 7, 2006 and October 24, 2007. The parties examined witnesses and introduced exhibits. They filed post-hearing briefs and reply briefs by April 15, 2008.

On October 28, 2008, the Hearing Examiner issued her report and recommended decision. H.E. No. 2009-3, 34 NJPER 319 (¶116 2008). She recommended that the Complaints in all three cases be dismissed. She determined that UMDNJ had acted consistent with its past practice of unilaterally setting and modifying supplemental salaries. Additionally, AAUP had sought to

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3/ On January 26, 2006, we denied motions and cross-motions for summary judgment. P.E.R.C. No. 2006-51, 32 NJPER 12 (¶6 2006).

negotiate limits on UMDNJ's discretion, but withdrew its proposals in exchange for other more important concessions and a new notification procedure. The Hearing Examiner determined that since the status quo was maintained and considering the negotiations history, AAUP, by signing a Memorandum of Agreement with a zipper clause and a fully-bargained clause, waived its right to negotiate mid-contract over the issue of clinical components.

On March 2, 2009, after extensions of time, AAUP filed exceptions and a brief. AAUP asserts that:

> The Hearing Examiner erred in finding that the past practice of the parties was for clinical components of AAUP unit members to be reduced for any reason the Chairs unilaterally deemed, or might deem, valid.
>
> The Hearing Examiner erred in not finding that the clinical components of AAUP unit members could be reduced only based upon historical reasons understood by the parties to be valid.

On March 31, UMDNJ filed an answering brief.[4/] It asserts that the Hearing Examiner properly found that it acted in accordance with past practice.

We have reviewed the record. We adopt and incorporate the Hearing Examiner's extensive findings of fact (H.E. at 5-143).[5/]

4/ On May 19, 2009, AAUP was denied leave to file an additional submission as cross-exceptions had not been filed.

5/ UMDNJ did not file exceptions to the recommended dismissal (continued...)

We briefly summarize the relevant facts and history of the parties' disputes over reductions in supplemental salaries.

Faculty receive a base salary that is negotiated between UMDNJ and AAUP. Some faculty members also receive a supplemental salary, the amount of which has been determined for each member through negotiations between the individual member and the department chair or by the department chair alone. Supplemental salaries or clinical components of salary take the form of either a patient service or a faculty practice component. In addition to base salary and the clinical components of salary, some faculty may also receive a faculty practice guarantee that guarantees income for a specified period of time. Faculty practice guarantees are set forth in the initial appointment letter or reappointment letter. There is no reference to supplemental salaries in the parties' collective negotiations agreement. One side letter of agreement dated December 9, 1994, entitled "Patient Care Supplements," provides that letters of appointment will specify the amount of the supplement and that such supplements are not subject to across-the-board salary increases. The other side letter related to supplemental salaries, executed in 2002 as part of the settlement of a grievance, states that UMDNJ agrees not to substitute either

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5/ (...continued)
of CE-2006-3. We adopt that recommendation without further discussion.

faculty practice or patient services salary components for any increase in academic base salary provided for in the collective negotiations agreement.

In UMDNJ, P.E.R.C. No. 2001-31, 27 NJPER 28 (¶32015 2000) ("UMDNJ Scope"), we addressed the parties' system of faculty compensation. At the time of the decision, supplemental salaries were provided to approximately 300 to 500 of the 1200 AAUP unit members. Supplemental salaries are offered to induce doctors to come to UMDNJ or offered to faculty members who devote time to administrative tasks for a department. In that scope of negotiations case, UMDNJ sought a restraint of binding arbitration of an AAUP grievance alleging that UMDNJ violated the parties' contract when, after UMDNJ brought the base salaries of 63 faculty members up to the appropriate range, those who were receiving clinical and faculty practice supplements had the amount of those supplements reduced. The bulk of UMDNJ's arguments in that case addressed its belief that AAUP waived any right to negotiate over supplemental salaries. We first noted that questions of waiver were outside our scope of negotiations jurisdiction. We then denied the request for a restraint of arbitration finding that UMDNJ did not have a managerial prerogative to reduce supplemental salaries. The grievance was then resolved by the side letter of agreement appended to the parties' 2000-2004 collective agreement and described above.

We next addressed the parties' compensation scheme in an unfair practice case that was pending at the time we issued UMDNJ Scope. In UMDNJ, P.E.R.C. No. 2002-53, 28 NJPER 177 (¶33065 2002) ("UMDNJ I"), AAUP alleged that UMDNJ had violated its obligation to negotiate in good faith when it unilaterally reduced the patient service component of Dr. Stanley Weiss's salary. We concluded that it would be unfair to find that UMDNJ had violated its obligation to negotiate in good faith where it had every reason to believe, based on AAUP's response to past reductions of which it was notified, that AAUP would not object to similar reductions. Although AAUP may not have actually known that patient service components had been unilaterally reduced in the past, we were convinced that UMDNJ acted in accordance with the way it had acted in the past. We specifically noted that AAUP did not offer any evidence that it sought negotiations once it was notified of the reduction in Weiss's salary. We concluded by stating that AAUP was now in a position to seek prospective negotiations over Weiss's salary and future reductions in patient service components.

During negotiations for the parties' 2004-2009 agreement, AAUP submitted two formal proposals that touched on the issue of supplemental salaries. The first would have required that individual faculty members agree before there could be any reductions in patient service components of their salary. The

second would have required that there be written contracts covering faculty practice components of salary and that alleged breaches of the individual contracts be subject to the parties' grievance procedure. UMDNJ objected to both proposals and AAUP ultimately withdrew them. The parties did agree to new notification procedures regarding changes to faculty practice and patient services salary components as well as an assurance by UMDNJ's Vice President of Academic Affairs that she would review all requests for changes in these salary components to confirm that the reason for the change was valid. On September 15, 2004, the parties entered into a Memorandum of Agreement ("MOA") that included a fully-bargained clause stating that the MOA represented their entire agreement in connection with their negotiations. On September 21, AAJP attorney Mark Schorr wrote to UMDNJ Director of Labor Relations Abdel Kanan about Schorr's understanding that their agreement on new notification procedures did not constitute a waiver by AAUP of its right to negotiate over supplemental salaries. According to Schorr, AAUP was reserving its right to continue to negotiate the issue of clinical salary components in the 2004-2009 agreement or to reopen negotiations over these issues if UMDNJ changed the way it had administered this component of salary.

On October 19, 2004, before the February 2005 execution of the parties' 2004-2009 agreement, UMDNJ eliminated Klein's

faculty practice salary component. AAUP almost immediately notified UMDNJ of its concerns. AAUP believed that UMDNJ's reason for the elimination - Klein's loss of medical privileges at Robert Wood Johnson University Hospital and his ability to provide patient care - was not a valid reason and, therefore, violated the parties' past practice in regard to changes in clinical components of salary. On November 5, 2004, Schorr wrote to Kanan stating that AAUP had specifically advised UMDNJ that is was not waiving its right to negotiate over clinical supplements and that it was deeply concerned about recent actions that were allegedly a departure from UMDNJ's representations at the negotiations table. On December 15, Kanan wrote to Schorr that the parties had reached an agreement on the issue of clinical salary components when the proposals were withdrawn in exchange for other proposals that were included in the Memorandum of Agreement. Kanan asserted that once UMDNJ executed the 2004-2009 agreement, AAUP would be deemed to have waived its right to negotiate on the issue of clinical supplements during the term of the 2004-2009 agreement. Schorr responded that AAUP had no choice but to move forward with the contract and reserve its right to litigate the issue.

By letter dated February 2, 2005, AAUP confirmed ratification of the 2004-2009 agreement. On February 22, AAUP

filed its unfair practice charge (CO-2005-220) challenging the reduction in Klein's salary.

In response, UMDNJ filed its charge. Then, during the course of the unfair practice hearing, UMDNJ unilaterally reduced or eliminated clinical salary components for faculty in various departments. AAUP's Executive Director demanded negotiations. UMDNJ did not negotiate and AAUP then filed its second unfair practice charge.

N.J.S.A. 34:13A-5.3 authorizes the majority representative to negotiate terms and conditions of employment on behalf of all unit employees. Salary is a mandatorily negotiable term and condition of employment that was most evidently in the legislative mind. Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 6-7 (1973).

Unilateral action undermines the employment relationship and violates the terms and goals of the Act. Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28, 29-30 (¶29016 1997), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000). Accordingly, section 5.3 provides that a public employer has a duty to negotiate before changing working conditions:

> Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

Majority representatives may, however, waive their right to negotiate over a mandatorily negotiable subject. But any waiver

of a statutory right to negotiate must be "clear and unmistakable." Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 140 (1978).

Waiver can be found where a mandatory subject of negotiations has been fully discussed and explored in negotiations, and where the union has consciously yielded its position. Higgins, The Developing Labor Law at 1019 (5th ed. 2006); Verona Tp., P.E.R.C. No. 84-41, 9 NJPER 655 (¶14283 1983).

Also, where a majority representative has acquiesced to an employer's unilaterally setting or changing a term and condition of employment, no violation of the obligation to negotiate will be found where the employer simply acted consistent with that practice. See, e.g., South River Bd. of Ed., P.E.R.C. No. 86-132, 12 NJPER 447 (¶17167 1986), aff'd NJPER Supp. 2d 170 (¶149 App. Div. 1987). However, that waiver of the right to negotiate ends when the union's acquiescence ends. Middletown Tp. Also, a failure to request negotiations in the past does not amount to a waiver of a present right to be notified of prospective changes and to be given the opportunity to request negotiations about them. The National Labor Relations Board, quoting from Exxon Research & Engineering Co., 317 NLRB 675, 685-86 (1995), enforcement den. for other reasons 89 F.3d 228 (5th Cir. 1996), has stated that:

> It is well established that "union acquiescence in past changes to a bargainable

> subject does not betoken a surrender of the right to bargain the next time the employer might wish to make yet further changes, not even when such further changes arguably are similar to those in which the union may have acquiesced in the past."
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> [Amoco Chemical Co., 328 NLRB 1220, 1222 n.6 (1999), enforcement den. sub nom. BP Amoco v. NLRB, 217 F.3d 869 (D.C. Cir. 2000)][6/]

We thus disagree with the Hearing Examiner's conclusion that UMDNJ had a right to unilaterally reduce supplemental salaries despite AAUP's demand to negotiate, so long as it did so consistent with its past practice.

In UMDNJ I, we stated that AAUP could seek to negotiate over supplemental salaries and future reductions in those components of salary. AAUP made two specific proposals that would have contractually restricted UMDNJ's ability to reduce supplemental salaries. AAUP withdrew those proposals. The question in this case is whether UMDNJ still had an obligation to negotiate mid-contract upon request before reducing certain faculty members' supplemental compensation. Our answer is yes.

Nothing is more fundamental in collective negotiations than salary. Until now, AAUP has forsaken its opportunity to negotiate over the initial setting of supplemental salaries. But

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6/ It is appropriate for the us to look to experience, policies, and adjudications of the National Labor Relations Board as a guide to interpretation of the New Jersey statutory scheme. Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); Galloway Tp. Bd. of Ed. v. Galloway Tp. Assoc. of Ed. Secys., 78 N.J. 1 (1978).

it has not waived that right in the contract. Similarly, UMDNJ has not secured a contractual right to set supplemental salaries unilaterally. The contract is silent on that issue. Contrast Contract between the Major League Baseball Clubs and the Major League Baseball Players Association (contract specifies that an individual player may negotiate with a club over salaries above the contractual minimum, http://www.mlb.com/pa/pdf/cba-english.pdf).[7/] Instead, AAUP has acquiesced to UMDNJ's unilateral setting of supplemental salaries and to almost all reductions in those salaries. In UMDNJ I, AAUP challenged a reduction, but it had not first sought to negotiate and we found that it would be unfair to find that UMDNJ had violated an obligation to negotiate when there had been no request to negotiate and UMDNJ had acted consistent with its past practice.

The parties' 2004-2009 agreement did not change anything. AAUP made two proposals that would have contractually restricted UMDNJ's ability to reduce salaries. It withdrew those proposals and was left without any contractual right to prevent reductions during the life of the contract. AAUP did not, however, clearly and unmistakably waive its right to negotiate over future supplement salary reductions. There is no express waiver in the

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7/ In Troy v. Rutgers, the State Univ., 168 N.J. 354 (2001), our Supreme Court recognized that the collective negotiations system can sometimes leave room for individual bargaining. See J.I. Case v. NLRB, 321 U.S. 332, 338 (1944).

contract. Even broadly worded zipper clauses or fully-bargained clauses alone do not constitute a clear and unmistakable waiver of the right to negotiate specific subjects. Camden Cty., P.E.R.C. No. 94-121, 20 NJPER 282 (¶25143 1994).[8/]

And, unlike UMDNJ I, there was no waiver through acquiescence. When notified of the proposed reduction in Klein's salary, AAUP objected because it believed the reduction was for reasons that it did not consider legitimate. Accordingly, it sought negotiations and UMDNJ refused. Similarly, when UMDNJ announced the reductions that later led to the filing of CO-2007-271, AAUP requested negotiations. Thus, under all these circumstances, we find that UMDNJ violated its obligation to negotiate over these reductions in supplemental salaries.

UMDNJ relies on Rutgers, the State Univ., P.E.R.C. No. 82-98, 8 NJPER 300 (¶13132 1980), but misses a critical distinction. After Rutgers announced that it would be closing the University

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8/ The Hearing Examiner incorrectly characterized the parties' fully-bargained clause as a zipper clause (H.E. at 181). The MOA includes a fully-bargained clause, which is recited in H.E. finding no. 51. It states that the MOA represents the parties' entire agreement, all proposals and counter-proposals are withdrawn, and no other agreement shall be enforceable unless mutually agreed upon. The MOA does not contain a zipper clause that waives the right to negotiate during the life of the agreement with respect to any subject or matter not specifically referred to or covered by the agreement. See, e.g., North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 79-14, 4 NJPER 451 (¶4205 1978), aff'd NJPER Supp.2d 63 (¶45 App. Div. 1979).

on January 2, 1981 and that employees would not be paid for the day, AFSCME, the majority representative, did not request negotiations over the closing. It filed a grievance deemed untimely by the University, which AFSCME did not pursue to arbitration; and it filed an unfair practice charge. As in UMDNJ I, we dismissed the charge noting AFSCME's pre-charge acquiescence to an unpaid closing that was consistent with past unpaid closings. Accord South River (finding clear and unmistakable waiver of right to negotiate salary reduction where majority representative did not seek to negotiate this or any prior reduction); Stockton State College, P.E.R.C. No. 90-91, 16 NJPER 260 (¶21109 1990) (finding waiver through acquiescence of right to negotiate stipends; noting that finding did not preclude future negotiations over stipends). Here, AAUP has sought to negotiate over certain reductions in supplemental salaries.

Hamilton Tp. Bd. of Ed. and Hamilton Tp. Ed. Ass'n, P.E.R.C. No. 90-80, 16 NJPER 176 (¶21075 1990), aff'd NJPER Supp.2d 258 (¶214 App. Div. 1991), is also instructive. In that case, the Board had unilaterally varied the amount of teacher preparation time from year to year, but the Association had drawn a line beyond which it would not acquiesce. When the Board reduced preparation time below 300 minutes, the Association filed an unfair practice charge alleging a unilateral reduction in preparation time. That charge was settled, but the Board was on

notice that the Association did not accept the Board's unlimited right to set preparation time and that the Association demanded the continuation of at least 300 minutes of preparation time per week. When the Board again reduced preparation time below 300 minutes, the Association filed a new charge. We rejected the Board's argument that it had met its negotiations obligation during the prior contract negotiations. The Association had proposed a specific daily amount of preparation time. The Board rejected the proposal. The Board proposed linking preparation time to the assignment of special subject teachers. The Association vigorously rejected it. The Board then reduced kindergarten teacher preparation time from 330 to 230 minutes per week. The parties continued to negotiate but no further understanding was reached and the contract remained silent on this issue. Neither the Association nor the Board was able to get the other to agree to its language. We concluded that the Association had not waived its right to negotiate by acquiescing to similar reductions, nor had it contractually agreed to permit the Board to implement the current reduction.

The Hearing Examiner made thorough and undisputed findings of fact. Our disagreement with her legal conclusion stems from the different questions asked. The Hearing Examiner asked whether UMDNJ violated the Act by changing its past practice of unilaterally setting and reducing supplemental salaries, and

whether AAUP waived its right to negotiate by accepting such unilateral action in the past or by accepting a notification procedure and withdrawing its proposals that would have contractually restricted some unilateral actions with regard to supplemental salaries. She found no change in the practice and a waiver of the right to negotiate through past acquiescence and a failure to obtain a contractual restriction. She thus found no violation of the Act. However, such an analysis effectively requires AAUP to obtain a contractual provision during successor contract negotiations in order to end UMDNJ's ability to unilaterally set and change this fundamental term and condition of employment. So long as UMDNJ does not agree to a restriction on its ability to set salaries unilaterally, it would be able to continue to do so unilaterally. Such a result would be antithetical to the Legislature's system of collective negotiations where terms and conditions of employment are set through bilateral negotiations, unless the union clearly and unmistakably waives its right to have its say.

We asked a different question: did AAUP clearly and unmistakably waive its right to negotiate upon request over supplemental salaries; either through negotiations or by acquiescence. We answered that question in the negative and thus found a violation.

At this point, it is important to address what that mid-contract negotiations obligation entails. UMDNJ asserts that AAUP should not be permitted to obtain through the unfair practice forum what it could not obtain through contract negotiations. We agree. AAUP does not obtain from this proceeding any contractual protection against unilateral reductions in supplemental compensation. All UMDNJ must do is notify AAUP of any proposed supplemental salary reductions and negotiate upon request with AAUP over the salary reductions that AAUP believes are outside the kinds of reductions it is willing to permit UMDNJ to implement unilaterally. However, as we have stated many times, the obligation to negotiate does not entail an obligation to agree. State of New Jersey v. Council of New Jersey State College Locals, 141 N.J. Super. 470 (App. Div. 1976). If the parties cannot reach an agreement and negotiate in good faith to impasse, UMDNJ may then act unilaterally. City of New Brunswick, P.E.R.C. No. 87-68, 13 NJPER 11 (¶18008 1986).

We now address the appropriate remedy. After finding that a party has engaged in an unfair practice, we must order the party to cease and desist from such unfair practice. N.J.S.A. 34:13A-5.4c. We must also order the party to take such reasonable affirmative action as will effectuate the policies of the Act. Ibid. We thus have broad discretion to fashion an appropriate remedy. Under ordinary circumstances, we would order an employer

that had announced a change in a term and condition of employment and then refused to negotiate, to restore the status quo pending negotiations. These are not ordinary circumstances and we will not order restoration of the status quo in this case. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Sec., 78 N.J. 1, 16 (1978) (although Commission has authority to order payment of back pay, such authority should be exercised with due regard for the employer's status as a governmental entity serving the public and funded by the taxpayers).

The parties have a more than two-decade history of the employer's unilaterally setting and changing supplemental salaries. The parties have had different views of their rights and obligations. However, it appears that even AAUP has assumed that if UMDNJ reduced salaries for the reasons it had done so in the past, there would be no violation of the Act. In other words, AAUP has been willing to continue to acquiesce to unilateral reductions in supplemental salaries under certain circumstances, but not under others. In fact, the record indicates that AAUP did not challenge or seek negotiations over all reductions that may have been inconsistent with prior reductions. AAUP appears to have challenged only reductions over which the affected faculty member has complained.9/ This has led

9/ For example, in 2006, Dr. John Parsons had his patient services salary component eliminated due to decreased

(continued...)

to tremendous confusion between the parties over what UMDNJ will be permitted to do unilaterally, and what must be negotiated. We hope that this decision sets the record straight and places the parties on a path that will continue to allow UMDNJ the flexibility it needs to attract highly qualified faculty, but will also respect AAUP's right to negotiate over mandatorily negotiable salary issues. The parties can clarify their respective rights in the next round of negotiations.[10/] Among other options, the next contract could include language giving UMDNJ the right to act unilaterally, or it could include language giving AAUP a contractual right to challenge salary reductions. In the meantime, or if the parties continue to leave their contract silent on this important issue, the parties will have to live with a system where AAUP acquiesces to some reductions, but not others, and UMDNJ will have to negotiate upon request to impasse over the changes that AAUP protests. And so long as UMDNJ engages in good faith negotiations to impasse, we would not expect any more litigation before this agency over this issue.

Accordingly, we will order UMDNJ to cease refusing to negotiate over reductions in supplemental salaries and to

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9/ (...continued)
University Hospital funds for distribution to New Jersey Medical School faculty. AAUP did not object to this action nor seek negotiations.

10/ We note that the parties' contract expired on June 30, 2009.

negotiate upon request over the disputed reductions in this case and any future reductions that AAUP seeks negotiations over.[11/] We surmise that the parties may finally decide that successor contract negotiations is the place to set out their respective rights and obligations.

ORDER

The University of Medicine and Dentistry of New Jersey is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to negotiate upon request over reductions in faculty supplemental salaries.

2. Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, particularly by refusing to negotiate upon request over reductions in faculty supplemental salaries.

B. Take this action:

1. Notify the University of Medicine and Dentistry of New Jersey Council of American Association of University Professors Chapters of any proposed reductions in supplemental

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11/ Under the particular circumstances of this case, we also will not order that UMDNJ post a notice of its violation.

salaries and negotiate in good faith upon demand over these proposed reductions.

2. Within 20 days of receipt of this decision, notify the Chairman of the Commission of the steps the Respondent has taken to comply with this order.

The remaining allegations are dismissed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed.

ISSUED: September 24, 2009

Trenton, New Jersey