

Memorandum of Agreement: July 7, 2009

**State of New Jersey and the
Council of New Jersey State College Locals, AFT, 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 the senior public institutions of higher education realizing substantial personnel cost savings including savings from wage deferral and furloughs, and the budget further conditions receipt of certain federal stimulus dollars upon achieving the tuition cap previously advanced by the senior public institutions of higher education, and which further mandates the colleges and universities to reduce spending, including personnel related costs and benefits to address the budget conditions for fiscal year 2010 and the anticipated continuing limits for fiscal year 2011; and

Whereas the Council of New Jersey State College Locals, AFT, AFL-CIO (AFT) and the State of New Jersey (the State) seek to avert the reduction in funding at each of the colleges and universities that would occur if such savings could not be achieved and the consequent dramatic personnel reductions and actions that each college or university would be required to impose; and

Whereas the parties recognize that during this period of economic crisis, with the rate of unemployment in New Jersey and the Country approaching double digits and with the federal government and the State seeking to stimulate the economy through job creation and other programs, including expanding opportunities at the colleges and universities, that layoffs and other permanent reductions not only devastate the lives of individual workers and their families, they counteract these economic stimulus policies and programs and are bad for New Jersey's economy; and

Whereas the parties recognize that an agreement to reduce salary and personnel costs during this economic crisis, preserves the integrity of the collective negotiations agreements, and is preferable to widespread layoffs and/or unilateral actions at each of the nine colleges and universities; and

Whereas the State and AFT recognize that a negotiated agreement encompassing the issues that are the subject of this Memorandum of Agreement (MOA) will not interfere with the operations of the colleges and universities; and

Whereas a negotiated agreement between the parties will facilitate the accomplishment of vital government policies and objectives, including the avoidance of layoffs, the delivery of needed public services, and the achievement of substantial budgetary savings;

Therefore the parties enter into the following agreement:

A. The Deferral of the July 2009 Across-the-Board Wage Increase

1. The 3.5% across-the-board increase to annual base salaries set forth in Article 21 that 12-month employees are due to receive the first full pay period of July 2009 and 10-month employees are due to receive the first full pay period of September 2009 will not be paid during FY10. Such increases and adjustments will be deferred and said increases and adjustments to base salary shall be paid the first full pay period after January 1, 2011.
2. Notwithstanding the parties' agreement to defer the payment of across-the-board increases, AFT unit members in the State PERS and TPAF systems will not suffer any diminution in their pension benefits as a result of the deferral of such payments.

B. Furloughs

1. A total of seven unpaid furlough days shall be utilized by each full-time AFT unit member prior to July 1, 2010. The furlough days provided hereunder shall be applied on a pro-rated basis to part-time AFT unit members. The implementation of such unpaid furlough days at the A. Harry Moore School shall be discussed at the local level by and between the affected parties.
2. The parties agree that through June 30, 2011, AFT unit employees will not suffer any involuntary unpaid leaves of absence or furloughs, except as expressly permitted in paragraphs B(1) above and B(3) through B(4) below. For purposes of this MOA, unpaid furloughs/leave days include staggered and non-staggered furloughs or "temporary layoffs," as well as furloughs or "temporary layoffs" resulting from complete or partial closures of the Colleges and Universities.
3. It is agreed that the November 27, 2009 day after Thanksgiving shall be an unpaid leave day for all AFT negotiations unit employees, except for those employees who are required to work on that day by their College or University. All employees who are required to work on November 27, 2009 by the College or University shall be required to utilize an alternate unpaid furlough day.
4. The remaining six unpaid furlough days shall be utilized by AFT unit members in the following manner. The faculty AFT unit member shall propose days for use to his or her Dean and professional staff unit member shall propose days for use to his or her supervisor. The proposal for use of all days shall be made by October 1, 2009, or sooner if practicable. All six days plus any alternate for the day after Thanksgiving must be used by not later than June 30, 2010. It is presumed that days proposed for use by AFT unit members shall not interfere with the conduct or support of the instructional program or fall within a period that would otherwise constitute a peak period of work for such AFT unit member. The proposal for use of such days shall be answered as soon as practicable, but

not later than October 30, 2009. In the event the supervisor or Dean does not approve the requested days, the employee and supervisor or Dean, or designee, shall meet as soon as possible to attempt to mutually resolve the selection. If they are unable to do so, the supervisor or Dean, or designee shall select days to be used and the requesting employee may seek review by the President's designee, whose review shall be final. Any AFT Unit member who does not timely propose days shall have unpaid furlough days selected by their respective Dean or supervisor, or their designee. Nothing herein shall prohibit a unit member from taking an approved furlough day prior to September 1, 2009.

5. If an employee utilizes an unpaid furlough day on the day before or after a holiday, the employee will be paid for the holiday. Employees who are not paid for the day after Thanksgiving 2009 will be paid for the Thanksgiving holiday.
6. The parties recognize that there may be unusual circumstances with respect to the utilization of furlough days by employees who are on extended unpaid or paid leaves of absence. If AFT is unable to address such situations with management at the College or University, such issues will be addressed by OER.
7. If any AFT unit member is furloughed or required to use an unpaid leave day in violation of B2 above, such member shall suffer no loss of compensation as a result of not being permitted to work on such day. If AFT submits to arbitration a grievance alleging a violation of B2 and the arbitrator sustains the grievance, the arbitrator shall be limited to awarding an employee his or her lost compensation as a result of being furloughed in violation of B2.
8. Nothing in this MOA shall be construed as a waiver of the parties' respective positions with respect to the negotiability of unpaid leave days or furlough days or with respect to whether unilaterally imposed furloughs or unpaid leave days violate the parties' collective negotiations agreements. The parties agree that this MOA shall not have precedential value, nor be relied upon by either party in any other proceeding except as necessary to enforce its terms.

C. No Layoff Pledge

1. In consideration for the substantial personnel savings achieved through the wage freeze and unpaid furlough days agreed to in sections A and B of this MOA, the State Colleges and Universities pledge that there shall be no layoff of bargaining unit employees during the period of the wage freeze which ends on January 1, 2011.
2. The parties recognize the legal authority to implement layoffs, but also recognize the personal and social costs of layoffs, including the disruption of services to the most vulnerable citizens of the State.

3. The parties agree that the savings achieved through this MOA coupled with savings to be achieved through agreements with other represented bargaining units and with savings from non-aligned employees and managers, should be sufficient to avoid the economic need for layoffs through December 31, 2010.
4. Because the conditions precedent for closures that were proposed for Kean University, William Paterson University and any other institution shall have been removed by the savings provided for in this agreement, such institutions agree to take steps necessary to rescind such closure plans. This provision should not be construed as a waiver of the parties' respective positions with regard to the negotiability of closures.
5. For the duration of the wage freeze, the parties agree that the reductions allowed by Article XLI, A 1 and 6 shall not be implemented for any member of the bargaining unit. Nothing herein shall limit the right of a college or university to retrench for programmatic reasons. Such a retrenchment for programmatic reasons shall not be deemed a "layoff" covered by this No Layoff Pledge.
6. If any member of the AFT negotiations unit is laid off prior to January 1, 2011 in violation of the no layoff pledge contained in C(1) above the College or University agrees to the following:
 - (i) The deferral of the 3.5% July 2009 across-the-board increase shall immediately end and on a prospective basis the salaries of all AFT unit members at that College or University will immediately return to the levels provided for in the 2007-11 collective negotiations agreements prior to the ratification of this MOA; and
 - (ii) If prior to July 1, 2010 any AFT unit member is laid off, the provisions in Section B of this MOA that require the use of furlough days will no longer be operative at such College or University and employees who are not laid off will not be required to use any additional furlough days at that College or University except as provided for in this paragraph. If at the time of such layoff any such employee at that institution utilized furlough days in excess of the days the employee was required to use on a prorated basis, that employee will be reimbursed for the value of such days. If at the time of such layoff any employee at that College or University utilized fewer furlough days than the employee was required to use on a prorated basis, the employee will use such prorated furlough days following the layoff. Employees at such college or university shall retain all days in their Paid Leave Banks.
 - (iii) In the event that a College or University is demonstrated to have violated the terms of the No Layoff Pledge, the parties recognize that the College or University will not be able to count the savings achieved herein towards

its certification to the Office of Management and Budget and so shall be presumed to be in violation of the requirement in the Budget for Fiscal Year 2010 that requires each such institution to certify to the Office of Management and Budget by December 1, 2009 that it has obtained or will obtain certain personnel cost savings during that fiscal year.

7. The no layoff pledge set forth in this section of the MOA does not apply to separations from service that are not “layoffs” under the parties’ collective negotiations agreements. Examples of such separations include, the termination of an employee at the end of a working test period, a disciplinary termination, the non-renewal/non-reappointment of a non-tenured employee, non-renewal/non-reappointment of a single or multi-year contract so long as such non-renewal/non-reappointment is not for fiscal reasons, or the termination of an employee in a grant funded position. Employees separated from a College or University on such grounds retain any rights they have to challenge such separations under the parties’ collective negotiations agreements and/or under law and regulation. This provision shall not be used to circumvent the no layoff pledge contained in paragraph 1 of this section of the MOA.

D. Paid Leave Bank

1. In recognition of the agreement that AFT unit members will utilize seven (7) unpaid furlough/leave days in FY 2010-and will defer the July 2009 3.5% across-the-board raises until the first full pay period in January 2011, each College or University shall establish a Paid Leave Bank (PLB) for each unit member. Each employee’s PLB will be credited with up to three (3) days of paid leave that are earned at a rate of 1 paid leave bank day for every two of the unpaid furlough days that are selected other than the Day After Thanksgiving or its substitute. By the end of the FY 2010, all employees who utilize a total of seven furlough days will have accrued a total of three paid leave bank days.
2. For all AFT unit members who do not receive vacation credit, the PLB days shall be utilized in the same manner as sick leave credit upon being earned. In such cases, the PLB days shall be usable for personal illness or injury or as paid family leave in accordance with the paid family leave statute for New Jersey. For all AFT unit members who receive vacation leave credits, the PLB days shall be utilized in the same manner as vacation leave, and such use shall be pursuant to subpart 4 below.
3. 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 PLB. Specifically, any carryover restrictions that are not applicable to paid vacation or sick time shall not be applicable to the PLB.

4. Beginning July 1, 2010, and for the duration of their employment with the College or University AFT unit members who receive vacation credit may use days in the PLB subject to operational needs in the same manner as vacation leave. Approval for the use and scheduling of PLB days shall not be unreasonably denied.
5. At the time an AFT unit member who retains paid leave bank days retires, resigns or is otherwise separated from the College or University, either voluntarily or involuntarily, any unused days in an employee's PLB will be paid upon such separation. Employees who die while in State service shall have the balance of his or her PLB paid to his/her estate.

E. SHBP Coverage

The parties recognize that the determination as to eligibility for State Health Benefits coverage is to be made by the State Health Benefits Commission. The parties further recognize that there is no reason to dispute that full time faculty are full time employees eligible for such coverage.

F. State College and University Committees

1. The committee established by the State with regard to Colleges and Universities will include, but not be limited to representatives from the colleges and universities and from unions representing state college and university employees. The College and University Presidents shall propose candidates to serve and the Governor shall appoint representatives from those candidates. Each of the unions may propose candidates to serve as a representative, and the Governor shall appoint representatives from those candidates. Such a committee will be chaired by the Chair of the Commission on Higher Education, or designee.

The Statewide Committee shall report to the Office of the Governor the information described below. The information shall include each institutions Carnegie ranking and shall focus upon the following areas of spending and costs:

- a. Tuition and fee charges compared to national average
- b. Ratio of full-time faculty to students
- c. Ratio of out of unit and in-unit administrators compared to full-time faculty, students.
- d. Ratio of full-time faculty to part-time/adjunct faculty
- e. Ratio of support personnel to students, full-time faculty
- f. Special and regular admissions numbers
- g. Number of applications at each institution versus acceptance rate

- h. Graduation rates at 4 years & 6 years
- i. State support compared to other institutions
- j. Compensation for in-unit and non-unit employees compared to comparable institutions.

The Statewide Committee shall report such information to the Office of the Governor, the Commission on Higher Education, and to the unions representing state college and university employees. Such information shall be reported following the close of the 2009/10 academic year and no later than December 31, 2010.

- 2. For the information of the union, the president of each of the state colleges and universities or their designee will, no later than August 31, 2009, and where practicable prior to commitment of such funds, provide information to his or her local as to how the federal stimulus funds received by the institution as part of the FY 2010 state appropriation shall be used on that campus. Upon receipt of that information, the Union shall have the opportunity to discuss the information further and can provide recommendations as to the use of these funds. The president or his/her designees will meet with the union for that purpose.

G. Enforcement of the MOA

- 1. This MOA is incorporated into and modifies the parties' 2007-2011 collective negotiations agreement, but such terms 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, are subject to the grievance/arbitration provisions of that agreement.
- 2. The State agrees that in the event AFT seeks to arbitrate a dispute arising under Sections A through D of this MOA, the State waives any right it may have to claim that the dispute is not legally arbitrable or negotiable under scope of negotiations law. In the event the AFT seeks to arbitrate a dispute arising under any other provision, the State retains its right to challenge the legal arbitrability of such grievances.
- 3. Further, the remedy set forth in Section C, paragraph 6 of the MOA, shall only be applied to a violation of Section C.
- 4. The parties' agree that if any provision of this MOA requires legislation or regulation to become effective, the parties will jointly seek the enactment of such legislation or the promulgation of such regulations.

H. Existing Collective Negotiations Agreement

All provisions of the parties' 2007-2011 collective negotiations agreement not expressly modified by this MOA remain in full force and effect.

I. MOA Subject to Ratification of Membership

This MOA is subject to ratification by the membership of the AFT.

On behalf of CNJSCL, AFT

On behalf of the State of New Jersey

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