

MEMORANDUM OF AGREEMENT BETWEEN RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY, AND THE AAUP-AFT (FULL-TIME CHAPTER), HPAE (LOCALS 5094 AND 5089), URA-AFT AND CWA (LOCAL 1031) RELATED TO THE INVOCATION OF THE “SUBJECT TO” LANGUAGE BY THE UNIVERSITY.

Rutgers, The State University of New Jersey (“University”) and the AAUP-AFT (Full-Time Chapter), HPAE (Locals 5094 and 5089), URA-AFT and CWA (Local 1031) (collectively “Unions”) hereby agree as follows to this Memorandum of Agreement related to the invocation of the “subject to” language by the University and declaration of a Fiscal Emergency (“FEMOA”):

1. By letter dated June 8, 2020, the University notified the Unions of the significant financial losses caused by the current COVID-19 pandemic and its related impact on the University.
2. Accordingly, the University and the Unions desire to re-open and amend certain provisions in their collective negotiations agreements that currently are effective from July 1, 2018 through June 30, 2022 (“CNAs”).¹

Shared Work Program

3. The University and the Unions desire, in lieu of layoffs, to establish and utilize through June 30, 2021 (or July 31, 2021 as set forth in Paragraph 4 below) the Shared Work Program outlined in N.J.S.A. 43:21-20.3, et seq., as amended by the Employee Job-Sharing Furlough Protection Act (“EJPA”).
4. **For CWA 1031, HPAE 5089, HPAE 5094, and URA-AFT Only:**
 - a. The University and CWA 1031, HPAE 5089, HPAE 5094, and URA-AFT agree that, in accordance with N.J.S.A. 43:21-20.3, et seq., as amended by

¹ The provisions of this FEMOA apply to all unit members of the Unions, unless those members are or will be covered by separate MOAs, including the members of HPAE 5089 and 5094, whose salaries are funded through contracts between the University and the State of New Jersey. The parties are currently negotiating a MOA to cover HPAE members funded through contracts with the State of New Jersey, Department of Families and Children. If the parties are unable to agree on a MOA to cover those HPAE unit members, HPAE shall retain the right to proceed with the Fiscal Emergency arbitration on their behalf. The parties will meet and discuss the application of this FEMOA to employees whose compensation is fully grant or contract funded. Raises for employees covered by grants or contracts, in the Fiscal Year in which the increase is paid, that provide full funding for negotiated salary increases shall not be deferred.

the EJPA, affected 12-month employees shall have their regular work reduced by 20% per week (1 day per week) for ten (10) consecutive weeks and affected 10-month employees shall have their regular work reduced by 20% (1 day per week) for eight (8) consecutive weeks, in accordance with the operational needs of, and at the discretion of, the University. Twelve-month employees must take their 10 furlough days between the date of ratification of this FEMOA and no later than July 31, 2021 and 10-month employees must take their eight furlough days (8 consecutive weeks in 1 day increments) between the date of ratification and June 30, 2021. The University will advise CWA 1031, HPAE 5089, HPAE 5094, URA-AFT, and employees when the Shared Work Program will commence and such notice will be in advance of the commencement of the Shared Work Program.

- b. It is the desire of CWA 1031, HPAE 5089, HPAE 5094, URA-AFT, and the University to maximize any federal stimulus programs available which provide an enhanced unemployment benefit for employees participating in the Shared Work Program. The parties understanding that the 20% reduction per week for ten (10) consecutive weeks for 12-month employees must be completed prior to July 31, 2021 and that the 20% reduction per week for eight (8) consecutive weeks for 10-month employees must be completed by June 30, 2021.

5. For AAUP-AFT Only:

- a. The University and AAUP-AFT agree that, in accordance with N.J.S.A. 43:21-20.3, et seq., as amended by the EJPA, affected employees shall have their regular work reduced by 10% per week (1/2 day per week) for twelve (12) consecutive weeks, in accordance with the operational needs of, and at the discretion of, the University beginning on April 12, 2021, but not extending beyond June 30, 2021. The University will advise AAUP-AFT and employees when the Shared Work Program will commence and such notice will be in advance of the commencement of the Shared Work Program.²
 - b. It is the desire of AAUP-AFT and the University to maximize any federal stimulus programs available which provide an enhanced unemployment benefit for employees participating in the Shared Work Program.
6. Employees represented by the CWA 1031, HPAE 5089, HPAE 5094, and URA-AFT, who were laid off effective on or after June 1, 2020 and subsequently recalled, shall not be required to participate in the shared work program described herein, provided the layoff period equaled or exceeded 10 working days for 12-month

² TAs/GAs shall not participate in the Shared Work Program.

employees and eight (8) working days for 10-month employees. If an employee was laid off for fewer than the number of days they would have been required to participate in the Shared Work Program, they may be required participate in the Program for the difference between the number of days they were laid off and the number of days they would be required to participate in the Program.

7. To avoid any issues arising as to their visa status, employees on visas are excluded from the Shared Work Program.
8. Employees on sabbaticals, employees on approved family and other paid leaves of absence shall not be required to participate in the Shared Work Program.
9. With regard to employees who hold secondary appointments at the University:
 - a. If an employee has a secondary appointment at the University, in addition to the employee's primary appointment at the University, and is disqualified from receiving short-time benefits under the Shared Work Program due to that secondary appointment, the employee will not be required to participate in the Program.
 - b. In light of DOL's advice to the parties that it aggregates primary and secondary appointments at the University: a) unit members of the AAUP-AFT who have secondary University appointments in any week during which the Program is in effect shall not be required to participate in the Program; however, unit members whose sole secondary appointment is to teach a Summer Session in 2021, prior to June 30, 2021, shall participate in the Shared Work Program from its inception (estimated to be April 12, 2021) through Friday, May 28, 2021 or through the commencement of their summer session courses, whichever is sooner³; and b) unit members of the CWA, URA or HPAE whose secondary University appointments, when aggregated with their primary University appointments, result in a workweek reduction below the Program's 10% threshold in any week during which the Program is in effect, shall not be required to participate in the Program.
 - c. Any employee who is enrolled in the Program and later is deemed ineligible to receive short-time benefits, will be removed from the Program and will be made whole with respect to wages and benefits for any lost furlough days taken for which short-time benefits were not paid solely due to the fact that the employee held secondary employment with the University.

³ Faculty who receive additional compensation through external grants during the summer beginning in June 2021, shall also participate in the Program from its inception until May 28, 2021. Such additional compensation shall be considered a secondary appointment for purposes of this FEMOA.

- d. Employees whose positions are fully funded through research grants or external funding sources are exempted from participating in the Shared Work Program.
10. Any employee who is enrolled in the Program and is later deemed ineligible to receive short-time benefits due to secondary employment with an employer other than the University, will be removed from the Program and will be made whole with respect to wages and benefits for any lost furlough days taken for which short-time benefits were not paid solely due to the fact that the employee held secondary employment with an employer other than the University.
11. The University and the Unions agree to complete and execute all appropriate paperwork and applications pursuant to N.J.S.A. 43:21-20.3, et seq., as amended by the EJPA to establish a Shared Work Program for affected employees.
12. Requests by employees to carry over more than one year's worth of vacation days, in an amount not to exceed the number of furlough days taken by the employee under the Shared Work Program described above in Paragraphs 4 and 5 of this FEMOA, in order to fulfill their job responsibilities and to meet the University's operational needs, as directed by their supervisor, shall not be unreasonably denied. The University's decision shall be final and not be subject to arbitration under Paragraph 38 of this FEMOA and/or the applicable CNA.
13. The University and the Unions agree to cooperate and provide information necessary for the employees' applications for unemployment insurance.
14. It is the intent of the University and the Unions to comply with all obligations/responsibilities pursuant to the Shared Work Program.
15. Health and retirement benefits will be administered consistent with State law, including, but not limited to N.J.S.A. 43:21- 20.3, et seq., as amended by the EJPA.
16. Employees will continue to accrue, including during furlough days, all benefits, including seniority, and paid time off as permitted by N.J.S.A. 43:21-20.3 et seq., as amended by the EJPA.
17. Employees will continue to be eligible for tuition remission benefits consistent with University Policy.
18. The Unions agree to the terms of the Shared Work Program.

Deferral of Negotiated Raises

19. Pursuant to the terms of the CNAs between the University and the Unions the salary increases due to negotiations unit members in Fiscal Year 2021, which the University withheld by letter dated June 8, 2020, shall be deferred until July 1, 2021. Except as otherwise provided for in Paragraph 23 of this FEMOA, employees

must be on University Payroll continuously from July 1, 2020 through the date of payment, in a position covered by this FEMOA, in order to receive this payment.

20. Pursuant to the terms of the CNAs between the University and the Unions, the salary increases due to negotiations unit members in Fiscal Year 2022 shall be deferred until March 1, 2022.⁴ Except as otherwise provided for in Paragraph 23 of this FEMOA, employees must be on University Payroll continuously from July 1, 2021 through the date of payment, in a position covered by this FEMOA, in order to receive this payment.
21. For HPAE 5094 only: If the deferral of a July 1, 2020 step increase resulted in an employee not advancing to the next step on a negotiated salary schedule on July 1, 2021, the payment of the July 1, 2020 step increase on July 1, 2021 shall result in the employee being placed on the step of the salary schedule she/he would have been on had the July 1, 2020 step increase not been deferred.
22. For HPAE 5089 Only: If the deferral of a July 1, 2020 step increase resulted in an employee not advancing to the next step on a negotiated salary schedule on July 1, 2021, the payment of the July 1, 2020 step increase on July 1, 2021 shall result in the employee being placed on the step of the salary schedule she/he would have been on had the July 1, 2020 step increase not been deferred. Similarly, any movement to the next step on a negotiated salary schedule that was related to the Fiscal Year 2022 increases shall occur on July 1, 2021.
23. Employees who were on payroll prior to July 1, 2020, and who are recalled or rehired (and would not be treated as new employees under the applicable CNA) from layoff, or who return from an unpaid leave of absence, shall have their base pay increased (including any step increase) by the amount of the July 1, 2020 deferred raise in accordance with paragraphs 18-21 above, upon reinstatement. Similarly, employees who were on payroll prior to July 1, 2021, and who are recalled or rehired (and would not be treated as new employees under the applicable CNA) from layoff, or who return from an unpaid leave of absence, after July 1, 2021, shall have their base pay increased by the amount of the deferred July 1, 2021 raise (including any step increase) in accordance with the terms of paragraphs 19-22 above, upon reinstatement.

No Declaration of Fiscal Emergency

24. The University agrees that it shall not invoke the “Subject To” language in the CNAs in Fiscal Years 2021 or 2022.

⁴ For those Unions which are signatories to this FEMOA and who have employees in positions that are externally funded and who are covered by a separate MOA regarding the June 8, 2020 letter, the terms of those MOAs shall apply to those employees.

25. Upon execution and ratification of this FEMOA, the University withdraws its June 8, 2020 letters to the Unions and the Unions withdraw with prejudice the grievances, requests for arbitration, and information requests related to the June 8, 2020 letters.

No Layoffs through January 1, 2022

26. The University agrees that there shall be no layoffs of employees in negotiations units represented by the Unions from the effective date of this MOA through January 1, 2022, except for layoffs due to termination or cessation of grants or external contracts which fund the employee's compensation or lack of work due to pandemic impacts substantially beyond the scope of the current pandemic impact. The University will make best efforts, when a layoff is necessary due to lack of work due to pandemic impacts substantially beyond the scope of the current pandemic impact, to reallocate employees to other positions for which they are qualified (and which would not be in violation of any collective negotiations agreement or University Policy) to avoid the layoff of employees, including the two (2) URA-AFT negotiations unit members (identified on the list provided by counsel for URA-AFT on March 8, 2021), who received notices of layoff on January 11, 2021 (with a layoff effective date of July 8, 2021) and February 16, 2021 (with a layoff effective date of April 6, 2021) due to lack of work during this period. The provisions of this Paragraph do not apply to employees who already have been laid off or who have received a notice of layoff, prior to March 1, 2021.
27. Upon request by a union whose unit members may be laid off during the time period set forth in Paragraph 26, the University and the union shall discuss alternatives to layoff, including, but not limited to, placing employees in vacant positions for which they are qualified, consistent with all applicable CNAs and University Policy.
28. If any employee is laid off in violation of this MOA, the savings from the Shared Work Program shall be used to make the employee whole, including any lost compensation and benefits from the date of layoff through January 1, 2022. No other remedy, including reinstatement, may be ordered by the arbitrator hearing an alleged violation (pursuant to Paragraph 38 below) of Paragraph 26.
29. Employees laid off prior to the effective date of this MOA and recalled to a position from which they were laid off (consistent with the applicable CNA and University Policy), shall not be required to serve in another probationary period, and shall have vacation and sick leave accrue based upon the formula that was applicable at the time of the employee's layoff. Consistent with the applicable CNA and University Policy, unused sick days available to an employee at the time of the employee's layoff shall be credited to the employee in full at the time the employee is recalled or rehired.

Extension of Funding for TAs/GAs

30. Extension of funding under the Doctoral Student Academic Advancement Support Program (“the Program”), announced by the University on or about March 1, 2021 (See Schedule A appended to this MOA) shall apply to negotiations unit members of the AAUP-AFT who have TA or GA appointments. The University shall announce and disburse awards for Spring 2021 as promptly as practicable. By June 15, 2021 awards will be announced and disbursed for Summer 2021. For the Fall 2021 semester, awards will be announced by June 30, 2021 and shall be disbursed by September 18, 2021.
31. Current TAs and GAs enrolled in doctoral programs and who have advanced to candidacy in or before Spring 2021 semester, who meet the terms of the Program and satisfy the criteria used by the departments/graduate programs to review individual applications, shall have their TA or GA appointments (academic year and calendar year) extended for the Summer 2021 semester and/or for the Fall 2021 semester and shall have their health benefits under the SHBP continued for the duration of their TA/GA extensions provided they are otherwise eligible for such benefits under the SHBP. The duties of each GAship shall be determined by the GA’s dissertation supervisor at their sole discretion. To the extent necessary, funding for TA/GAs who present a demonstrable need under the program, including funding for health and tuition remission benefits to which TAs and GAs are contractually entitled shall be provided by the University.
32. At least one week prior to the application deadline, the University shall provide to the AAUP-AFT the criteria departments are using to determine the “duration and level of support.” Understanding that criteria are not mandatorily negotiable, to the greatest extent possible, these criteria shall be consistent across departments and campuses and aligned with the Program guidelines previously disseminated to all provosts on or about March 1, 2021. Extension of TA/GAships shall be reviewed and decided by the Graduate Program Directors or Department Chairs, and Deans. TAs and GAs who are not in good academic standing shall not be disqualified from the Program.
33. The University shall provide to the AAUP-AFT periodic reports on the Program by semester, which shall include: (1) the number of applicants who are in TA/GA positions; (2) the number of TA/GA applications granted; (3) the number of TA/GA applications denied; and (4) the total amount of funding awarded to TAs/GAs through the Program. The foregoing reports should include overall university-wide numbers, as well as numbers by campus (Camden, New Brunswick, Newark).
34. University agrees to extend the Program to Spring 2022 based upon a demonstrable need, by the individual TA/GA referenced in Paragraph 31 above, for extended funding as a direct result of the disruptive effects of the pandemic on the TA/GA’s individual doctoral program. Spring 2022 awards shall be made at the same time

as Fall 2021 awards for TAs/GAs qualifying for a full 2021-2022 AY appointment. The University agrees that during negotiations for a successor collective negotiations agreement, upon request of the AAUP-AFT the parties shall discuss a further the extension of the Program.⁵

35. The EVP for Academic Affairs shall review applications from TAs or GAs which have been denied by the applicable provost and shall have the authority to remand an application to the provost for reconsideration. A copy of the EVPAA's decision shall be provided to the TA/GA.
36. Pursuant to the terms of the AAUP-AFT Collective Negotiations Agreement ("CNA"), violations of the Program or Paragraphs 30-35 are grievable as Category Two violations. The criteria that form the basis for determining program eligibility and the academic judgment that forms the basis of any decision relating to a TA's or GA's Program application are not grievable. Paragraphs 37 and 38 do not apply to Paragraphs 30-35. Except as provided in this Paragraph, there shall be no further remedy for alleged violations of Paragraphs 30-35.

Miscellaneous

37. Except as otherwise provided for in this FEMOA, this FEMOA shall not alter, amend, or otherwise replace any other provisions of the CNAs between the University and the Unions, effective July 1, 2018 to June 30, 2022. The provisions of this FEMOA shall be incorporated by reference into the parties' collective negotiations agreements, but shall sunset on June 30, 2022 and shall not be considered as part of the status quo when the parties negotiate successor collective negotiations agreements.
38. The parties designate Bonnie Weinstock as the arbitrator to hear disputes over alleged violations of mandatorily negotiable terms and conditions of this FEMOA and of paragraphs 26-29, on an expedited basis under the FEMOA. If Bonnie Weinstock is not available to hear a dispute on an expedited basis, the parties designate Joseph Licata to hear such disputes. The University agrees not to challenge the legal arbitrability of Paragraphs 26-29 of this FEMOA. Arbitration decisions rendered pursuant to this paragraph shall be binding on the parties.
39. Alleged violations of non-mandatorily negotiable provisions of this FEMOA that are not subject to arbitration pursuant to paragraph 38 above, shall be subject to the grievance/arbitration provisions of the parties' CNAs only to the extent permitted by the express terms of this FEMOA or the applicable CNAs, but under no circumstances shall such alleged violations proceed to binding arbitration.

⁵ The use of the term "discuss" does not the waive the right of the AAUP-AFT to negotiate over mandatorily negotiable items related to the extension of the Program.

Paragraphs 38 and 39 of this FEMOA do not apply to Paragraphs 30-36 of this FEMOA.

40. The effective date of this FEMOA shall be from March 1, 2021 through June 30, 2022, unless extended by mutual agreement and this FEMOA is subject to ratification by the Unions.

For AAUP-AFT:

For Rutgers University:

Dated:

Dated:

For HPAE 5089

Dated:

For HPAE 5094

Dated:

For URA-AFT

Dated:

For CWA 1031

Dated: