

Agreement

July 1, 2011 – June 30, 2015

between
New Jersey Institute of Technology
and
COUNCIL 52, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

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NJIT/AFSCME AGREEMENT

This Agreement is entered into by New Jersey Institute of Technology, hereinafter referred to as the Employer, and Council #52, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the Union.

ARTICLE I

RECOGNITION

- A. The Employer recognizes the Union as the sole and exclusive negotiating agent for the purposes of negotiating terms and conditions of employment for:
- B. All operations and maintenance, department technical staff, and special services employees employed by New Jersey Institute of Technology, but excluding teaching staff, administrative staff, office and clerical employees, guards, part-time employees working normally twenty (20) hours or less per week, student employees, employees assigned to the Council of Higher Education in Newark (CHEN) and all others and supervisors within the meaning of the Act.
- C. The inclusions of certain part-time employees within the negotiating unit shall not be construed to expand the coverage of any program relating to terms and conditions of employment for which such part-time employees were not previously deemed to be eligible, or to include such part-time employees under the coverage of any provisions describing a type of program for which such part-time employees were generally eligible prior to inclusion under the Agreement.
- D. Temporary employees shall be entitled to those benefits determined by law, but shall not be members of the bargaining unit for which Council #52, AFSCME, AFL-CIO is recognized as the sole and exclusive negotiating agent nor shall such employee be entitled to any benefits or protection provided by the Agreement.
- E. Subject to provision of law to the contrary, should the Employer, during the term of this Agreement, re-employ the services of food services personnel in positions describing a food service worker, food service cashier, chef or other food preparer or handler previously recognized by the Employer and Union as within the jurisdiction of the Union, then upon a showing of majority interest by such employees but without the necessity of an election, said food service employees shall be accreted into the bargaining unit and thereafter recognized for the purposes of collective negotiations as within the Union's jurisdiction.

ARTICLE II

NEGOTIATING PROCEDURE

- A. The Union shall present its demands to the Employer, in writing, relating to terms and conditions of employment, on or before October 1st. On or before November 1st, the Employer shall meet with the Union for the purposes of negotiating, in good faith, a mutually acceptable Agreement.
- B. The Employer agrees that any written salary and fringe benefits which apply to all employees shall not be changed during the period of this Agreement unless such change is mandated by state action.
- C. Should any Article, Section, or portion thereof, of this Agreement be held unlawful and unenforceable by a court of competent jurisdiction, such decisions of the court shall only apply to the specified Article, Section, or portion thereof, directly specified in the decision. Upon the issuance of such decision, the parties agree to meet immediately and discuss a substitute for the invalidated Article, Section, or portion thereof.
- D. The foregoing constitutes the entire Agreement between the parties and shall not be changed, except by an amendment mutually agreed upon between the parties, in writing annexed hereto, and designated as an amendment of this Agreement.

ARTICLE III

MANAGEMENT RIGHTS

- A. The Employer retains and reserves unto itself all rights, powers, duties, authority and responsibilities conferred upon and vested in it by the laws and constitutions of the State of New Jersey and the United States of America.
- B. All such rights, powers, authority and prerogatives of management possessed by the Employer are retained, and may be exercised without restrictions, subject to the limitations imposed by law and except as they are specifically abridged and modified by this Agreement.
- C. The Employer retains its responsibility to promulgate and enforce the rules and regulations subject to limitations imposed by the law governing the conduct and activities of the employees not inconsistent with the express provisions of this Agreement.

ARTICLE IV

DUES/FEES DEDUCTION

- A. In accordance with Chapter 310 of the Laws of New Jersey for 1967 (N.J.S.A. 52:14-15 (9) (e), as amended) the Employer agrees to deduct from each paycheck the Union Dues (Dues) and regular assessments of each member of the bargaining unit who furnishes a voluntary written authorization for such deduction on a form acceptable to the Employer.
- B. The right of the Dues deduction for any employee in the bargaining unit shall be limited to the Union and employees shall be eligible to withdraw such authorization only as of July 1st of each year provided the notice of withdrawal has been filed timely.
- C. The amount of the Dues made from each of twenty four (24) paychecks out of an even twenty-six (26) pay periods pursuant hereto shall be remitted by the Employer to the Union before the fifteenth (15th) day of the calendar month succeeding that in which such deductions are made, together with a list of names of the Union members from whose pay such deductions were made.
- D. The Union agrees to save the Employer harmless from any action or actions commenced by any employee against the Employer, for any claims arising out of such deduction and the Union assumes full responsibility for the disposition of any such funds once they have been turned over to the Union as provided.
- E. Errors made by the Employer in the deduction and/or remittance of the monies under this Agreement shall not be considered by the Union as a violation of this Agreement.
- F. **Representation Fee (Agency Shop)**
 - 1. Purpose of Fee
 - a. Subject to the conditions set forth in (b) below, all eligible nonmember employees in this unit will be required to pay to the majority representative a Representation Fee, in lieu of Dues, for services rendered by the majority representative until June 30, 2015. Nothing herein shall be deemed to require any employee to become a member of the majority representative.
 - b. It is understood that the implementation of the Representation Fee program is predicated on the demonstration by the Union that more than fifty percent (50%) of the eligible employees in the negotiating unit are dues paying members of the Union.
 - c. If, at the signing of this Contract, the above percentage has not been achieved, the Representation Fee plan will be continued through pay period 26 of the calendar year, after which it shall be discontinued unless the

minimum has been achieved prior to that occurrence. Thereafter, if the minimum percentage is exceeded on any quarterly date, i.e., January 1st, April 1st, July 1st, or October 1st, the Representation Fee plan shall be reinstated, with proper notice to the affected employees.

- d. In each year of the contract on July 1st, an assessment shall be made to determine if the minimum percentage has been exceeded. If it has, the Representation Fee shall continue until the following annual assessment. If it has not, the Representation Fee will be discontinued and eligibility for reinstatement shall be on a quarterly basis as provided above.

2. Amount of Fee

Prior to the beginning of each contract year, the Union will notify the Employer, in writing, of the amount of regular membership dues, initiation fees and assessments charged by the Union to its own members for that contract year, and the amount of the Representation Fee for that contract year. Any changes in the Representation Fee structure during the contract year shall be in accordance with F1 above.

The Representation Fee, in lieu of Dues, shall be in an amount equivalent to the regular membership dues, initiation fees and assessments charged by the majority representative to its own members less the cost of benefits financed through the dues, fees and assessments and available to or benefiting only its members, but in no event shall such fee exceed eighty-five percent (85%) of the regular membership dues, fees and assessments.

3. Deduction and Transmission of Fee

After verification by the Employer that an employee must pay the Representation Fee, the Employer will deduct the fee for all eligible employees in accordance with this Article.

The mechanics of the deduction of Representation Fees and the transmission of such fees to the Union will, as nearly as possible, be the same as those used for the deduction and transmission of regular membership dues to the Union.

The Employer shall deduct the Representation Fee as soon as possible after the tenth (10th) day following reentry into this unit for employees who previously served in a position identified as excluded or confidential, for individuals employed in this unit from a re-employment list, for employees returning from leave without pay and for previous employee members who become eligible for the Representation Fee because of nonmember status.

The Employer shall deduct the Representation Fee from a new employee as soon as possible after thirty (30) days from the beginning date of employment in a position in this unit.

4. Demand and Return System

The Representation Fee, in lieu of dues, shall be available to the Union only if the procedures hereafter are maintained by the Union.

The burden of proof under this system is on the Union.

The Union shall return any part of the Representation Fee, paid by the employee, which represents the employee's additional pro rata share of expenditures by the Union that is either in aid of activities or causes of a partisan political or ideological nature, only incidentally related to the terms and conditions of employment, or applied toward the cost of any other benefits available only to members of the majority representative.

The employee shall be entitled to a review of the amount of the Representation Fee by requesting the Union to substantiate the amount charged for the Representation Fee. This review shall be accorded in conformance with the internal steps and procedures established by the Union.

The Union shall submit a copy of the Union review system to the Employer. The deduction of the Representation Fee shall be available only if the Union establishes and maintains this review system.

If the employee is dissatisfied with the Union's decision, he/she may appeal to a three (3) member board established by the Governor.

5. Employer Held Harmless

The Union hereby agrees that it will indemnify and hold the Employer harmless from any claims, actions or proceedings brought by any employee in the negotiations unit which arose from deduction made by the Employer in accordance with this provision. The Employer shall not be held liable to the Union for any retroactive or past due Representation Fee for an employee who was identified by the Employer as excluded or confidential or, in good faith, was mistakenly or inadvertently omitted from deduction of the Representation Fee.

6. Legal Requirements

Provisions in this clause are further conditioned upon all other requirements set by statute.

ARTICLE V

RIGHTS OF THE UNION

- A. The Employer agrees to recognize those members of the negotiating unit, not to exceed five (5), who are designated by the Union as Union representatives for collective negotiations by written notice of the names of such members of the negotiation unit

given to the Employer. This section shall not preclude either party from inviting others to attend collective negotiations at the invitation of either party for the purpose of engaging in negotiations or providing factual knowledge or expertise with respect to a particular subject for collective negotiations. In this event, advance notice shall be given the other party.

- B. Authorized Representatives of the Union shall be permitted to transact official business on the Employer's property at all reasonable times during the period of time the university is normally open provided they do not interfere or interrupt normal university operations or the work of any individual employee or group of employees.
 - 1. Representatives of the Union who are also employees are required to obtain release time from their immediate supervisors in order to transact official business during working hours.
 - 2. Representatives of the Union who wish to transact official business with an employee or group of employees must first obtain permission of the supervisor or supervisors in charge of that work area.
 - 3. Approval of such release time and/or meeting with other employees shall not be unreasonably withheld.
- C. The Union shall have the right to post on mutually agreed bulletin boards, bulletins and notices to the employees it represents relevant to official Union business.
- D. The Employer agrees to submit to the local Union, each month, a list of new employees eligible for the bargaining unit and their job classification.
- E. The Employer agrees to send copies of job postings, changed assignments, promotions, demotions, disciplinary actions and reclassification actions to the local Union President and Council #52.

ARTICLE VI

HOURS OF WORK

- A. The regular hours of work each day shall be consecutive except for interruptions for lunch periods and the workweek shall consist of five (5) consecutive days.
- B. All employees shall be scheduled to work on a regular work shift and each work shift shall have a regular starting and quitting time involving no more than eight (8) consecutive hours of work.
- C.
 - 1. Work schedules showing the employee's shifts, workdays and hours shall be posted on all departmental bulletin boards at all times. Work schedules shall not

be changed without reasonable notice to the employees affected and the Union. Reasonable notice shall, except in demonstrably extenuating circumstances, be considered to be at least two (2) weeks in advance of the implementation of the shift change(s).

2. In the event the Employer decides to create new work shifts, the Employer shall meet and confer with the Union regarding any such new shift prior to its implementation. Such conference may include any problem perceived by the Union. The parties shall attempt to reach, within a reasonable period of time, agreement on a resolution of any problem raised by the Union, but failure to reach such agreement shall not hinder the implementation of such new work shifts, and the only grievable matter is whether, pursuant to this paragraph, such a meeting and discussion took place.
3. Prior to implementation of a shift change for incumbent employees, except where the Employer adjusts a shift of an employee in active disciplinary status or unless a certain expertise is required on a given shift that all members do not have, volunteers shall first be solicited in order of seniority with the most senior incumbent given option of first refusal.

Except as noted above, should no incumbent volunteer, assignment shall be made in inverse seniority order with the least senior incumbent first assigned the changed shift.

- D. All employees' work schedules shall provide for a fifteen (15) minute paid rest period during each one-half (1/2) shift, however, such can be varied if necessary.
- E. Employees who are required to continue work on an overtime basis, when it is anticipated that such overtime work shall include one-half (1/2) or more of the new shift, shall receive a fifteen (15) minute paid rest period before they begin work on such next shift. If such overtime work must coincide with scheduled evening classes, the time between the end of the regular shift and the time at which the evening classes are scheduled shall not constitute hours worked for overtime payment.
- F. In the event the Employer should provide a reduced workday during any period of the year, there shall be no afternoon rest period.
- G. Unless and until agreed upon to the contrary by the Employer and the Union, full-time employees are hired, classified and scheduled to work either 35, 37 1/2 or 40 hours per week, inclusive of paid rest break time as set out in this Agreement. Every full-time employee shall be afforded an unpaid lunch period of thirty (30) minutes unless a sixty (60) minute period is scheduled by the Employer upon at least two (2) weeks' notice to the employee and the Union. A sixty (60) minute lunch period maybe returned to a thirty (30) minute lunch period upon at least two (2) weeks' notice to the employee and the Union.
- H. Employees specifically directed by their supervisor to remain at their work areas between

assigned work periods shall be entitled to pay for hold-over time at their regular job rate, subject to the provisions of Article VIII, Rate of Pay, pertaining to payment of overtime compensation.

- I. The parties agree to resolve and incorporate items pertaining to paragraph C.3 above in labor-management committee in accordance with Article XX of the Agreement.

ARTICLE VII

HOLIDAYS

- A. Each member of the bargaining unit shall be entitled to the following named, paid holidays:
 1. New Year's Day
 2. Independence Day
 3. Labor Day
 4. Thanksgiving Day
 5. Christmas Day

Additionally, members of the bargaining unit shall receive six (6) paid holidays as designated by the Employer.

Finally, members of the bargaining unit shall receive two (2) floating holidays, providing such "floating" holidays shall be taken at a time agreeable to the supervisor.

- B. In the event any of the regular paid holidays fall on a Sunday, they shall be observed on the following Monday. Should any of the regular paid holidays fall on a Saturday, they shall be observed on the preceding Friday.
- C. The Employer shall continue its requirements for eligibility for holiday pay; however, an employee who is not on the payroll shall not be eligible for holiday pay.
- D. Employees, who are on the payroll on a day designated by the Employer as a paid holiday, shall receive their regular rate of pay for that day. Subject to and except for the limitations of the provisions of E. infra., any employee who is required to work any of the days designated by the Employer as a paid Holiday, shall be afforded the following premium pay in addition to the Holiday pay:
 1. For the first eight (8) hours, time and one-half (1/2) for all hours worked.
 2. For all hours in excess of eight (8), double time for all hours worked.
- E. For the period of the four (4) regular weekdays falling between the Christmas and New Year's Holidays, the Employer shall designate, for each bargaining unit member, two (2) of these days as paid Holidays, as part of provision A. supra.

The Employer shall notify each bargaining unit member of the individually scheduled and designated two (2) holidays, falling during this period, as soon as possible but in no

event later than December 1st , of each year.

Any employee whose service and attendance is necessary, as determined by the Employer, for either one (1) or both of such designated days, shall receive one (1) floating holiday for each day of service. Floating holidays shall be taken at a time agreeable to the supervisor. Prerequisite to such attendance shall be the provision of written notice to all affected bargaining unit members on or before December 1st of each year.

There shall be no holiday premium pay for days worked during this period. Other contractual provisions and those relevant mandates of the Fair Labor Standards Act pertaining to overtime are unaffected and continue.

- F. The thirteen (13) holidays, annually provided, pursuant to this Agreement, constitute the entire paid holiday schedule provided by the Employer.
- G. For the purpose of computing overtime, all holiday hours, whether worked or unworked for which an employee is compensated, shall be regarded as hours worked.
- H. It is expressly intended and understood that there are no additional paid holidays available to members of the bargaining unit, except as expressly provided by other provisions of this controlling Collective Bargaining Agreement.

ARTICLE VIII

RATE OF PAY

- A. The regular work week shall commence at 12:00 AM, Sunday and end at 11:59 PM on Saturday.
- B. Time and one-half (1½) the employee's regular hourly rate of pay shall be paid for work under any of the following conditions, but compensation shall not be paid twice for the same hours:
 - 1. All work performed in excess of 7, 7½ or 8 hours, depending upon an employee's classified and scheduled work shift, in any workday in which the employee worked or received paid excuse therefrom.
 - 2. All work performed in excess of forty (40) hours in any workweek in which the employee worked or received paid excuse therefrom.
 - 3. All work required by the Employer to be performed on an employee's regular sixth day provided he/she worked or received paid excuse for 35, 37.5 or 40 hours during that work week.

- C. Eligibility for overtime pay shall only be based upon time actually worked, or received paid excuse therefrom, and shall not include time not worked and/or not paid in calculating the daily or weekly hours.
- D. Any employee who is scheduled to report to work for a regular scheduled workday shift and who presents him/herself for work as scheduled shall be assigned to at least four (4) hours work on the job for which he/she was scheduled to report if such job is available. If work on the job for which he/she was scheduled to report is not available, the employee shall be assigned to such duties as the Employer designates.
- E. If overtime work is available, it shall be distributed first to the persons doing such work normally. If a greater number than those normally doing the work are required, the work shall be distributed equally among those, within the same job classification, qualified to perform the work.
- F. In addition to all contractual provisions relating to overtime:
 - 1. Employees recalled to work for emergency reasons after having departed from work, following completion of a full regular work shift, shall be guaranteed a minimum of two (2) hours pay at the overtime rate of time and one-half (1 ½) for call back work.
 - 2. If necessary overtime is of an emergency nature and shall be continuous for over four (4) hours, the appropriate building personnel shall be called and night shift personnel shall be held over to perform such overtime until the day or afternoon shift personnel, as appropriate, shall report to work.
 - 3. If necessary overtime is of an emergency nature and shall be continuous for less than four (4) hours, night shift personnel may be held over to perform such overtime without the necessity of calling appropriate building personnel.
- G. The distribution of overtime shall be posted each six (6) months. If the Union is dissatisfied with the distribution of overtime work, it shall convene a Labor/Management meeting in accordance with Article XX, Labor Management Committee, of this Agreement.
- H. If there are not the necessary number of volunteers to perform the required overtime work, the Employer shall assign employees, as required, in reverse job classification seniority order, beginning with the least senior.
- I. Subject to Article XVII, Seniority, B.3., if a member of the bargaining unit is formally assigned full-time, on a temporary basis, to a job having a higher salary range, he/she shall, after three (3) continuous workdays, be temporarily promoted to the higher salary range job, retroactive to the first day. The temporary assignment of the higher salary rate shall be accompanied by the full level of performance responsibility and accountability for the higher level position while occupied; however, the higher salary shall not be reduced due to less than satisfactory performance while in the higher level