



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

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

UNFAIR PRACTICE CHARGE

File an original and 9 copies of this charge with the Director of Unfair Practices, Public Employment Relations Commission, together with proof of the simultaneous service of a copy of the charge on the respondent(s). See Instructions on back.	<u>DO NOT WRITE IN THIS SPACE</u>
	DOCKET NO.
	DATE FILED:

1. CHARGING PARTY

Full Name:	County: Middlesex
University of Medicine & Dentistry of New Jersey Council of Chapters of the American Association of University Professors Chapters	
Address of Charging Party (Street and Number, City, State and Zip Code):	
675 Hoes Lane, Piscataway, New Jersey 08854	
Name and Title of Representative to Contact	Telephone No.
Debra Osofsky, Esq., Executive Director	(973) 972-5875
Attorney/Consultant Representing Charging Party (if any):	Telephone No.
Mark D. Schorr, Esq., Sterns & Weinroth, A Professional Corporation	(609) 392-2100
Attorney/Consultant Address (Street and Number, City, State and Zip Code):	
50 West State Street, P.O. Box 1298, Trenton, New Jersey 08607-1298	

2. RESPONDENT(S) *(Public employer and/or employee organization against whom charge is made)*

Full Name:	County:
University of Medicine & Dentistry of New Jersey	Essex
Address of Respondent(s) (Street and Number, City, State and Zip Code):	
65 Bergen Street, Newark, New Jersey 07102	
Name and Title of Representative to Contact:	Telephone No.
Abdel Kanan, Esq., Director of Labor Relations	(973) 972-4643
Attorney/Consultant Representing Respondent(s) (if any):	Telephone No.
Peter C. Harvey, Attorney General, Office of the Attorney General of State of New Jersey	(609) 292-4925
Attorney/Consultant Address (Street and Number, City, State and Zip Code):	
Hughes Justice Complex, P.O. Box 080, New Jersey 08625-0080	

3. STATEMENT OF CHARGE *(See instructions on back)*

Pursuant to the New Jersey Employer-Employee Relations Act, as amended, the charging party hereby alleges that the above-named respondent(s) has (have) engaged or is (are) engaging in an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a), subsection(s) 1 & 5 and/or N.J.S.A. 34:13A-5.4(b), subsection(s) _____, in that: (List subsections)

See attached Addendum

(Indicate whether additional sheets are attached)

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

(indicate whether additional sheets are attached)

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

9	Petition to Initiate Compulsory Interest Arbitration Docket No. _____ Date Filed: _____	9	Request for Submission of Panel of Arbitrators Docket No. _____ Date Filed: _____
9	Notice of Impasse Docket No. C-2005-001 Date Filed: 12/20/04	9	Scope of Negotiations Petition Docket No. _____ Date Filed: _____
9	Representation Petition Docket No. _____ Date Filed: _____	9	Petition for Issue Definition Determination Docket No. _____ Date Filed: _____
9	Petition for Contested Transfer Determination Docket No. _____ Date Filed: _____	9	Other Unfair Practice Charge(s) Docket No. _____ Date Filed: _____
9	Related Filings At Other Administrative Agencies Docket No. _____ Date Filed: _____	9	Other (explain)

6. CERTIFICATION

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

Signature Title Date

INSTRUCTIONS FOR FILING AN UNFAIR PRACTICE CHARGE

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

ADDENDUM

3. STATEMENT OF CHARGE

I. PARTIES

1. The University of Medicine and Dentistry of New Jersey Council of Chapters of the American Association of University Professors Chapters (the "Association") is the exclusive public employee representative for full-time teaching and/or research faculty and librarians and all part-time teaching and/or research faculty and librarians who are employed 50% or more of full time at the University of Medicine and Dentistry of New Jersey (the "University").

2. The University is a public employer under the Act and has recognized the Association as the exclusive public employee representative under the Act for certain faculty since 1972. The most recent Agreement between the Association and the University expired on June 30, 2004 (the "Agreement").

II. COMPENSATION OF CLINICIANS IN THE ASSOCIATION'S UNIT

3. Members of the Association's unit who perform clinical services receive a base salary to which are added one or more clinical salary components. The base salary component is negotiated and the subject of express contractual commitments in the Agreement.

4. The University pays certain members of the Association's unit additional amounts which it designates as clinical components of salary. One such clinical component is known as a "clinical supplement." The University pays clinical supplements to employees irrespective of the extent, or even the existence, of their clinical practices, often in order to attract them to the University. In such cases, the

University customarily needs to pay additional compensation, since base salary alone does not make a position at the University sufficiently attractive.

5. The University has established clinical components, including clinical supplements, unilaterally, and not through collective negotiations. Clinical supplements are only reduced based upon a change in circumstances--for example, a transfer to part-time from full-time employment.

III. NEGOTIATIONS BETWEEN THE PARTIES

6. Negotiations between the Association and the University for a successor to the Agreement began in or about June 2004 and continued through December 2004.

7. During the negotiations, the Association and the University discussed, but did not reach agreement on, a contractual provision regarding clinical components of compensation for unit members. In the course of those negotiations, the University acknowledged that clinical components of salary would be reduced only based upon a change in circumstances--for example, a transfer to part-time from full-time employment--and that all such changes would be undertaken with the prior approval of the University's Vice President for Academic Affairs.

8. While the parties did not negotiate any contractual provision covering clinical components of salary, the University agreed to follow certain procedures in connection with the clinical components.

9. On September 15, 2004, the Association and the University executed a Memorandum of Understanding, a true copy of which is attached as Exhibit A, which contained the basis for a successor to the Agreement. The Memorandum of

Understanding did not incorporate the understanding of the parties as to procedures covering clinical components.

IV. THE ELIMINATION OF THE CLINICAL SUPPLEMENT OF SANFORD L. KLEIN, M.D.

10. Sanford L. Klein, M.D. is a member of the Association's unit who came to the University in 1983 as Chair of the Department of Anesthesiology at Robert Wood Johnson Medical School (the "Department"), a non-unit position. At the time of his hire, Dr. Klein received a base salary of approximately \$82,000. The balance of his compensation in 1983 consisted of a clinical supplement of approximately \$32,000 and a bonus attributable to his position as Chair.

11. From 1983 through 1999, when he was terminated as Chair and became a member of the Association's unit, Dr. Klein received a base salary and clinical supplement annually. The amount of the clinical supplement was never dependent upon whether or to what extent Dr. Klein was engaged in clinical practice. Both his base salary and clinical supplement were increased gradually, through 1999, at which time Dr. Klein was receiving a base salary of \$167,835 and a clinical supplement of \$117,412.

12. Dr. Klein was terminated as Chair of the Department as of June 29, 1999. During the following five month period, he performed no clinical work. Dr. Klein began a sabbatical in January 2000, from which he returned in January 2001. During the five months following his termination as Chair and throughout his sabbatical, Dr. Klein received his full base salary, and a clinical supplement at the rate of \$117,412 per annum.

13. On or about March 21, 2001, Dr. Klein resumed his clinical practice, in which he was engaged for the following seven months. As of October 15, 2001, as the

result of a dispute with the then-Chair of the Department, Dr. Klein agreed not to perform services at Robert Wood Johnson University Hospital (the "Hospital"), but he would continue to receive his base salary and clinical supplement.

14. On or about May 2, 2002, Dr. Klein received a letter from the Credentials Committee of the Robert Wood Johnson University Hospital (the "Hospital") denying renewal of his hospital privileges. Dr. Klein appealed the denial.

15. The Hospital appointed a Fair Hearing Committee (made up of physicians) to take evidence and make findings as to Dr. Klein's privileges. In March 2004, the Committee issued its report, concluding that the Hospital had not carried its burden of proof on the charges which formed the basis for denial of his privileges and recommended that Dr. Klein be granted privileges with a period of oversight by the Department.

16. On October 8, 2004, the Hospital's Credentials Committee issued its report in which the Committee accepted the findings of the Fair Hearing Committee, but required that Dr. Klein undergo an examination to evaluate his physical, mental and emotional condition. Dr. Klein has filed a timely appeal from that determination, which appeal is pending.

17. During the more than two years of hearings related to Dr. Klein's privileges, he received a clinical supplement of \$117,412 per annum, but did not engage in clinical practice.

18. Dr. Klein met on October 15, 2004 with the Acting Chair of the Department, during which meeting they discussed Dr. Klein's activities. There was no

mention at that meeting of Dr. Klein's clinical supplement, which he had been receiving without interruption since his termination as Chair of the Department.

19. By letter dated October 19, 2004, a true copy of which is attached as Exhibit B, the Acting Chair of the Department advised Dr. Klein that, based upon the reports of the Credentials Committee and Fair Hearing Committee and because he was unable to perform clinical activities, the University could not continue to pay his clinical supplement. The Acting Chair took such action notwithstanding that Dr. Klein had discontinued practicing at the Hospital by mutual consent and was fully capable of practicing. Therefore, effective December 1, 2004, Dr. Klein would no longer receive the clinical supplement he had been receiving continuously for more than 20 years. The University in fact eliminated Dr. Klein's clinical supplement as of December 1, 2004.

20. By eliminating Dr. Klein's clinical supplement as it did, the University altered a condition of employment unilaterally, without notice to the Association and without first negotiating on the issue. The University with the Association has refused to negotiate on the issue.

21. The University's unilateral elimination of the clinical component of Dr. Klein's compensation without negotiation, during negotiations for and prior to agreement on a successor to the Agreement, constitutes its refusal to negotiate in good faith with the Association on an existing employment condition in violation of N.J.S.A. 34:13A-5.4(a)(1) & -(5).

V. REQUEST FOR RELIEF

The Association requests relief as follows:

1. An order requiring that the University cease interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by the Act and, in particular, that it cease unilaterally eliminating or reducing clinical components of members of the Association's unit;
2. An order requiring that the University negotiate in good faith with the Association concerning conditions of employment, particularly the unilateral alteration of clinical components;
3. Restoration of the clinical supplement of Sanford L. Klein, M.D. retroactive to December 1, 2004; and
4. Such other relief as the Commission deems just and necessary.