

**STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD  
UNFAIR PRACTICE CHARGE**

**DO NOT WRITE IN THIS SPACE: Case No: Date Filed:**

**INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at**

**www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.**

**IS THIS AN AMENDED CHARGE? YES If so, Case No. NO**

**1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC<sup>1</sup>**

**a. Full name:**

**b. Mailing address:**

**c. Telephone number:**

**d. Name and title of**

**E-mail Address:**

**person filing charge:**

**Fax No.:**

**Telephone number:**

**e. Bargaining unit(s)  
involved:**

**2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION EMPLOYER**

**a. Full name:**

**b. Mailing address:**

**c. Telephone number:**

**d. Name and title of**

**E-mail Address:**

**agent to contact:**

**Fax No.:**

**Telephone number:**

**3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)**

**a. Full name:**

**b. Mailing address:**

**4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)**

a. Full name:

b. Mailing address:

c. Agent:

<sup>1</sup> An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

SEE REVERSE SIDE

PERB-61 (4/3/2020)

**5. GRIEVANCE PROCEDURE**

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes \_\_\_\_\_ No \_\_\_\_\_

**6. STATEMENT OF CHARGE**

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)

Ralph C. Dills Act (Gov. Code, § 3512 et seq.)

Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)

Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)

Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code, § 99560 et seq.)

Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)

Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are:

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (***a copy of the applicable local rule(s) MUST be attached to the charge***):

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)

**DECLARATION**

I declare under penalty of perjury that I have read the above charge and that the statements herein are true  
and  
complete to the best of my knowledge and belief and that this declaration was executed on

\_\_\_\_\_  
\_\_\_\_\_  
(Date)

at .

(City and State)

\_\_\_\_\_  
(Type or Print Name) (Signature)

Title, if any: \_\_\_\_\_

Mailing

address:

\_\_\_\_\_  
Telephone Number: \_\_\_\_\_ E-Mail Address:

PERB-61 (4/3/2020)

**Amended Attachment A to Unfair Labor Practice Charge  
of the  
Peralta Federation of Teachers, AFT Local 1603, CFT/AFT, AFL-CIO**

1. The Peralta Federation of Teachers, AFT Local 1603, CFT/AFT, AFL-CIO (“union,” “PFT” or “Charging Party”) represents a bargaining unit consisting of all of the academic employees (“faculty”) of the Peralta Community College District (“District”). Faculty means all persons employed as instructors, counselors, librarians and nurses (including all part-time, temporary faculty) except guest lecturers, consultants and independent contractors. The unit includes approximately 1,000 faculty members, of which a large number (approximately 10 %) are non instructional faculty such as counselors, librarians and nurses. The President of the PFT is Jennifer Shanoski (Shanoski). Any amendments to Attachment A are denoted by underlining or ~~strike-out~~.
2. The District is a public community college District operated under the laws of the State of California, in Alameda County, CA. The District includes four colleges: College of Alameda, Berkeley City College, Laney College and Merritt College. The District also maintains a central office in Oakland. The District is governed by a Board of Trustees.
3. The highest level administrative employee of the District is its Chancellor, Dr. Regina Stanback Stroud (Stanback Stroud). Chanelle Whittaker (Whittaker) is the District’s Vice Chancellor of Human Resources. Siri Brown (Brown) is the District’s Vice Chancellor of Academic Affairs.

4. The Union and the District are parties to a collective bargaining agreement (“CBA”) currently in effect, and have been parties to a series of collective bargaining agreements since 1978 or thereabouts. The current agreement took effect on or about February 25, 2020.
5. As alleged below, the district has acted unilaterally, without notice to or negotiations with the PFT, and thereby violated its duty to negotiate in good faith with the union as the exclusive representative of the academic employees of the District, in violation of Government Code sections 3543.5 (b) and (c), and in violation of section 3543.5(a). The District has so acted in regard to negotiable decisions and the effects of both negotiable decisions and actions, and the effects of non-negotiable decisions and actions.

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6. The district’s actions have interfered in the union’s ability to carry out its duties as the exclusive bargaining agent, and have denied the Union’s right to represent the employees whom it represents.
7. For the spring 2020 semester, District’s faculty commenced providing academic services on or about January 21, 2020.
8. On March 4, 2020, in response to the global pandemic of COVID-19, California Governor Gavin Newsom issued a proclamation declaring a State of Emergency. The District did not contact PFT about issues presented by the State of Emergency, and related events, such as closure of the colleges or movement to online instruction by faculty, and any negotiable issues or effects resulting from those or related events.
9. On March 9 at 1:13 p.m., PFT President Jennifer Shanoski emailed Stanback Stroud, Whittaker and Brown stating PFT had not been contacted regarding a plan to deal with COVID-19 issues, and was committed to working together with the District to address issues. Shanoski asked how the parties could collaborate.
10. Also on March 9, at 1:24 p.m., Vice Chancellor Whittaker emailed President Shanoski,

“Please be aware that the District is currently working to create and implement the necessary policies and procedures ... I look forward to scheduling a date this week, to discuss next steps with the PFT. If there is a date that works for the PFT please let me know and I will accommodate.”

At 3:07 p.m. that same day, President Shanoski wrote Vice Chancellor Whittaker that,

“A decision about any closure could have several areas that are negotiable. Negotiable effects of a closure may include, but are not limited to: - faculty loads

- wages/compensation,
- part-time assignments,
- changes to the academic calendar,
- evaluations, and
- workload.

So, the creation and implementation of policies and procedures will need

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include the collective bargaining unit that represents the faculty affected by any potential closure. This needs to be done prior to the announcement of said policies and procedures.

I am available to meet to discuss this tomorrow between 10-2 or Wednesday 11-3. Please let me know what time works best for you.”

11. The evening of March 9, at 8:40 p.m., Vice Chancellor Brown texted PFT President Shanoski, saying she was going to send information to her in an hour, about the District moving in-person classes to “online instruction”.

PFT President Shanoski responded that these items are negotiable and that the parties needed to be communicating.

Brown replied, texting,

"What are y talking about I am communicating w u. Our first meeting was FRIDAY!"

She also said "I am not the Chancellor I'm doing my part in an emergency and faculty are all in the development of my part. So direct it to someone else."

On March 10, Brown and Whittaker jointly called President Shanoski, to discuss various issues regarding calendar changes (including cancelling classes for March 11, 12 and 13, paying faculty whose classes were cancelled, and moving the week of spring break from April to March 16 through 21. After the call, Ms. Brown sent President Shanoski a summary of their discussion. President Shanoski then revised it based on her understanding of their discussion, and said she needed to share it with the PFT Executive Council, and that she would get back to Brown and Whittaker by 5:00 p.m. [on March 10].

However, before 5:00 p.m., the District issued an announcement to faculty and staff, via a listserv set up by the District and used by the District, faculty and staff, that there would be an emergency board meeting, and that PFT had agreed to certain changes in the calendar. In fact, PFT had not agreed on those changes with the District.

Whereupon, President Shanoski contacted Chancellor Stanback Stroud on March 11, 2020. Shanoski and Stanback Stroud orally agreed to the limited

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“calendar” changes, including that the District would cancel classes for March 11, 12 and 13; and would move the planned District “Spring Break” from April 13-18, 2020 to the week of March 16-21, 2020. They also moved “professional development day.”

The District’s Board of Trustees then met in an emergency Board meeting and affirmed what PFT and the District had agreed to do.

12. Then on Monday, March 16, the District, without notice to or negotiations with the PFT, over either the decision or its effects, unilaterally cancelled all classes at all four colleges for the period of March 16, 2020 to April 6, 2020. The District had not discussed this action with PFT. PFT had not agreed to such action by the District, and was taken by surprise.
13. PFT only learned of the District’s decision to cancel all classes for three weeks, when Vice Chancellor Brown and Vice Chancellor Whittaker telephoned Jennifer Shanoski at approximately 3:00 p.m. on March 16, and indicated the District was cancelling all District classes for three weeks (including those already offered via the internet or able to be taught on the internet), and was considering extending the academic calendar by two weeks. The District’s action delayed the start of many short-term, 6-week long classes from March until April. This will presumably result in part time faculty not being paid for work they usually perform in March, such that they will not be paid for such work until April, 2020, potentially causing hardship for many part-time faculty.

It was also unclear how, with the class cancellations, the part-time faculty will have sufficient time to teach all of the subjects and requirements for their classes.

14. President Shanoski raised several concerns and asked questions of Brown and Whittaker about what she at first thought was only a District *proposal to cut classes*. President Shanoski asked the District’s representatives why the District wanted to cancel all on-line classes, why the District wasn’t assessing whether or not the faculty needed additional time for conversion to on-line classes, what the payment schedule would be, whether faculty could make up student contact hours in other ways, what

would happen to faculty who were unable to switch to a remote delivery of their courses. Brown and Whittaker did not answer these questions to Shanoski's satisfaction.

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Finally, Brown and Whittaker told President Shanoski that the District had already decided to cancel all of the District's classes for three weeks, and that they were just informing her of that fact, not consulting her about what should be done. Brown and Whittaker said that they were only seeking PFT's agreement to extend the calendar by two weeks. Hence, the call from Brown and Whittaker to President Shanoski was not intended to seek an agreement or permission to cancel classes for three weeks, from PFT; instead, the call was to announce to PFT what the District had done unilaterally and seek a two-week calendar extension.

Brown and Whittaker thus explained that the District had decided to cancel all classes for three weeks, and that the District had already announced this to all students and faculty – two hours earlier that afternoon, again over the District listserv.

The District's action in unilaterally cancelling classes for three weeks is devastating to the teaching faculty. Cutting courses short could impact whether the teacher satisfies the course outline, and could potentially subject teachers to loss of pay, made no provision for their making up all of the time lost, might lead to criticism of them in teaching evaluations which would have a potentially negative ramifications for probationary faculty working toward tenure, or continued employment of part-time, temporary faculty, and made no provision for time spent by faculty in performing all of the discontinued work, because those faculty who were able to arrange to perform the extra work would presumably need to make up for the lost instructional time. It also created confusion because the District was unclear on what was happening or why.

15. The PFT-District collective bargaining agreement expressly forbids the District from unilaterally deciding to cancel classes. (Article 18.D.8). This provision provides that the District cannot cancel classes after the first District "census" (i.e. headcount of students). It explicitly states, "Except for error or inadvertence, no class shall be canceled after the first census." The first census for the Spring 2020 semester had occurred in February 2020, before the District unilaterally cancelled all classes for three weeks, on March 16, 2020. Hence the cancellation violated the practice established in the current collective bargaining agreement, and predecessor collective bargaining agreements.

The cancellation of all classes for a three-week period from March 16, 2020 to April 6, 2020 occurred without advance notice to the PFT, without

negotiations over the decision, and without negotiations over the effects of cancelling all classes, such as impact on faculty compensation, impact on faculty workload or length of the semester, and other impacts.

16. PFT President Shanoski emailed Stanback Stroud that the CBA is “not suspended” during an emergency, and that PFT was neither notified nor consulted until after the District had sent an announcement of the changes to all faculty, staff and administrators. PFT demanded that “any change to the academic calendar, change in course delivery mode, or other contractual items be negotiated before they are implemented and that District administration work with the [PFT] on the impacts of such decisions prior to making them.”
17. Stanback Stroud replied that the District “would follow the contract and the policies related to emergencies and act accordingly.” Stanback Stroud also announced at a public meeting of the Board of Trustees that PFT was “creating a culture of confusion.”
18. Stanback Stroud has since defended the District’s action in cancelling classes, claiming despite the foregoing that “the cancellation of classes is not something that is in violation of the contract.” (Email, March 17, 2020, from Stanback Stroud to Jennifer Shanoski.)
19. The District held a special meeting of its Board of Trustees on March 17, 2020. At that meeting the District authorized the Chancellor to take numerous actions relating to the Coronavirus pandemic, including the cancellation of classes.
20. In failing to inform PFT of its plan to cancel all classes from March 17, 2020 to April 7, 2020, and in failing to negotiate with PFT over cancelling all classes for these three weeks (from March 17, 2020 to April 7, 2020) before making and announcing that decision, and over the effects of such actions, the District denied PFT its right to represent its members in violation of section 3543.5(b) of the Act, denied employees their right to union representation of its bargaining unit in violation of section 3543.5(a) of the Act, and failed to bargain in good faith in violation of section 3543.5(c) of the Act.

## Remedies

PFT requests the following remedies for the District’s unfair labor

practices:

1. Cease and desist from taking unilateral action and failing and refusing to negotiate in good faith with PFT about adopting negotiable policies, such as cancelling of classes for three weeks, and reducing the working time of part-time faculty teaching six-week long courses, and over the effects of such matters.
2. And by the same conduct, denying PFT rights guaranteed by the EERA, including the right to represent its members.
3. Cease and desist interfering in or denying PFT's representation of its members; and cease and desist in denying employees of the District their right to union representation.
4. Take the following affirmative actions designed to effectuate the policies of the EERA:
  - a. Upon request, meet and negotiate with PFT about any plans to cancel teaching assignments.
  - b. Make whole any faculty who lost pay and/or benefits, or suffered other financial losses, as a result of the District's decision to cancel classes for three weeks, and to offer fewer classes in March 2020, plus interest at the legal rate.
  - c. Pay the PFT for its legal fees and expenses incurred in pursuing this unfair practice charge.
5. For such other and further relief as is just and proper.

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**Attachment A2 to Unfair Labor Practice Charge  
of the  
Peralta Federation of Teachers, AFT Local 1603, CFT/AFT, AFL-CIO**

In addition to unilaterally implementing the cancellation of every class for a period of three weeks, as alleged in the original unfair labor practice charge, the District has engaged, and continues to engage, in flagrant violations of

the EERA. These flagrant violations include, but are not limited to, the following:

**I. Unilateral Change of Past Practice in Faculty Access to District Email and Listservs at Each of the Four Colleges and the District; Bad Faith Bargaining; Interference in PFT and employee rights; Discrimination because of Protected Activities**

1. The District has for at least 15 years operated distinctive and separate listservs at each of its four colleges, and a fifth listserv for the District Office. (The “listservs” herein) A listserv describes an automated, on-line mailing list. The fifth listserv, known as the FAS (faculty, administration, staff), provides a means of communication for the PFT and individual faculty members, on a district-wide basis, with all District employees.

2. Section 3543.1(b) provides that employee organizations shall have the right of access at reasonable times to ... *other means of communication*, subject to reasonable regulation ...” The District listservs constitute “*other means of communication*” as used in section 3543.1(b) of the EERA. Besides the EERA, the parties collective bargaining agreement also provides that same right of access in Article 6.D..

3. For 15 years or more, the listservs have provided a means of communication allowing the PFT and the District’s academic employees, to communicate with each other, and with other District employees over a virtually unlimited amount of issues, including wages, hours and terms and conditions of employment. These listservs have generally been free of any effort by the District to censor or restrict information presented by bargaining unit members, which is of concern to them. The subjects of the listserv communications have been wide-ranging, and included all manner of communications regarding matters related to wages, hours and terms and conditions of employment.

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4. The District’s listservs are an important part of the District’s internal mail and communications system, allowing for communication by and among bargaining unit members, and with other District employees.

5. PFT and its bargaining unit employees’ access to “other means of communication” is a negotiable subject under the EERA. *Davis Joint Unified School District* (1984) PERB Dec. No. 474. A district’s attempt to impose a new or different listserv policy requires notice to the Union and negotiations, upon request. *State of California (Water Resources Control Board* (1999) PERB Dec. No. 1337-S. PERB has also held that employees have the right to use an employer’s email system to discuss matters related to wages, hours and terms and conditions of employment and to discuss protected activities during non-work time. *Napa Valley Unified*

*School District* (2018) PERB Dec. No. 2563; and see *Los Angeles Unified School District* (2018) PERB Dec. No. 2588, holding that email is a fundamental forum for employee communications.

6. There is a historic, clearly enunciated and established practice, readily ascertainable over a reasonable period of time, allowing PFT and its unit members to utilize the listserv to communicate with PFT and other bargaining unit members, and other District employees, on matters of their interest, including matters related to wages, hour and terms and conditions of employment.

7. During at least the last three years, the District erroneously underpaid several PFT bargaining unit members. One faculty member the District erroneously underpaid is named Judy Juanita. As of 2018, the District owed her more than \$10,000 in backpay. Ms. Juanita attempted to resolve this underpayment with the District on her own, but was unsuccessful. She brought the matter of her underpayment to the attention of PFT, which successfully resolved the matter and recovered approximately \$22,000 for her that the District owed her, on or about August 31, 2018.

8. On September 1, 2018, Ms. Juanita posted to the Peralta all-faculty listserv, informing the faculty at large of her underpayment and the recovery of monies owed her. In her posting she wrote, *inter alia*,

“I hope all of you are getting paid what you’ve earned and getting it in a timely fashion. This didn’t happen with me. I had to raise holy hell – the equivalent of Rihanna’s ‘Bitch, where my money?’”

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Jennifer Shanoski/PFT [president] contacted payroll on my behalf ... I’ve been complaining for three years about my pay status. Finally, Laney paid me yesterday \$22,000+ in retro pay ...”.

9. Ms. Juanita’s post to the listserv inspired other employees to commend her actions and to offer their opinions about such underpayments. For example, one unit member referred to the underpayments as a “bombshell.” Others discussed whether underpaid employees were entitled to interest from the district, or indicated they had suffered from underpayments. Ms. Juanita made further posts noting in one that “An honest day’s pay for an honest day’s work is not too much to ask, even of Laney/PCCD.”

10. Dr. Regina Stanback Stroud became Chancellor of the District on or about September 30, 2019, more than a year after Ms. Juanita posted her email revealing the Peralta District’s underpayment of her wages. On January 16, 2020, in a presentation to a large number of faculty held at a “Flex Day”, nearly one and half years after Ms. Juanita’s listserv posting, Chancellor Stanback Stroud *objected* to Ms. Juanita’s posting. Dr. Stanback Stroud described Ms. Juanita’s posting in derogatory terms, referring to it

as “obsessive vitriol,” and complaining that District email should only be for “district business.”

11. On or about January 21, 2020, some District employees wrote to the Chancellor, supporting the retention of an “open” Faculty and Staff electronic mail list. In response, also on January 21, Stanback Stroud emailed some members of the faculty declaring she would be “moving forward with changing the permissions on the emails in the next 30 days.”

12. In response to the foregoing, on January 31, 2020, the PFT, by counsel, wrote to Chancellor Stanback Stroud and demanded that the District (1) cease and desist modifications of the listservs and (2) that the District bargain with PFT over any changes in listserv usage or access. PFT requested a response by February 5, 2020. The District did not respond to PFT’s request on or before February 5, 2020.

13. On February 10, 2020, PFT president Jennifer Shanoski contacted Chancellor Stanback Stroud by email and requested that she respond to the demand letter for negotiations from PFT’s counsel. Neither Chancellor Stanback Stroud, nor anyone representing the District, contacted President Shanoski or PFT in regard to President Shanoski’s demand for bargaining.

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14. Not long after the foregoing, the COVID-19 crisis arose, leading to discussions and negotiations between PFT and the District over matters related to, *inter alia*, the shelter-in-place and social distance requirements issued in Gubernatorial Declarations. As of April, the District still had not responded to either counsel’s letter of January 31, or PFT’s email of February 10.

15. On or about April 3, 2020, a member of the faculty posted an email on the FAS listserv complaining that an administrator had attempted to remove him from a “share governance committee” to which he was appointed by the academic senate of Laney College. The administrator’s action was not within his jurisdiction or authority. The posting of the email by the faculty member constitutes concerted activity for mutual aid and protection.

16. Despite established practice, the email from the faculty member was removed from the FAS listserv by the District administration. Shortly after President Shanoski attempted to post an email on the FAS listserv. Her email was rejected, and she received an email from the District declaring:

“The groups at peralta.edu only accept messages from people on their allowed senders list, and your email address isn’t on the lists.”

In this manner, PFT learned that the District had barred it from the FAS list and/or disassembled the FAS listserv. PFT received no prior notice this

particular action was being taken, nor had the District responded to counsel's letter of January 31 or PFT's email of February 10 before so acting.

17. The District's failure to respond is mirrored by its failure to respond to other communications from PFT about bargaining subjects, which PFT communicated in March 2020, and are discussed below. Together the District's lack of communication suggests now that the District has repudiated its duty to negotiate or recognize PFT, and that the District is now in flagrant disregard of its obligations under the EERA which are owed to PFT, and which are further alleged below.

18. The EERA (Government Code §3543.2(a)) and the CBA provide the Federation with the right to negotiate over matters related to wages, hours and terms and conditions of employment, including matters related to communications made or received by academic employees within the PFT

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bargaining unit.

19. The District's unilateral action in destroying and/or dismantling the FAS listserv and denying access to PFT, and bargaining unit members, and in creating a new type of listserv or list, was done without negotiations or notice to PFT, as to the decision and its effects, and violates section 3543.5(c) of the Act.

20. The District engaged in discrimination against PFT and its members, by destroying the existing email system, and interfering in faculty communication through the established listserv system, because employees posted communication related to their wages, hours and terms and conditions of employment. In taking the actions alleged herein the District denied PFT members their right to be represented by PFT in their relations with the District, and the District denied PFT its right to represent its members in their employment relations with the District. These acts violated sections 3543.5(a) and (b) of the Act.

21. The District's actions in removing the email of a unit member on or about April 3, 2020, and in destroying the existing listserv and replacing it with one which limits, and permits censorship of PFT or unit member communications regarding matters relating to wages, hours and terms and conditions of employment, constitutes interference in the PFT and unit members exercising their rights to communicate through the listserv system established prior to the changes occurring on or about April 3, 2020.

22. The above-referenced actions constitute flagrant violations of the EERA, entitling the PFT to enhanced remedies.

Wherefore, PFT requests the remedies requested at the conclusion of this Amended Charge.

## **II. District Interference and Denial of Rights In Regard to PFT's Representation of a Unit Member/Union Officer.**

23. On or about March 19, 2020, the District, by Delisle Warden, Interim General Counsel and Chief of Staff, wrote Richard Greenspan, a faculty member and chief negotiator for the PFT. Mr. Warden directed Mr. Greenspan to attend a meeting with an investigator, where he would be questioned. Although Warden wrote that Greenspan was not the subject of the investigation, it declared that Greenspan had knowledge of certain

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issues under investigation. The letter directed Greenspan that he should not discuss his interview, or issues related to the investigation, with others, including other employees of the District. This warning covered PFT officials including its president, all of whom are District employees. The letter cautioned him to answer all questions "truthfully and fully," implying he could be disciplined should the District conclude he did not answer all questions "truthfully and fully." The meeting was scheduled per Zoom, because of the COVID-19 limitations.

24. On March 25 the PFT, by counsel, wrote to Mr. Warden and requested that the District allow Mr. Greenspan to be represented by the PFT. The request explained that the District could not interrogate Mr. Greenspan about information he obtained in his capacity as the Chief Negotiator for PFT, and as a member of the Union's Executive Board. The letter also requested a specific description of the allegations being investigated, so as to allow PFT the opportunity to provide meaningful representation of Mr. Greenspan. The letter requested that Mr. Warden direct any questions he had about representation by the Union to Union legal counsel.

25. Neither District lawyer Warden, nor any other representative of the District, responded to the PFT's letter. Mr. Greenspan did not "attend" his interview, and as of the preparation of this Amended Charge, neither PFT nor Mr. Greenspan has received any further information about the "investigation."

26. In failing to provide PFT with adequate information about the subject of the interrogation, or respond to PFT's letter, the District engaged in bad faith bargaining, interfered in the right of and denied PFT's right to represent Mr. Greenspan, interfered in and denied Mr. Greenspan's right to representation by PFT at the interview, and thereby violated sections 3543.5(a)(b) and (c) of the EERA. The District's directive that Mr. Greenspan not speak to others, including district employees, about the interview or issues related to the investigation, infringes on Mr.

Greenspan's protected rights by prohibiting him from contacting faculty, staff or students in connection with the investigation. Other faculty include the Union president and numerous union officers and representatives. This restriction interferes with Mr. Greenspan's rights under the EERA, section 3543.5(a), to speak with other employees on such matters.

Wherefore, PFT requests the remedies set forth at the conclusion of this

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Charge.

### **III. District's Failure to Negotiate Over Evaluation of Faculty**

27. As explained herein, the District has refused, and continues to refuse, to negotiate over evaluations of faculty. Every three years of employment, a part-time, temporary faculty employee must be evaluated.

28. Every year a probationary faculty member must be evaluated. Probationary faculty ordinarily serve four years in a probationary position.

29. Evaluations of teaching faculty generally involve observation and assessment of teaching activities.

30. Part-time faculty are eligible to be placed in the "Faculty Rehire Preference Pool, under contractually-specified conditions. "Part-time faculty in the 'Preferred Hiring Pool' will be given preference in assignment over part-time faculty in the Non-Preferred Hiring Pool. In order to be eligible for placement in the Preferred Hiring Pool, a part-time faculty member must have been employed by the District for eight of the last twelve semesters. Seniority within the Preferred Hiring Pool plays an important role in making assignments when there are not enough scheduled classes available for an upcoming semester. Rules governing application of these criteria appear in Article 30 of the PFT-District Collective Bargaining Agreement.

31. It is a contractual obligation of the District to conduct sufficient evaluations of academic employees to enable them to meet the requirement of having worked in eight of the last twelve semesters, in order to have an opportunity to attain placement in the Preferred Hiring Pool.

32. Approximately 40 part-time, temporary faculty have evaluations scheduled for the Spring 2020 semester at the District's four colleges (Laney, Merritt, Alameda and Berkeley). These evaluations will be crucial in determining if they have met the requisite standard of being evaluated as "surpasses requirements" "or better", as set forth in Article 30 of the PFT

District agreement.

33. The District announced it intends to cancel evaluations which have been planned or scheduled for the Spring 2020 semester, thereby penalizing faculty who require said evaluation in order to enter the Preferred Hiring

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Pool. This action by the District will cost some teachers their jobs, and will for some part-time faculty, reduce or eliminate their opportunity to qualify for the Preferred Hiring Pool or continue teaching in Peralta.

34. PFT requested negotiations over this evaluation issue to prevent the District's violation of the Agreement and the rights of faculty to a timely evaluation. The District has refused to negotiate. On April 2, 2020, the District, by Siri Brown informed PFT that "we are not interested in moving any faculty into the Preferential Pool and time is passing by." In refusing to negotiate with PFT in an effort to remedy the effects of COVID-19, the District has violated the EERA.

Wherefore, PFT requests the remedies set forth at the conclusion of this Charge.

#### **IV. The District's Failure to Negotiate Over Additional Work Assigned to Bargaining Unit Members, and Additional Work Days for Faculty; and Directly Dealing With Bargaining Unit Members and Bypassing the Union**

35. On or about April 6, 2020, the District began contacting individual faculty and through the Vice President of Instruction at each of the four District colleges, demanded that faculty "make up" the three weeks of work the District unilaterally cancelled, and which is the subject of the original charge.

36. On or about April 6, PFT demanded that the District meet and negotiate over the issue of requiring faculty to "make up" for classes the District unilaterally cancelled.

37. The District responded to the PFT's demand to bargain by ignoring it, and thereby bargained in bad faith, in violation of the EERA.

38. In addition, the District, by Kuni Hay, Vice President of Instruction at Berkeley City College, in an email dated on or about April 3, 2020, bypassed PFT and dealt directly with bargaining unit members in regard to demanding that they address "contact hours that were missed during the campus closure, Spring break, PD day, and the holiday" by "work[ing] in" these "hours of direct instruction as they continue their classes remotely or online." The District had not negotiated any such "make up time" with PFT. In bypassing PFT and dealing directly with unit members on their work time

and work load, the District failed to negotiate in good faith in violation

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of section 3543.5(c) of the Act, and interfered and denied PFT members their right to be represented by PFT, and interfered and denied PFT's right to represent said members.

**V. The District's Failure to Negotiate Over Additional Leave of Absence Reports it is Requiring of Faculty.**

39. On or about April 6, 2020, the District began demanding that faculty who were absent from work because of COVID-19 complete a Leave of Absence form every month instead of only when faculty have absence time to report. PFT demanded that the District negotiate over use of the form. The District's response was to not respond to the PFT request.

40. In failing to respond to PFT and in failing to negotiate over a new reporting requirement concerning the Leave of Absence report, the District bargained in bad faith in violation of the EERA, and interfered and denied PFT members their right to be represented by PFT, and interfered and denied PFT's right to represent said members, in violation of sections 3543.5(a), (b), and (c) of the Act.

**VI. The District's Failure to Negotiate over Supplies for Faculty and over procedural rules for negotiations.**

41. The District has converted numerous in-person classes to over-the internet classes, due to COVID-19.

42. The District has recently purchased supplies, including an estimated 100 computers. These supplies are necessary for some faculty to adequately perform their jobs. PFT requested negotiations with the District over distribution of the supplies, including the computers. The District's response to this request was to ignore it.

43. In failing to negotiate over the distribution of supplies, including computers, the District bargained in bad faith in violation of the EERA.

44. During a recent bargaining session, and after, the District informed PFT that it wished to make audio recordings of bargaining sessions. The PFT refused to agree. Subsequently, the District informed PFT it wished to bring a court reporter to negotiations sessions to make a verbatim record of negotiations. PFT responded by making a counter proposal – a court reporter would be accepted provided (1) the District paid the cost, (2) the

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PFT was given a copy of the transcript and (3) this new method be

considered temporary, and subject to discontinuance if PFT determined it was not appropriate in PFT's discretion. The District has not responded to PFT's proposal, thereby engaging in bad faith negotiations in violation of the EERA.

PFT requests the remedies set forth at the conclusion of this First Amended Charge.

**In Addition to the Remedies Set Forth in Attachment A, Charging Party requests the following additional Remedies for the District's unfair labor practices set forth in Attachments A and A2:**

1. That the district cease and desist from acting unilaterally, and without negotiations, destroying or dismantling listservs and other means of communication utilized by PFT and the faculty, in effect prior to April 2020, without notice and negotiations as to the decision and its effects; and denying PFT and its unit members access to said means of communication; and, changing or modifying access by PFT and its members to the listservs; and, censoring or otherwise interfering in use of the listservs by PFT and its members, in violation of the EERA.

2. That the district restore the *status quo ante*, and cease and desist from giving effect to its unilaterally adopted listserv requirements.

3. That the district cease and desist from acting unilaterally to adopt working conditions regarding qualifying for the Part-Time Preference Pool, or other employment conditions dependent on evaluations, including but not limited to subsequent probationary contracts or tenure.

4. That the District be required to negotiate with the Federation in good faith over all matters within the scope of representation, including but not limited to listserv policies, practices and arrangements in effect prior to the unilateral changes occurring herein, evaluation policies, working conditions, and all related terms and conditions of employment.

5. That the District take effective action to immediately rectify its failure to respond to communications from the PFT as described herein, and its flagrant violations of the rights of PFT and academic employees in regard to access to District means of communication, including but not limited to:

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6. That the District be required to take action to remedy its flagrant actions by, *inter alia*, reimbursing PFT for its legal and staff fees and expenses incurred in prosecuting this action, and its attorneys fees, costs and expenses, in regard to this case.

7. That the District cease and desist interfering in or denying PFT or its members their rights under the EERA. This includes, but is not limited to,

ceasing to interfere in employees protected rights to discuss matters related to their employment with others, including other employees and union representatives.

8. That the District cease and desist denying PFT its right to represent employees entitled to representation by their Union during investigatory interviews.

9. Make employees and PFT whole for any losses resulting from the employer's conduct in the matters alleged herein, plus interest at the legal rate.

10. That the District cease and desist violating established practices regarding the evaluation of faculty who were entitled to be evaluated in order to become a member of the Preferred Hiring Pool; and include all such employees in the Preferred Hiring Pool pending the adoption, through negotiations with PFT, policies and procedures resulting from the District's unilateral decision to not evaluate faculty and to not place faculty in the Preferred Hiring Pool, who were scheduled for an evaluation in Spring 2020; and to make whole all employees who were denied entry into the Preferred Hiring Pool who were not given an evaluation in Spring 2020, until such time as the PFT and District agree on such procedures as are necessary to make said employees whole.

11. That the District cease and desist from failing to negotiate over any additional working hours or days needed for faculty who were teaching classes that the District unilaterally cancelled in Spring 2020, and make faculty whole for any losses resulting from the District's action.

12. That the District cease and desist dealing directly with unit members, and/or bypassing the PFT, in regard to establishing terms and conditions of employment.

13. That the District cease and desist creating Leave of Absence forms

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for faculty, without notice to and negotiations with PFT.

14. That the District cease and desist failing to negotiate distribution of supplies to faculty.

15. That the District cease and desist failing to negotiate in good faith with PFT over procedures and ground rules for negotiations, including use of court reporters or recording devices.

16. That the District cease and desist refusing or failing to negotiate or respond to the designated representatives of the PFT, including but not limited to its President and Chief

Negotiator.

17. That the District's Chancellor be ordered to read the Board's order in this case aloud to members of the bargaining unit, either by a platform such as Zoom or Skype, or in an assembly, at the choice of the PFT, notifying the bargaining unit of the District's flagrant violation of the rights of PFT and the faculty.

18. For such other and further remedies and relief as are just and proper. Page 12 of 12



I declare that I am a resident of or employed in the County of

\_\_\_\_\_, State of \_\_\_\_\_. I am over the age of 18

years. The name and address of my Residence or business is

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

On \_\_\_\_\_, I served the

\_\_\_\_\_ (Date) (Description of document(s))

\_\_\_\_\_ in Case No.

\_\_\_\_\_. (Description of document(s) continued) (PERB Case No.)

on the parties listed below by (check the applicable method(s)):

placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;

personal delivery;

facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

electronic service (e-mail) - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) to the electronic service address(es) listed below on the date indicated. (May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).)

(Include here the name, address, e-mail address and/or fax number of the Respondent and/or any other parties served.)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on \_\_\_\_\_, at (Date)

\_\_\_\_\_  
(City) (State)

(Type or print name)

(Signature)