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May 28, 2020

Jeremy Zeitlen, Supervising Regional Attorney *Via Electronic Upload Portal* Public  
Employment Relations Board  
San Francisco Regional Office  
1330 Broadway, Suite 1532  
Oakland, CA 94612-2514

**Re: Position Statement of Peralta Community College District**  
***Peralta Federation of Teachers AFT Local 1603 v. Peralta Community***  
***College District***  
**Unfair Practice Charge No. SF-CE-3394-E**

Dear Mr. Zeitlen,

This letter constitutes the Peralta Community College District's ("District's") position statement in response to the above referenced Unfair Labor Practice Charge ("Charge"), filed by the Peralta Federation of Teachers, AFT Local 1603 ("PFT") on March 23, 2020, and its Amended Charge filed on April 7, 2020. As is explained more fully below, the Charge must be dismissed because the facts alleged by PFT do not, even if assumed true, state a *prima facie* case for any violation of the Educational Employment Relations Act ("EERA," Gov. Code §§ 3540 *et seq.*).

**Summary of Allegations**

The PFT alleges that the District, without notice, acted unilaterally in its decisions that affect the PFT and its membership, thereby violating 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 (a), (b) &(c).

Additionally, the PFT alleges that 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.

Specifically, in its March 23, 2020 Charge, the PFT alleges the following:

1. The District failed to negotiate regarding the effects of COVID-19 on its union membership. Specifically, items including, but not limited to:
  - a. faculty loads;

- b. wages/compensation;
  - c. part-time assignments;
  - d. changes to the academic calendar;
  - e. evaluations; and
  - f. workload.
2. Changes to the Academic Calendar.
  3. Cancellation of Classes.

### **Summary of District's Position**

#### **I. PFT Bears the Burden of Proof to State All Required Elements of the Applicable *Prima Facie* Case for its Alleged EERA Violations**

PFT bears the burden of alleging facts sufficient to state a *prima facie* case for each alleged violation of the EERA. (See, e.g., *National Union of Healthcare Workers* (2012) PERB Dec. No. 2249-M.) This burden cannot be met by pleading mere legal conclusions and speculation; it must instead be met by pleading *actual facts* establishing *every* element of the applicable *prima facie* case standard. (*Charter Oak USD* (1991) PERB Dec. No. 873.). When, as here, that burden is not met, the Charge must be dismissed.

Moreover, the PFT cannot meet its burden for a *prima facie* case when the “facts” as alleged in its Charge are nothing more than gross mischaracterizations of the truth, and outright falsehoods, intended to deceive the Public Employment Relations Board (“PERB”).

#### **II. PFT Has Not Alleged Facts Stating a *Prima Facie* Case for Unilateral Action, Failure to Bargain in Good Faith or Interference with the PFT's Exclusive Representation of its Members**

To establish a *prima facie* case of an unlawful unilateral change, the charging party must show: (1) the employer took action to change policy; (2) the change in policy concerned a matter within the scope of representation; (3) the action was taken without giving the exclusive representative notice or opportunity to bargain over the change; and (4) the action has a generalized effect or continuing impact on terms and conditions of employment. (*Fairfield-Suisun Unified School District* (2012) PERB Decision No. 2262).

As to the elements above that are required to establish and *prima facie* case, the PFT's Charge fails for the following reasons:

1. No unilateral change in policy occurred because the parties' collective bargaining agreement (“CBA”) expressly allows the District to change practices in an emergency. (Article 7 Management Rights)
2. The CBA language represents an express waiver of the right to negotiate over changes in an emergency.

3. The State of California declared a State of Emergency on March 4, 2020, and on March 16 and March 19, 2020 respectively, Alameda County and the State of California issued Shelter in-Place orders.
4. The District's Chancellor, Dr. Regina Stanback Stroud ("Stanback Stroud"), established an Emergency Operations Command team on March 6, 2020, effectively declaring that the District was operating in an emergency situation.
5. A Special Board Meeting was held on March 17, 2020 in order to adopt a resolution to declare a state of emergency for the District. (See Exhibit 9 Board Agenda Item).

**The District has a Valid Claim of "Business Necessity" Due to the Declared State of Emergency, and Declaration of Emergency Conditions Within the District, Which Excused it from Negotiations**

**State Declaration of Emergency and Article 7 of the Collective Bargaining Agreement**

PERB has recognized that under limited circumstances, an employer may be excused from negotiating on the basis of a true emergency that provides a basis for claiming that a business necessity excused a unilateral change. (*Cloverdale Unified School District* (1991) PERB Decision No. 911).

As in *Calexico School District* (1983) PERB Decision No. 357, the District can establish "operational necessity" or "business necessity" as a defense to a unilateral change. Specifically, there was a State Declaration of Emergency that left the District with no alternative to the action taken.

Additionally, the District's actions were an unavoidable result of a sudden change in circumstance (Declared State of Emergency) beyond the District's control. (*Lucia Mar Unified School District* (2001) PERB Decision No. 1440, ALJ Proposed Dec., p. 46.)

Here, the PFT contends that the District failed to contact them as of the date of Gov. Gavin Newsom's March 4, 2020 Executive Order, to discuss negotiable aspects of the CBA. This assertion fails to meet the criteria of a *prima facie* case for several reasons. First, on March 2, 2020, two days prior to Gov. Newsom's Executive Order, Stanback Stroud released a lengthy communication to the District community detailing all information regarding COVID-19, known at that time. (**Exhibit 1**).

Moreover, it is imperative to note the manner in which Stanback Stroud's communication was distributed. The communique was sent to the email address of every faculty member, employee and student of the District. Additionally, it was posted on the front page of the District's website, which is easily accessible to all faculty, staff and students. Furthermore, email communication and posting information on the District's website has historically served as the most viable means to distribute mass communication.

As the PFT points out, Gov. Newsom declared a State of Emergency (“SOE”) on March 4, 2020, two days following the District’s mass communication on COVID-19. Section eleven (11) of the SOE declaration provided, *“To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders, and community care facilities by no later than March 10, 2020.”* Even if it could be assumed, for the limited purpose of the current argument, that the District is considered a “State department,” the District complied with section eleven (11) of the SOE eight (8) days prior to the deadline, with its March 2, 2020 communication. (**Exhibit 2**).

Even at the time of the March 4, 2020 SOE declaration, the District had no way of knowing that the COVID-19 crisis would escalate so severely, causing the District and the entire nation to shut down. Thus, the District’s sincere belief was that it was acting in good faith toward the PFT, and the Peralta community at large by continuing to provide updated communications that were rapidly evolving day by day.

<b>Date</b>	<b>Event</b>
February 5, 2020	Message from Stanback Stroud to the Peralta community re: COVID 19 safety guidelines as established by the CDC & WHO
February 7, 2020	<i>Peralta Gems</i> newsletter with COVID-19 update
February 28, 2020	<i>Peralta Gems</i> newsletter with COVID-19 update
February 28, 2020	Message from Stanback Stroud to the Peralta community regarding creation of Health Services website, campus closure and travel bans re: COVID-19
March 2, 2020	District-wide from Peralta Health Services re: COVID-19
March 4, 2020	Message from Stanback Stroud to Peralta community with updates re: COVID-19 safety protocols and guidelines
March 6, 2020	Message from Stanback Stroud to Peralta community establishing the Emergency Operations Command team.
March 10, 2020	Message from Vice Chancellor Brown to academic community re: education continuity and possibility of campus closure
March 12, 2020	Message from Stanback Stroud re: change to academic calendar as a result of COVID-19
March 16, 2020	Message from Stanback Stroud re: Alameda County Shelter-in-Place

Date	Event
March 19, 2020	Message from Stanback Stroud to Peralta community re: State of California Shelter-in-Place

Table 1 - Dates of District-wide Communication Re: COVID-19 Prior to the Filing of the Charge

On March 17, 2020, the Board of Trustees adopted a resolution declaring emergency conditions within the District, which granted the Chancellor emergency authority over District operations. **(Exhibit 3).**

Article 7 of the PFT CBA expressly provides in part, *“The Federation recognizes and agrees that the District retains its rights to temporarily amend, modify, or rescind practices referred to in this Agreement in case of emergency. An emergency is considered an Act of God or a natural disaster or other acts, which may be injurious or harmful to the students, employees, or to the educational mission of the District. When an emergency is declared, the District shall immediately notify and consult with the Federation.”*

*The District agrees that, in regard to a declared emergency and decisions made therein, the Federation shall have the right to subject such declaration and decisions made therein to the provisions of the grievance procedure when such declaration and decisions violate the provisions of this Agreement. Any actions taken by the District as a result of a Declaration of Emergency shall be reasonable under the circumstances, and the District shall, upon request of the Federation, restore the status quo ante the emergency as soon as reasonably practicable.”*  
**(Exhibit 4)**

There are several items of significance here. First, Article 7 references the District’s right to temporarily amend provisions of the contract if there is an “Act of God or natural disaster.” Even the PFT acknowledges in its Charge that on March 4, 2020, Governor Newsom declared a State of Emergency due to COVID-19.

Second, and most important, the provision states that decisions made during a declared emergency, which the PFT believes are in violation of the contract, are to be handled through the negotiated grievance procedure process. To date, that has not occurred. Therefore, PERB is not the correct venue for the PFT to settle the current dispute, and thus the PFT, and not the District, is in violation of the CBA.

### **Shanoski’s March 9, 2020 Email**

The PFT’s allegation is worded as to suggest that Jennifer Shanoski (“Shanoski”) sent an email to Stanback Stroud, Interim Vice Chancellor Chanelle Whittaker (“Whittaker”) and Vice Chancellor Siri Brown (“Brown”) on March 9, 2020, because the PFT had not received any

communication prior to that date. As detailed above in Table 1, the PFT, along with the entire Peralta community received extensive COVID-19 communication from the District.

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This is a clear example of the PFT going out of its way to mislead PERB by withholding information, and knowingly attempting to establish a false narrative.

Moreover, Shanoski's March 9, 2020 email was not a standalone email (Exhibit 4). The email was actually in response to a March 8, 2020 email Stanback Stroud sent to all employees (including union constituency groups), thanking those that had provided feedback, and calling for recommendations and suggestions from others, as the District continued to work in crisis mode, to ensure the health and safety of its community.

Therefore, it is incomprehensible that the PFT would allege that the District did not, in any way, reach out to them to discuss the effects of COVID-19 on its members.

It is imperative to point out that at the time of Shanoski's March 9, 2020 email, there was nothing to negotiate with the PFT. There was no indication the District would be required to close its facilities. The Academic Calendar had not been changed. Neither faculty nor staff had been laid off. There was no change to the salaries of any faculty, staff, or student workers. At that time, the District, as the rest of nation, was grappling with understanding the full scope of the COVID-19 pandemic.

As the PFT points out, Shanoski also emailed Whittaker on March 9, 2020. Within a mere eleven (11) minutes, Whittaker responded to Shanoski informing her that the District was in the process of developing the proper processes and procedures to address the COVID-19 crisis. Additionally, Whittaker informed Shanoski that the District was more than willing to meet with the PFT to discuss its concerns.

At the moment of Whittaker's response, the District was receiving nearly hourly updates from different health organizations, and monitoring local school districts. As has been the case throughout the pandemic, information provided by state and local governmental agencies could drastically change throughout the course of any given day. Thus, it was not until later in the day on March 9, 2020, that the District determined it needed to immediately move forward with implementing a plan to transition classes to remote instruction, and to immediately remove students from campus in order to prevent the spread of COVID-19. With that, the District understood that such changes to the mode of instruction was a negotiable item, and consultation with the PFT was required.

#### **March 9, 2020 Text Message Between Brown and Shanoski**

Here again, the PFT has attempted to deceive PERB by intentionally providing limited information, in its attempt to manufacture violations of misconduct and inaction by the District.

The full scope of the text conversation between Brown and Shanoski is as follows:

Brown:

*I'm sending u and Donald some info in about an hour. Closure*

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Shanoski:

*Ok. But this is mostly negotiable. And the fact that our admin is acting unilaterally without negotiating or even talking to us is a problem. And its a problem that we will have to push back on. Im so disappointed. Not in you. But in this process. This isnt collaboration. This is coming up with a plan and informing us. We can actually help solve problems and come up with solutions.*

Brown:

*What are you talking about I am communicating w u. Our first meeting was Friday!. Its now Monday!!!*

Shanoski:

*Ok. I dont want to fight. That's not my goal. I sent an email. These things are negotiable. Faculty are freaking out. Hopefully someone will reach out to include us in a meeting to discuss. Ill look at your email later.*

Brown:

*Im not the Chancellor Im doing my part in an emergency and faculty are all in the development of my part. So direct it to someone else.*

Shanoski:

*I get it. Im not attacking you.*

Here, the full scope of the conversation between the parties detail the fact that the District, via Brown, reached out to the PFT via its President, Shanoski. Brown informed Shanoski that she would be sending email communication for the parties to discuss. When Shanoski replied with her belief that the items were negotiable, Brown informed her that she was acting accordingly by engaging the PFT.

Also important in the communication above is that Brown points out to Shanoski that the newly established Emergency Operations Command team's first meeting was Friday, March 6, 2020, and that it had only been one (1) business day between that meeting, and Brown's communication to Shanoski.

Moreover, as will be discussed below, the District and the PFT met in person to negotiate the Academic Calendar the following day. Thus, a blatant contradiction to the PFT's allegation that the District acted unilaterally and failed to negotiate.

**March 10, 2020**

The PFT is correct in that the CBA calls for consultation and agreement between it and the District when adjusting the Academic Calendar. (**Exhibit 6**).

On the morning of March 10, 2020, Stanback Stroud's Executive Cabinet met to preliminarily draft a proposed change to the Academic Calendar, which was to be presented to Shanoski the same day, for the very consultation the PFT erroneously asserts did not occur. See **Exhibit 7** for pictures of the draft plan as captured in real time on Whittaker's cell phone, at 10:26 a.m., 10:39

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a.m., 10:43 a.m., and 10:54 a.m. respectively. At or around noon the same day, a mere one hour later, Whittaker, Brown and Shanoski met in person.

The District points out a discrepancy regarding the PFT's item #11 in the current Charge. The PFT states that Brown and Whittaker called Shanoski and met via phone. That is not accurate. Brown contacted Shanoski and requested to meet. Shanoski stated that she was available to come to the District. The meeting was held face-to-face in Brown's office, where the items referenced in **Exhibit 7** were written on the wall.

At the start of the meeting, Shanoski was loud and ill-mannered, voicing her concern that the District had failed to communicate strategy and procedure with her, the PFT, and the Peralta community at large. It was communicated to Shanoski that the draft plan on the wall was only written just prior to her arrival, and that she was immediately contacted as the Union's President, to discuss the matter and obtain feedback.

During the meeting, options regarding possible changes to the Academic Calendar were discussed with Shanoski, as well as foreseeable concerns regarding the effects to the changes of working conditions for faculty.

Shanoski was informed that the District was preparing to call a Special Board Meeting to adopt changes to the Academic Calendar, and thus required the PFT's input immediately. Shanoski replied that she would immediately reach out to her Executive Counsel and provide a timely response.

As evidence by **Exhibit 8**, Brown emailed Shanoski following the meeting, to memorialize what had just be discussed moments earlier. Brown specifically stated that she needed an answer within an hour, so that Stanback Stroud could send out the appropriate messaging.

At 2:01 p.m., Shanoski replied to Brown's email with her understanding of the conversation and draft plan, as well as provided additional information the PFT wanted in the notification.

At 2:09 p.m., Shanoski again replied to Brown's email with the exact language she was going to send to her Executive Counsel. It is imperative to note that the opening sentence of Shanoski's email states, "*This is the plan that has been negotiated by the District and PFT to address concerns regarding the spread of the coronavirus (COVID-19).*" A clear indication that the District and the PFT did in fact meet and negotiate over the Academic Calendar and effects to

working conditions.

At 3:17 p.m., Brown responded to Shanoski with, “*I think this looks good. Thanks.*”

The District did not receive another response from Shanoski to this particular email chain until 5:46 p.m., wherein Shanoski states, “*Before we can agree to this, we need some clarification on how non-instructional faculty will be affected if they are not able to change spring break plans. Will they be permitted to continue offering non-instructional services next week?*”

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In a separate email exchange enclosed as **Exhibit 9**, Shanoski wrote to Brown and Whittaker asking a question regarding a concern with a single faculty member. Brown immediately responded to Shanoski to let her know that the District was working to address the issue, and suggested that the faculty member reach out to their supervisor for clarification.

In no way did Shanoski state in the email exchange (**Exhibit 9**) that the situation regarding the single faculty member, had any bearing on the language that had previously been negotiated and agreed upon between the District and PFT.

The numerous discrepancies and outright falsehoods in the PFT’s allegations in the full Charge, and section #11 specifically, are significant. First, the PFT alleges unilateral action by the District, and failure to negotiate. The above referenced exhibits substantiates that the District reached out to the PFT, and all constituency groups for feedback. Moreover, when Shanoski emailed Whittaker requesting a meeting, Whittaker immediately responded accepting the invitation.

Second, the PFT only provides an excerpt of one email exchange between the parties on March 10, 2020, when in fact, the parties communicated and negotiated throughout the day, and actually agreed upon a strategy to move forward. This was done in an attempt to bolster the PFT’s fabricated claims, and provide PERB with misinformation.

Moreover, the current Charge untruthfully describes a telephone conversation between Shanoski, Brown and Whittaker that never actually occurred on March 10, 2020. Worse, the PFT asserts that Shanoski told Brown and Whittaker that she would respond to them by 5:00 p.m., when the documented evidence is to the contrary. Specifically, at 1:30 p.m., Brown told Shanoski to respond to her within one hour, which was indicative of the message communicated to her during the in-person meeting. Shanoski replied to the email at 2:01 p.m., and then again at 2:09 p.m.

When Shanoski did not reply back to Brown or Whittaker following her 2:09 p.m., where she stated, “*This is the plan that has been negotiated by the District and PFT to address concerns regarding the spread of the coronavirus (COVID-19)*”, it was assumed by the District that there was in fact an agreement by the parties.

There is no language in the entire email chain of March 10, 2020, where Shanoski informs Whittaker or Brown that she would reply to them by 5:00 p.m. Even if PFT’s erroneous statement is believed to be true, and the District was to wait until 5:00 p.m. for another response,

Shanoski in fact did not respond to the District by 5:00 p.m., but instead sent an email at 5:46 p.m.

Additionally, the PFT proclaims that the District sent out a notification prior to the mysterious 5:00 p.m. deadline that does not appear in any written documentation, and that such communication announced a Special Board Meeting, and stated the PFT agreed to the changes in the Academic Calendar. Surprisingly, the PFT did not attach as an exhibit such communication it relies upon, because in fact, that is not the actual language of the communication. See **Exhibit 3**, the Special Meeting Board Agenda. On page three of four (3 of 4), Background Analysis Section, paragraph two (2), it reads, “*We have consulted with the PFT and am recommending a*

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*change in the Academic Calendar to move Spring Break from the originally scheduled week of April 13-17, to March 16-20.”*

There was absolutely nothing nefarious or misleading in the District’s message, nor was there a violation of the CBA. Again, it is clear and evident from the attached exhibits that the District and the PFT had been in consultation with each other throughout the day on March 9 and 10, 2020. Furthermore, the District’s communication enclosed as **Exhibit 10**, was sent to the Peralta community at 3:36 p.m.; one hour and twenty-six minutes after Shanoski emailed Brown and Whittaker with the language, “*This is the plan that has been negotiated by the District and PFT to address concerns regarding the spread of the coronavirus (COVID-19).*” Thus, the District reasonably relied on Shanoski’s email communication.

Important is the fact that the communication in **Exhibit 10** was notification to the Peralta community of the Special Board Meeting that was not to occur until roughly twenty-four (24) hours in the future. There was more than ample time to continue meeting and negotiating with the PFT prior to the Special Meeting. In fact, in one of very few truthful statements in the PFT’s Charge, it states that Shanoski and Stanback Stroud orally agreed to the changes to the Academic Calendar, prior to the Special Board Meeting. Again, this agreement mirrors the same agreement between Shanoski, Brown and Whittaker just one day prior.

### **March 16, 2020**

The PFT again alleges that on March 16, 2020, the District unilaterally cancelled classes for three (3) weeks without consultation or negotiation with the PFT. Here, the PFT conflates issues and creates confusion in its continued attempt to mislead PERB.

As the aforementioned evidence shows, and the PFT acknowledges in its own Charge, the PFT was consulted on March 10, 2020 regarding the cancellation of classes, among other things, that was to occur on March 11, 2020. Moreover, the Charge states at section #11, that Shanoski and Stanback Stroud made an oral agreement the morning of March 11, 2020 regarding the cancellation of classes for March 11, 12, 13 and 14, 2020. In addition to the cancellation of classes, there was an agreement to move Spring Break to the week of March 16-21, 2020.

Therefore, it is simply untrue that on March 16, 2020, the PFT learned for the first time that the District cancelled classes and adjusted the Spring Break schedule.

On March 16, 2020, however, Alameda County issued a mandatory “Shelter-in-Place” order that required the District to take immediate action. Such action required the District to send all employees home to work remotely, and to cancel all face-to-face classes, once Spring Break concluded. By law, the District was required to act immediately to protect its students, staff and faculty. It should be noted that all four (4) colleges that make up the District are within Alameda County.

As with most educational institutions across the nation, it was a daunting task to immediately transform instruction from face-to-face, to an online platform. It was expressly communicated that during the timeframe of March 23 through April 6, 2020, that the District would be working hard to convert as many classes as possible to a remote form of instruction to maintain

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instructional continuity. Moreover, that timeframe was to be used to allow faculty the opportunity to receive training in order to properly transition instruction to an online platform.

On March 19, 2020, Gov. Newsom issued a statewide “Shelter-in-Place” order, with no specific end date. Again, the District was required to remain compliant with the law. With both the March 16 and March 19, 2020 orders, the District could not, within the confines of the law, safely return students and faculty to the classroom.

Perhaps in the future, it would satisfy the PFT if Gov. Newsom contacted them directly for consultation regarding his decisions on how best to protect the health and safety of the citizens of California.

### **Unilateral Cancellation of Classes**

The PFT asserts throughout its Charge that the District did not have authority to cancel classes without first negotiating with the PFT. That is simply untrue. It has always been the ultimate authority of the Chancellor to take action that is in the best interest of the institution, and the constituents it serves. In doing so, there are times, such as during emergency situations that threaten the health and safety of the District, where the Chancellor is required to immediately take all necessary measures to protect faculty, staff and students. This includes cancelling classes if deemed necessary.

The District cites two (2) specific recent occasions where the Chancellor of the District was required, due to an emergency situation that affected the health and safety of the Peralta community, to immediately cancel classes. Because this authority lies within the scope of power of the Chancellor and had been established by past practice, the decision was not negotiated with the PFT.

- In November 2018, due to the Sonoma County fires, and the resulting harmful air quality in the Bay Area, the Chancellor utilized his authority to cancel all face-to-face classes until the quality of the air improved, such that it was safe to return to campus.
- In October 2019, due to fires in the North Bay and the resulting harsh winds, PG&E shut off power to several of the buildings at one of the District’s campuses. In response, the

Chancellor chose not to move classes to an alternative location, but to cancel them, until such time that it was safe to return to campus.

At no time where the above decisions to cancel classes negotiated with the PFT. However, if there were any resulting effects of such decisions, the District informed PFT that it would be ready and available to address their concerns. Neither of the above decisions were grieved by the PFT. Instead, the Chancellor was congratulated for acting so swiftly.

Moreover, the District notes that the PFT leadership was the same in both above situations, as it is now.

The PFT further asserts that the District violated Article 18.D.8 when it cancelled classes. Again, the PFT is conflating unrelated issues, and only providing partial facts in order to sustain its inaccurate claims.

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Indeed, Article 18.D.8 states, “*Except for error or inadvertence, no class shall be canceled after the first census.*” However, Article 18 has nothing to do with the current issue, and instead references the fact that the District must pay a faculty member for the first week of class, if the class is cancelled for anything other than error or inadvertence, after the first census. (**Exhibit 11**).

### **Conclusion**

The PFT has failed to meet its *prima facie* case for unlawful unilateral change as set forth in *Fairfield-Suisun Unified School District* (2012) PERB Decision No. 2262. In as much as the PFT could argue that the District did engage in unilateral action, it has a valid defense of business necessity due to the State of California Declaration of Emergency issued by Gov. Newsom, the declaration of emergency conditions within the District during the March 17, 2020 Special Board Meeting, as well as Article 7 of the CBA.

Even in the absence of a Declaration of Emergency, and declared emergency conditions, the District has shown sufficient proof that as soon as it became aware of the need to take action that was within the scope of representation of the PFT, it immediately contacted the PFT to meet and confer.

Moreover, since the Declaration of Emergency and the Shelter-in-Place orders, the District has continued to meet and confer with the PFT regarding all of its actions that may have an effect on the “wages, hours and working conditions” of the PFT’s membership.

Lastly, Government Code 3541.5(a)(2) states in part, “*Any . . . employee organization . . . shall have the right to file an unfair practice charge, except that the board shall not: . . . (2) [i]ssue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration.*”

Therefore, it is the District’s position that PERB is not the appropriate body to hear the current matter. Instead, this matter should be deferred to the grievance and arbitration process as outlined

in the parties' CBA.

**Response to Amended Charge**

**Summary of District's Position - Amended Charge**

**I. The PFT Fails to Meet its *Prima Facie* Case of 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**

The PFT is simply wrong in its argument that the District violated section 3543.1(b) of the EERA and Article 6D of the CBA. While section 3543.1(b) states in part "...*right of reasonable access...*," and "...*other means of communication...*," it also states that such other means of communication are "...*subject to reasonable regulation...*" Additionally, the PFT fails to establish that the change to the District's Faculty, Administrator and Student Listserv ("FAS") was a change in past practice.

As the PFT acknowledges in its Charge, the District's FAS system has been in existence for at least the last fifteen (15) years. However, what the PFT neglects to point out is that it had no involvement in its creation, nor has it had any participation in its maintenance, or the policies that regulate it, over the past fifteen (15) years. Also significant to note is that the FAS was created only as subcomponent to an already existing email system. The purpose of which was to allow individuals within a single geographic location (specific college campus) greater ease of network contact. It was not however, ever a mechanism whereby union leadership gained additional access to its represented constituents.

Over the years, the FAS has increasingly been used not as a tool to collegially engage and communicate with individuals within a geographic location, but instead as a tool to discuss personal, non-district business, to incite hate speech, and spew vitriol throughout the Peralta

community. All of which, are a violation of the policies and procedures established by the District.

As with all other means of communication in the District, the FAS is subject to Board Policy and Administrative Procedure as approved by the Board of Trustees and the Chancellor, not the PFT. Specifically, Board Policy 3720 Information Technology Use, Administrative Procedure 3720 Telephone Computer and Network Use, and Administrative Procedure 7380, all provide guidelines around the acceptable use, regulation and violation of the District's computer networking systems. (**Exhibit 12**). In no way did the District make changes to any of the policies that guide the use of the email or networking system. It simply continued to enforce the power given to it by the aforementioned Board Policies and Administrative Procedures.

In particular, Board Policy 3720 Information Technology Use, and Administrative Procedure 3720 Telephone Computer and Network Use specifically discuss the employee's responsibility not to abuse networking resources, harass or defame others; the violation of which can result in

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the loss of District network privileges. Administrative Procedure 7380 further proscribes unacceptable behaviors that are in violation of District policy.

The District finds it interesting that the two examples provided in PFT's Charge, are clear examples of their members abusing Board Policy and Administrative Procedure.

### **Judy Juanita**

Here again, the PFT is conflating two separate issues; Ms. Juanita's right to send emails regarding her wages, and Ms. Juanita's unacceptable, derogatory language directed at employees in the Finance Department. There is no dispute that Ms. Juanita had a right to send email regarding her wage grievance. However, there is an express code of conduct that must be adhered to by all employees; Ms. Juanita is no exception. While it is understandable that Ms. Juanita would be upset regarding her wage grievance, it does not allow her the ability to disrespect employees and refer to them in derogatory terms, which she did when she sent an email referring to the Finance Department, stating, "*Bitch better have my money.*"

Stanback Stroud in her January 16, 2020 speech referenced the downturn in the culture and morale of the District, and stated that much of it was due to the contempt by which individuals speak to each other in email; specifically, the FAS. In her explanation, Stanback Stroud mentioned that she had been made aware of the "*Bitch better have my money,*" statement in an email, and used that specific reference to shed light on the disrespectful way in which individuals voice their concerns in publicized communications. Moreover, Stanback Stroud specifically stated that this violation, and others, were the basis for the District's decision to make necessary changes to the FAS.

In no way, did Stanback Stroud make a negative reference to any of the contents of Ms. Juanita's email, or her right to send the email, other than her specific comment of "*Bitch, better have my money.*" Stanback Stroud's speech can be located at the following link:

[https://www.youtube.com/watch?v=Oee\\_4OWnVbw](https://www.youtube.com/watch?v=Oee_4OWnVbw). Stanback Stroud's speech begins at the

52:59 mark.

### **Removal of April 3, 2020 Email**

The PFT argues that the posting of the email by the faculty member constitutes concerted activity for mutual aid and protection. The District disagrees. This situation was yet another example of the abuse of the email system, and a faculty member's attempt to publically harass, condemn and degrade another employee. Specifically, the faculty member referred to the employee as a "bully who sits behind a desk," and stated, "*You are a hostile authority figure who uses his position to cover up his mistakes and justify his aggression.*" (**Exhibit 13**). Statements such as these are the very reason the District implemented Board Policies and Administrative Procedures regarding civility, mutual respect and abuse of network systems.

Moreover, Article 12 of the CBA clearly defines the mechanism by which a faculty member is to initiate a grievance against another employee (**Exhibit 14**). Specifically, the faculty member is to refer such matter to his/her union representative, which is then referred to the necessary

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administrator or Human Resources. The proper protocol is not to send out a disparaging email to faculty, administrators, and staff in toto.

### **Past Practice**

The District did not engage in a unilateral change to past practice. As stated above, the FAS has been in existence for at least the past fifteen (15) years with no collaboration or involvement by the PFT. Additionally, it has always been the District's past practice to make any and all necessary changes to FAS and distribution lists, as it is the District's administrative right to do so.

For example, since at least 2006, the District has restricted access to one of its other distribution lists; [announcements@peralta.edu](mailto:announcements@peralta.edu). This was done, just as with the FAS, as a direct result of employee's blatant misuse of the District's communication policies. In both cases, implementing necessary restrictions allowed the District to better ensure that the type of information being disseminated en masse, was in adherence to established policy and procedure.

Additionally, it has always been past practice that the Chancellor has the authority to order the removal of a specific email or chain of emails from the network, if such mail is found to violate District policy. In this case, the removal of the email was the result of the mass distribution of offensive language, with the purpose of bringing shame and humiliation to a specific individual.

### **Prior Notice**

The PFT asserts that the change to the FAS was a negotiable item, and that therefore, it should have been provided prior notice and the opportunity to bargain. The District wholeheartedly disagrees.

First, as established above, there has been a clearly recognized past practice by the District, and none of its actions as alleged in the current Charge stray away from that practice. The District

has always maintained administrative rights and authority over all of its distribution lists, including the FAS.

Second, the change to the FAS list does not constitute a change to “wages, hours, and working conditions.” In no way was there a (1) change to the essential methods of communication, it (2) did not prohibit or interfere with the PFT’s or any other union’s ability to communicate with its members, and it (3) did not discriminate against any employee. The establishment of the FAS was not a bargained for benefit or right of any employee. It was a privilege, one with specific rules regarding its use, and established ramifications for violation of such rules.

The PFT argues interference and discrimination, when in fact, the District expanded the means by which employees can communicate with each other. Specifically, the District established the following:

1. Four (4) new mailboxes, one for each college, for individuals to use for requesting College-level announcements;
2. Four (4) new distribution lists, one for each college, for classified professional senate leaders to communicate with all classified professionals on their college campus;

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3. Four (4) new distribution lists, one for each college, for faculty senate leaders to communicate with all faculty members on their college campus;
4. New distribution list of all classified professionals across the District for use by the District Classified Senate leaders;
5. New distribution list of all faculty across the district for use by the District Academic Senate leaders; and
6. Three (3) new distribution lists, one for each collective bargaining unit, so that leadership from all three unions can communicate directly with their members.

Additionally, the District highlighted two (2) software communications tools that were already provided by the District, namely Microsoft Teams and Microsoft Yammer. Both tools allow for significant flexibility in creating communicative groups as neither are setup as moderated tools.

Despite inferences to the contrary, the District did not in any way, make changes to the main email communication system. All employees of the District still have the ability to send an email to anyone in the District, however, they must now do so individually, to the intended recipient.

Even if one could argue that the District was *required* to provide the PFT notice prior to making changes to the FAS, the District can prove that it did just that. The PFT acknowledges in its Charge that on January 16, 2020, Stanback Stroud announced to the Peralta community that there would soon be a change to reserve access to the various FAS email distribution lists for official organizational business.

On January 10, 2020, Stanback Stroud released a Board Update wherein she details the upcoming changes to the FAS due to employee misuse. Moreover, she discusses the creation of new methods of communication, and specifically discusses the Union’s ability to communicate

with its membership. (**Exhibit 15 p. 5-7**).

On January 21, 2020, the District published a newsletter titled, *Peralta Gems*. Here the Chancellor addressed the changes that were going to be made to the FAS (**Exhibit 16 p. 4**).

Again, on January 31, 2020, in another edition of *Peralta Gems*, the Chancellor discussed the problematic use of the District's FAS, and pointed out that since at least 2006, the District has and will continue, to make necessary changes to the its distribution lists (**Exhibit 17 p. 12-13**).

Also on January 31, 2020, the Chancellor attended the Participatory Governance Council meeting, along with the PFT and constituents of all union groups. The Chancellor again addressed the changes to the FAS, and welcomed questions and concerns from all.

### **Interference with Exclusive Representation**

The Charge alleges interference with the PFT's exclusive right of representation of its members. This is simply untrue. The FAS was never intended to be, and was never used as the exclusive method of communication by the PFT to its members. Emails sent through FAS were distributed to the whole community of faculty, administrators, and staff—not just to members of the PFT—without regard to if the information contained therein only pertained to the PFT and its members.

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Moreover, on a regular basis, the Department of Human Resources provides PFT with an official list of all of their unit members, for the sole purpose of effectuating a method by which the PFT can communicate with its membership.

If any member of the PFT wanted to send an email to its members, or vice versa, there was absolutely no change made that would prevent them from doing so.

## **II. The PFT Fails to Meet its *Prima Facie* Case That the District Interfered and Denied a Union Member/Office the Right of Representation**

The District did not violate sections 3543.5(a), (b) and (c) of the EERA, and deny Richard Greenspan ("Greenspan") representation in an investigative meeting. Here, the Charge inaccurately attributes actions by Interim General Counsel Delisle Warden ("Warden"), as a violation of Greenspan's right to representation.

As the Charge acknowledges, Greenspan was not a subject to the investigation, therefore not requiring the District to notify him that he was allowed representation. This is not at all to say that Greenspan could not have opted to bring representation to the meeting, if he chose to do so.

In all investigatory matters, the District is required to maintain the confidentiality of an investigation to the fullest extent possible. Therefore, Warden's statement in the communication to Greenspan that he should not discuss the interview or matters related to the investigation with others, was a statement solely meant to ensure confidentiality of process. The statement was not

however, a directive that Greenspan could not discuss the matter with, or obtain representation from the PFT.

Furthermore, per the CBA at Article 20 Disciplinary Actions and Investigative Procedures, there is an enumerated list of requirements that must be met when contacting a unit member that is the subject of an investigation (**Exhibit 18**). Greenspan does not fall into this category.

Additionally, it has long been the District's past practice that interviewees that are not the subject matter of an investigation, are not provided information prior to the meeting, as to protect the integrity of the investigative process.

The Charge further makes reference to the fact that Greenspan nor the Union's Counsel have been provided with additional information to date. The answer here is simple. There was no entitlement to information prior to the meeting. In as much that Greenspan, after arriving to the meeting and obtaining the necessary information, required additional time to confer with his representation, he would have been granted as much as time as needed.

Moreover, because Greenspan was not a subject to the investigation, he was not required to attend the meeting. Therefore, when he did not attend, there was no additional action for Warden to take regarding the matter, and no further action was taken.

### **III. The PFT Fails to Meet its *Prima Facie* Case Regarding the District's Alleged Failure to Negotiate Over Faculty Evaluations**

The allegation regarding the District's failure to negotiate regarding the matter of faculty evaluations is a wholeheartedly false.

In response to the State's Shelter-in-Place directive, the District closed its facilities the evening of March 16, 2020. On March 19, 2020, the District sent the PFT an email initiating the discussion regarding part-time faculty evaluations (**Exhibit 19**). The initial negotiations session took place March 24, 2020.

Subsequent to the meeting held on March 24, 2020, the District has continued to meet and bargain in good faith regarding part-time faculty evaluations, and other items. Meetings have been held on the following dates:

- April 10, 2020;
- April 29, 2020;
- May 8, 2020;
- May 14, 2020;
- May 20, 2020; and
- May 27, 2020.

The District points out that at the time of the filing of its Amended Unfair Labor Practice Charge,

the PFT and the District had been in contact and held two (2) negotiations sessions to discuss part-time faculty evaluations. Additionally, it was the District that initiated the conversation and the request to meet and bargain.

This is yet another example of the PFT's frivolous and knowingly false statements provided in its Charge.

#### **IV. The PFT Fails to Meet its *Prima Facie* Case Alleging the District Had Direct Dealings with the Faculty Regarding Classroom Makeup Hours**

Here, the PFT alleges that the District, via its Vice President of Instruction, Kuni Hay, bypassed the Union and dealt directly with the faculty to require that they "make up" lost contact hours. Again, the PFT has taken a situation out of context and manipulated the facts, in order to bolster its claim. The District did not require a single faculty member to "make up" any hours that were missed as a result of the cancellation of classes, or the COVID-19 crisis.

Hay's April 3, 2020 email to the faculty was not an attempt to bypass negotiations and consult with the Union. It was simply an effort to be proactive and solicit recommendations from faculty members on how they may make up contact hours, in the event the State required such action.

On March 10, 2020, Brown sent an email to Hay, along with other Vice Presidents and Presidents, detailing information she received from the State Chancellor's Office regarding contact hours. Brown specifically states that there was not yet a requirement that faculty "make

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up" contact hours, but that it would be advantageous to start considering the creation of a template to track such hours. (**Exhibit 20**).

That same day, Brown forwarded the email she sent to the Vice Presidents to Shanoski. Therefore, there was no concerted effort by the District to bypass the Union and negotiate directly with the faculty, because the information was given directly to the PFT contemporaneously. (**Exhibit 21**).

#### **V. The District Did Not Fail to Negotiate With the PFT Over Leave of Absence Reports**

The Leave of Absence Report (LAR) referenced by the PFT in its Charge is not new, and has been in existence for at least twenty (20) years. During this time, it has been a requirement that all employees, including fulltime faculty, fill out the form and provide it to their Dean or Vice President. Regardless of this requirement, there are faculty that have consistently failed to turn in the form.

The PFT is incorrect that the current situation as discussed in the Charge has any correlation to COVID-19. The matter arose due to Acting President Stacey Shears, reminding the staff, which included a particularly petulant faculty member, that the LARs were due for the month. The faculty member then conferred with the PFT because they did not want to follow instruction and fill out the form.

Another lie perpetuated by the PFT in its Charge is that it attempted to communicate with the District regarding this matter and the District's response was to not respond at all. The PFT's first contact with the District was on April 6, 2020, when Shanoski emailed Shears regarding a concern she received from a faculty member regarding the LAR. Shears responded the same day stating that she would contact Human Resources for guidance. (**Exhibit 22**).

The next day, April 7, 2020, Shears again responded to Shanoski and stated that Whittaker would be reaching out to her. Later that same day, Whittaker sent Shanoski an email answering her specific questions, and pointing out that Shanoski was mistaken in her belief that the LAR was a new form, or a new requirement for faculty. (**Exhibit 23**).

Shanoski again responded to Whittaker stating that the policy must be new, because she was unaware of it, and that the District should figure out another way of tracking sick leave. The District points out that Shanoski's mistaken belief, and/or her failure to follow the procedures set forth by the District for almost twenty (20) years, does not constitute unfair labor practices or a failure to negotiate with the PFT. (**Exhibit 23**).

Additionally, Shanoski commented in her email, *"This is a topic that needs further discussion. At the very least, we need to understand when changes like this take place so that we're able to help faculty when they come to us with questions."*

The topics to be discussed during each negotiation session are jointly agreed upon by the District and the PFT. With all the pressing issues surrounding the District and its community due to the COVID-19 crisis, LAR forms have not been at the forefront of matters to discuss. The District

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notes that since April 7, 2020, the PFT has not raised this issue. However, the District is, and has always been ready and willing to meet and further discuss the matter.

Moreover, the District finds it unreasonable on the part of the PFT to include this matter in its Charge. At the time of filing, there had only been one day of discussion, and the PFT did not allow the District the opportunity to provide additional clarification before erroneously concluding that the District acted improperly.

#### **VI. The PFT Fails to Meet It's *Prima Facie* Case that the District Refused to Negotiate over Equipment and Supplies for Faculty and Procedural Rules for Negotiations**

The District did not in any way fail or refuse to negotiate with the PFT over the distribution of supplies, and in particular the one hundred (100) computers it purchased. Recognizing its faculty and staff may require technological equipment while working remotely during the COVID-19 crisis, the District purchased computers and made them available for individuals to borrow. In addition to these computers, each college site has an inventory of computers for distribution as

needed.

As has been the established practice of the District, if a faculty member requires equipment in order to be able to complete instruction for a course, they are to submit a request to their Dean or Vice President. Many times, the District has an inventory from which to choose. In the event an item is not in the District's inventory, the faculty member may receive advance authorization to purchase the necessary equipment and later seek reimbursement, or the college may purchase it on the faculty member's behalf.

With regard to the newly purchased computers, there has been no change in policy with regard to how equipment is distributed. To date, each and every faculty member that has requested a computer has received one. Additionally, the colleges' inventories are such that there has not been a single request to distribute the newly purchased computers.

Moreover, during its negotiations meetings, the PFT did not provide the District with a proposal to negotiate equipment and supplies until April 13, 2020, six (6) days after the filing of the Amended Charge. (**Exhibit 24**). Thus, the District is baffled as to how it failed to negotiate on a specific matter prior to the PFT ever bringing it to their attention.

Also, as Whittaker is the Chief Labor Negotiator for the District, the request to bargain over equipment and supplies was not addressed to her until April 13, 2020, therefore begging the question, who did the PFT make such official request of?

Since first being made aware on April 13, 2020 that the PFT wished to negotiate over equipment and supplies, the District and the PFT have negotiated over this matter on the following dates:

- April 29, 2020

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- May 8, 2020
- May 14, 2020
- May 20, 2020

It should be noted that the PFT and District have already come to an agreement in concept on the topic of equipment and supplies. (**Exhibit 25**).

The PFT's claim that the District failed to negotiate over the procedural rules of negotiations is yet further evidence of the PFT's blatant falsehoods provided in its Charge. In fact, it is the PFT that changed the procedural rules of negotiations that have been established for many years.

The Charge rants about the District's desire to suddenly record meetings, which the PFT objected to, and that the District has never responded to the PFT's proposal. The accusations are so outlandish that it is laughable. First, the District and PFT agreed many years ago that negotiation sessions would be recorded and later transcribed by District or PFT staff. When negotiations began remotely, it was the District's position that meeting minutes should be recorded in the same manner as had previously been negotiated. As such, the District offered to have Whittaker's Executive Assistant transcribe the minutes from the Zoom Conference recording. The PFT objected to this, which was perplexing to the District, as this had been past

practice.

The PFT offered no viable explanation for the change other than it was not comfortable with it. Again, the District offered to look into a court reporter or additional type of third party note taker that was not an employee of the District. The PFT's response was that it would consider the suggestion if the District bared the cost, among other things. (**Exhibit 26**).

In an April 13, 2020 email sent by the PFT, its Chief Labor Negotiator, Greenspan, requested that Kayla Lewis ("Lewis"), a PFT employee, take notes for the remainder of the semester, and that such notes be uploaded in Dropbox. (**Exhibit 27**).

During the next meeting on April 29, 2020, Greenspan verified with the District that it would be permissible for Lewis to continue taking notes for the remainder of the meeting. The District responded in the affirmative and agreed that Lewis would set up the ZOOM Conference information, and the District would send the information to each participants Outlook schedule. To date, this practice is still in effect.

### **Conclusion**

PFT has failed to allege facts stating a *prima facie* case for any violation of the EERA. As shown above, there has been an established past practice with regard to the District's FAS Listserv. Moreover, no action by the District in removing the FAS resulted in a loss of essential methods of communication for the PFT or its members, nor did it in any way interfere with the PFT's exclusive representation of its members.

The District can, by way of the negotiated proposals, sufficiently refute the PFT's claim that it failed and/or refused to meet and confer with the PFT on the negotiable items of faculty evaluations and supplies.

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Moreover, the District did not in any way deny Greenspan access to union representation in an investigative interview, as Greenspan was not the subject of the investigation. Furthermore, the PFT failed to provide evidence that Warden actually told Greenspan that he was not allowed union representation during the meeting.

Lastly, the District, to date, has not required faculty to "make up" contact hours that were lost as a result of the cancellation of classes. Additionally, the PFT has failed to prove its *prima facie* claim of direct dealing and unfair bargaining, as the District provided documented evidence that it sent the necessary information to Shanoski for her review.

For these reasons, PERB should deny both the original and amended Charge filed by the

PFT. Sincerely,

Chanelle Whittaker

Interim Vice Chancellor, Human Resources  
& Employee Relations