

Chabot-Las Positas Faculty Association (CLPFA)

FACULTY FOCUS

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UNFAIR LABOR CHARGE FILED AGAINST DISTRICT BY FACULTY ASSOCIATION

Charlotte Lofft January 25, 2011

An Unfair Labor Charge was filed against the District by the Faculty Association (FA) on January 24, 2011. This is the third Unfair Labor Charge filed by the FA against the District since 1998 and the first one to be filed by the FA in approximately ten years.

This communication is an effort by the FA to provide you, our membership, with information as to why this Charge was necessary.

The District has recently refused to provide the FA with necessary and relevant information that the FA requested to represent a unit member who was investigated and disciplined for alleged professional misconduct, based on student reports. Despite repeated requests, to date, the District refused to provide the FA with the student reports and/or specific accusations, before the faculty member was interviewed.

It is a long established principle of labor law that a union is entitled to all information that is necessary and relevant to represent unit members who are being investigated for alleged misconduct. This right to information includes anything that may be used as the basis for discipline. Without a copy of the student reports, complaints and/or accusations, a union cannot make crucial decisions about a unit member's representation. The union's ability to safeguard both the unit member's and union's contractual and legal rights are seriously compromised when such secrecy occurs.

Many decisions of the National Labor Relations Board (NLRB) and the California Public Employment Relations Board (PERB) uphold a union's right to complaints so they can effectively defend their members. For example, in *Ventura Community College District*, the PERB held that the District violated its duty to provide information when it refused to turn over an anonymous letter which initiated an employee investigation. (1999) PERB Decision No. 1340, 23 PERC ¶ 30147. Similarly, in *Hacienda LaPuente Unified School District*, the PERB concluded that the District violated the EERA for failing to provide a letter/incident report for use in connection with Union representation of a unit member who attempted to challenge a disciplinary action. (1997) PERB Decision No. 1184, 21 PERC ¶ 28053.

We will keep you apprised as this case make its way through the PERB. We expect it will take several months before we have a decision..

2009-2010 CLPFA Officers

President
Charlotte Lofft
510.723.6873

Vice President
Chabot: **Dave Fouquet**
510.723.6868
LPC: **Jane McCoy**
925.424.1237

Secretary
Tom deWit
510.723.6821

Treasurer
Kevin Ankoviak
925.424.1396

Part Time Representatives
Chabot: **Erwin Barron (12/10)**
LPC: **Teresa Donat**
925.424.1000 ext 2360

Membership
Chabot: **Shari Jacobsen**
510.723.7696
LPC: **Debbie Fields** 925.424.1113

Grievance Officer
Chabot: **Diane Zuliani**
510.723.6838
LPC: **LaVaughn Hart**
925.424.1194



FA Attorney Presents in Panel Discussion on Chabot's Flex Day

Ms. Patty Lim of the Law Offices of Robert Bezemek presented during a panel discussion at Chabot College during Flex Day on October 26, 2010. The FA is grateful to Ms. Shirley Pejman, Chabot DSRC Counselor, for making this opportunity available.

Ms. Lim advised that a legal analysis under the ADA is very fact or situation specific, and therefore, it was important to adopt a cooperative or integrated working strategy so the various parties' interests could be addressed and accommodated, without escalation or legal involvement.

The FA has indicated a willingness to send Ms. Lim to LPC as well, at the mutual convenience of the parties.

The panel was on the general topic of issues related to the education of students with disabilities and how those issues occasionally come in conflict with the rights and needs of others in the classroom. Here are some of the highlights of the discussion:

1. A key concept that was repeated during the panel discussion was **balance**. Specifically, Ms. Lim reiterated that the needs of the disabled student(s) has to be balanced with the needs of the other students and the needs of the instructor. In order to avoid litigation, the parties (student, DSRC, faculty and if involved, the FA) should work together to reach a compromise that addresses the concerns of all involved. A disabled student is entitled to an "academic adjustment" or auxiliary aide, including the use of a service animal, a college and/or instructor are not required to lower, substantially modify, or waive any essential requirements and/or standards of a program or course; and a service animal can be excluded if the safety and health of others is jeopardized though this is a high bar to meet in most cases.
Bottom Line: The disabled student has definite legal rights that we as faculty have to honor. Hopefully, we do so willingly and with a caring heart. Those rights, however, must be balanced against the rights of the others in the class (students and faculty) so that everyone's needs are met in a fair and equitable manner.
2. In order to qualify for a reasonable accommodation under the ADA (Americans with Disabilities Act of 1990), an employee must be "disabled" **and still qualified to**

perform his/her essential job functions, with or without a reasonable accommodation. This concept was discussed in the context of students who are both blind and deaf who may not be qualified to perform an essential course functions, such as observing children in a classroom setting. The question was whether or not an "accommodation" of having a third party do the observing for the student met the essential course requirements of the student doing the observation by him or herself.

3. Some questions were raised about having service dogs in the classroom. Again, the concept of balance was discussed. If students or small children in the classroom have allergies to the dog, it might be necessary to accommodate the disabled student in ways that would limit exposure of the service dog to allergic children. There was a question about whether or not a Nursing student might bring a service dog to a hospital as a form of accommodation. The obvious issues related to hospital policies for infection control in sterile environments. Ms. Lim indicated that there are both federal and state laws that deal with such accommodations in hospitals. This subject would need considerably more exploration if it presented itself again.
4. It was stressed that faculty can always contact the DSRC and/or the FA if there are questions about individual situations in the future.

FA MAKES DONATION IN MEMORY OF GIL RIBERA

The FA made a small donation to the family's charity of choice in memory of Gil Ribera, former Chabot Business instructor, who passed away recently.

Gil was one of the founding FA Presidents and he served on the Executive Board for nearly twenty years. He was actively involved in the implementation of collective bargaining in this district, and much of the Contract language we have today was negotiated by him.

Those of us on the Executive Board stand on his shoulders as he helped lay the groundwork for our current system of wages, hours, and working conditions of employment. We mourn his passing.

General FA Meetings on Campus

LPC: **March 30th** - 2:30 Staff Lounge

Chabot: **Feb 15th, March 15th & April 15th**

Chabot Meetings are at Noon – 1PM

Room 1st floor conference room IOB

HOW CAN I PREPARE FOR THE FUTURE IN THESE UNCERTAIN TIMES?

By: Charlotte Lofft

This article has been printed before and is updated for currency. This article is taken from the following sources:
Invest in Your Future Now by Lindy McKnight (Union Action, SF City College, Dec., 2001) Referenced with permission.
403bwise <http://www.403bwise.com/wisemoves/403band457.html>
Consultation with a Vanguard representative.
Consultation with Ms. Lori Benetti, Payroll Manager, CLPCCD
“Prepare for Changes in 403b Plans,” by Andrea Coombes, *Valley Times*, May 20, 2007.

This article is intended for all faculty. It is important for Part-time (Adjunct) faculty to know that you can partake of the 403b and the Cal PERS 457 plans described below.

NOTE: The representations made below are intended as guidelines. You should check with financial professionals for confirmation and applicability to yourself.

Are you worried about your financial future? Even though we are still climbing out of the recession, this is a great time to invest. Why? Because stocks are at a fairly low level and when you buy now you will take advantage of them going up later. And, because you can save on taxes by investing in the plans listed below.

403b and 457 plans

You are probably well aware of the mandatory deductions that come out of your paycheck every month such as the individual deduction for STRS retirement. **But, are you aware of the additional options to fund retirement offered by our District?** Those options are the 403(b) and the Cal PERS 457(b) plans. These plans are wonderful savings vehicles because, like your STRS deductions, they are funded with PRETAX dollars and **lower your taxable income**. They also grow in a tax-deferred manner, which means you pay no tax on them until you start to withdraw money. Most people are in a lower tax bracket when they access the funds upon retirement.

It is my understanding that teachers under age 50 who, like us, are eligible for both plans can contribute the maximum of **\$16,500 per plan year 2011 to each plan (the 403b and the 457) for a total contribution of \$33,000 in 2011**. If you are over age 50 you can contribute an extra **\$5,500 per year to each plan for a total of \$22,000 per plan or \$44,000 per year**. Participants eligible for “catch-up” provisions can contribute even more. (See below.)

Catch up provisions are somewhat complicated and should be reviewed on the Web Site above. For example, there is a Cal PERS 457(b) catch up provision for the last three years before retirement.

There is also an additional 403(b) catch-up provision for people who have worked 15 years for the same employer and have not contributed more than a threshold amount in the previous years. Contributions under this “15 year rule” cannot exceed \$3,000 per year, up to a \$15,000 lifetime maximum.

Management of Existing and New 403bs

The IRS wants employers to exert more “centralized control” over the 403b plans. This means that employees can’t continue to transfer funds from one 403b vendor into another 403b vendor without going through a process with the employer and the vendors.

Our district has executed a contract with Envoy, a company that will manage the 403b accounts of faculty. All communication regarding your 403b has to be through Envoy, and we are limited to signing up for 403b companies that are on Envoy’s list. The information regarding Envoy is available on the District Web Site under Human Resources. Vanguard is now one of the mutual fund companies to whom Envoy will manage your 403b investments. This represents a significant improvement over our past choices for mutual fund companies.

Go to www.403bwise.com for useful general information. To compare your plan offerings to others, go to www.403bcompare.com.

Consult a tax or investment professional before taking advantage of these programs.

Once you decide to “go for it”, contact the Benefits Office or Payroll Office at the District Office for the appropriate forms. Or, they may be available at your college Business Office. You can contact Cal PERS for 457 plan forms and information directly at 1-800-260-0659.

Individual Retirement Accounts (IRAs).

In addition to the 403b and Cal PERS 457 plans offered through the District or Cal PERS, anyone can have an Individual Retirement Account. (IRA). **If you are under 50, your maximum 2011 contribution to an IRA is \$5000. If you are over 50, your maximum contribution is \$6000 for 2011. IRAs can be either based on pre-tax or post-tax dollars.** Again, consult a financial professional before you decide which type is best for you. You need to open these on your own, and you can have them in the stock market or other types of investments such as bond funds.

Like all investing, the most powerful factor influencing the growth of retirement funds is **time**. The earlier in life one begins, and the longer the money grows tax-deferred, the larger the amount at the end. Graphic illustrations of this principle are staggering and should send you running to immediately open your 403(b), 457(b), and IRA accounts. **YOU SHOULD ALSO KEEP IN MIND THAT PART OF WHAT YOU PUT INTO THESE 403(B) AND 457(B) AND IRA ACCOUNTS WOULD GO TO THE IRS ANYWAY. WOULDN'T YOU RATHER BE WATCHING THE BALANCE SHEET GROW IN YOUR OWN ACCOUNT INSTEAD OF PAYING ALL THOSE EXTRA TAXES?**

CONTRACT ARTICLES CURRENTLY UNDER NEGOTIATION

Prepared by FA Negotiating Team - February 5, 2011

The Contract expired June 30, 2009, The FA was ready at that time, but there was a one year hiatus in beginning reopening the Contract. The FA and District did meet often during this period and discussed many issues. We agreed upon some MOUs and also upon enhanced Lab Load for several specific courses.

The District (D) and Faculty Association (FA) began negotiating in earnest last Fall Semester. This is intended as a report to highlight current issues under negotiation. There will be regular follow up on these issues as well as new articles that will be opened in the future. No articles have been agreed upon; the material below is intended to be informative and to keep you apprised of where we are at this point.

The FA is reopening 16 articles. The District is reopening 24 articles. See attached table of the articles reopened by the parties.

The following articles have been opened to date in negotiations. Underlined sections of the text indicate areas of initial disagreement between the parties. If language below is not underlined it is not intended to convey agreement but rather to provide informative feedback.

Article 1: Agreement: Clarifying language proposed on a number of topics. FA desires to include Contract and Community Education Instructors in the bargaining unit.

Article 3: Negotiating Procedures: Clarifying language discussed.

Article 4: FA Rights: Clarifying language. District struck requirement for distribution of hardcopy of Contract to all FA faculty and replaced with distribution to any unit member upon request. FA wants FA offices at each campus and to provide FA with list of faculty paying FA membership dues by an annual date certain. Discussions ongoing about FA website

Article 7: Grievance: District opened with different timelines for grievance procedure and with desire to strike the mandatory meetings with President and Chancellor. FA OK with the timelines but wants to keep meetings.
District also opened with language that would markedly change the amendment process for a grievance so that the grievant would have to show he/she didn't know of evidence to

amend the grievance and could not have reasonably been expected to know of it at the time the original grievance was filed. Would place the burden of proof on the grievant. FA responded in the negative to said language.

Article 8: Academic Calendar: District opened with language to develop Calendar for two years at a time on a routine basis.. Note that this is currently allowed in Contract but new proposal would institutionalize it. FA interested in having grade deadlines negotiated. FA wants 45 minutes allotted on Convocation Day for general membership meeting to start no earlier than 8 am. . FA wants ability to orient new faculty.

Article 9: Working Conditions: District wants to change admission of students to college programs so as to give the dean the right to approve faculty's decision according to Title V requirements. FA wants language that would not require faculty to come in during times when on break to defend a student grievance. D wants language to better clarify mandatory safety training and faculty responsibilities in case of serious threats. Language proposed to streamline TB testing. FA wants faculty to have ability to drop and add students and submit Incomplete grades online. Lots of clarifying language on accommodation of disabilities. FA wants assurance that D will pay for follow up fingerprinting when a condition of employment, that FA can represent unit members on I-9 matters, that shared governance shall be followed on the hiring process, that process for distribution and removal of release time be negotiated, that release time for coordinators be negotiated, that there be no requirement to teach at an alternate campus other than the one where the unit member was originally hired.

Article 17: Summer and Intersession: Clarifying language about office hours for adjunct and overload summer classes: 1 hour per week for every three CAH of instruction, excluding PE activity courses and courses taught exclusively in individualized learning laboratories/centers.

Article 19: Pre-retirement Reduction in Load: A lot of clarifying language. Removed the mandatory retirement at age 70 of anyone on Pre-retirement reduction in load. Further information on faculty in PERS qualifying for Pre-retirement reduction in load.

Article 33: Post-Retirement Employment and Emeritus Privileges: FA wants to include half price to all Performing Arts events that are not sold out four hours before curtain time and an email account with the District upon request of the retiree.

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Article 35: Non-Discrimination: Some clarifying language. D wants to require faculty to attend harassment training. FA in favor of harassment training but opposed to mandatory attendance at such training.

Article 36: Resignation and Retirement: (New Article proposed by FA): FA proposed new article articulating procedures for submitting resignation and/or retirement papers. FA would allow for rescission under certain circumstances.

Article 20: Benefits: This article has not been formally opened by either side. The parties did meet in December to review data from the District's broker, Keenan and Associates. The FA benefits consultant, Ms. Linda Pierce of Rael and Letson attended. The FA is aware D wants to make significant changes in our benefits package. FA has indicated that we will not agree to benefits changes until there is a Tentative Agreement on the entire Contract.

This table represents the Contract Articles that have been listed as re-openers by both the FA and the District. It is noteworthy to mention that the FA, which listed re-openers first, kept the option open to add to its list. The District, in their 24 Article response, stated that they acknowledge the FA "request" to reopen additional articles and "concur when both parties mutually agree on additional articles to reopen." The FA responded in writing and with a supporting email from our attorney, that the District cannot require mutual agreement of the FA's potential request to reopen articles.

| Contract Negotiation Articles to Reopen | | | | | |
|---|---------------|---------|-------------|---------------|---------|
| Article | District Open | FA Open | Both Opened | District Only | FA Only |
| 1: Agreement | X | | | X | |
| 3: Negotiation Procedures | X | | | X | |
| 4: FA Rights | X | | | X | |
| 7: Grievance | X | X | X | | |
| 8: Academic Calendar | X | | | X | |
| 9: Working Conditions | X | X | X | | |
| 10 Workload | X | X | X | | |
| 11: LOA's | X | X | X | | |
| 12: Sabbatical and Banked Leaves | X | X | X | | |
| 14: Untenured Faculty Eval. | X | X | X | | |
| 15: Tenured Faculty Eval. | X | X | X | | |
| 16: Personnel Records and Files | X | X | X | | |
| 17: Summer and Intersession | X | X | X | | |
| 18: PT Faculty | X | X | X | | |
| 19: Pre-Retirement Reduction | X | | | X | |
| 20: Benefits | X | X | X | | |
| 21: Salaries | X | X | X | | |
| 22: FSA's | | X | | | X |
| 25: Duration | X | | | X | |
| 26: Academic Freedom | X | | | X | |
| 28: Subs. Abuse | X | | | X | |
| 29: Enrollment Management | X | | | X | |
| 32: Staff Development | X | X | X | | |
| 33: Post Retirement | | X | | | X |
| 34: RIF | X | | | X | |
| 35: Non Discrimination | X | | | X | |
| 36: (New Article) Resignation | | X | | | X |
| Totals | 24 | 16 | 13 | 11 | 3 |

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| Spring 2011 | Dates |
|--|-------------------------|
| Last day to Add or Drop NGR (No Grade of Record) in person for Full-Term courses | February 4 |
| Last day to Add or Drop NGR (No Grade of Record) online for Full-Term courses | February 6 |
| CENSUS DAY | February 7 |
| Deadline to apply for Pass/No Pass | February 17 |
| HOLIDAY - Presidents' Weekend (CAMPUS CLOSED - No Instruction) | February 18, 19, and 21 |
| SPRING FLEX DAY (No Instructions for classes before 4 pm. Evening classes are held) | March 3 |
| SPRING FLEX DAY (No Instructions for classes before 4 pm. Evening classes are held) | April 1 |
| Last Day to WITHDRAW with a "W" in person and online for Full-term courses | April 8 |
| Last Day to Apply for Graduation | April 15 |
| Saturday Classes Meet | April 16 |
| SPRING BREAK (CAMPUS CLOSED - No Instruction, No Saturday Classes) | April 18 - 23 |
| Last day of Saturday Classes | May 14 |
| Last day of Instruction | May 20 |
| Saturday Classes May 21 | May 21 – 27 |
| Commencement (6:00 pm) | May 27 |
| Spring Grades Due | June 2 |

Chabot Las Positas Faculty Association (CLPFA)

FACULTY FOCUS

To: All Chabot – Las Positas Faculty

