Chabot-Las Positas Faculty Association (CLPFA)

FACULTY FOCUS

Volume XIV, Issue 11 – November 2011

FA Files Unfair Practice Charge against District for Failure to Negotiate "Free Speech" Policy

By: Mr. David Conway of the Law Offices of Robert Bezemek, FA Attorneys

On September 16, the FA filed an Unfair Practice Charge against the District over the District's refusal to negotiate with the Union regarding its existing "Free Speech" policy for faculty. (The District's existing policies and procedures for "Free Speech" are found at BP and AP 4322 and 5510). The Charge alleges that the FA properly requested negotiations with the District over this policy and its impacts on faculty, and that despite these requests, the District unlawfully refused and failed to negotiate with the Union.

History of Charge:
During this past year, the District has been considering revisions to one of its "Free Speech" procedures, AP 5510, that impact faculty and student speech rights. In December 2010, the District created (but did not adopt or implement) a draft AP 5510 that purported to characterize "the outside areas generally available to students and the community" of the colleges as "designated public forums." Within these vaguely defined "designated public forums," the District purported to reserve the right to require advance notice for certain speakers, and place other restrictions on free speech.

The FA wrote to the District in response to this proposed draft policy and objected to this proposed draft procedure as (1) not being negotiated with the Union, and (2), as violating the Constitutional free speech rights of faculty, students and members of the public. The FA pointed out that certain areas of the colleges campuses, such as its streets, sidewalks, lawns and quadrangles, are historical public forums, where the District has no right to stifle or prohibit free speech by requiring advance notice, or by placing any other unreasonable restrictions on speech or expressive activity. The FA wrote:

> "These generous open spaces, and other areas, were intended not merely for pedestrian or other traffic, but offer the opportunity for adults in a college setting, faculty, students, staff, and the public, to engage each other in discussion, debate, protest and other types of free speech and association. The Supreme Court has recognized the high importance given to free expression on a college campus,
>
> '... **the university is a traditional sphere of free expression** so fundamental to the function of our society [that] the Government's ability to control speech within that sphere ... is restricted by the vagueness and overbreadth doctrines of the First Amendment.' *Rust v. Sullivan*, 500 US 173, 200 (1992), quoting from *Keyishian v. Board*

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> "Because a public forum historically exists within California's colleges and universities, freedom of expression and association are fully protected from arbitrary limitation or exclusion by the trustees of that public property. Simply put, the District cannot eliminate the Constitutionally protected, historic public forum aspects of its campuses *by re-characterizing them as non-public forums or ostensible 'designated public forums.*" (April 19, 2011, FA letter to the District.)

In its letter, the FA also demanded that the District negotiate with it over any proposed change to its policies (to the extent allowable – neither the District, the FA or both together have any right to limit the Constitution's protections for free speech), and that the District negotiate with the FA over its existing policies. The District never responded to this April 19, 2011, letter.

The District did not implement its proposed draft AP 5510, but neither did it respond to the FA's request to negotiate. In August 2011, the FA reiterated its request to negotiate. Again, the District failed to respond to this request; and, consequently, the FA filed its Unfair Practice Charge with PERB.

Allegations of Charge

The Charge alleges that the District's failure to negotiate violates the Education Employment Relations Act (EERA), since the FA made a timely request, the District failed or refused to negotiate, and the subject matter (the District's existing policy) impacts mandatory subject of negotiations. These include the terms and conditions of employment for faculty, the faculty right to engage in mutual aid and protection, and FA access and speech rights under EERA.

The Charge alleges that the EERA expressly recognizes that faculty and other unions enjoy workplace access for political activities, and that the U.S. Supreme Court affirmed this union right in *Eastex, Inc. v. NLRB* (1978) 437 U.S. 556. The Charge alleges that the District's current policy, which restricts faculty and Union access and speech, violates these EERA rights.

Status of Charge

FA filed its Charge on September 16, and the District is currently set to reply to the Charge on or before October 27, 2011. After its response, the Public Employment Relations Board (PERB) will evaluate the Charge, and decide whether or not to issue a Complaint. If a Complaint is issued, the parties will participate in mandatory mediation; and, failing resolution, the matter will go to a hearing before an Administrative Law Judge.

TWO UNFAIR LABOR CHARGES FILED AGAINST DISTRICT BY FACULTY ASSOCATION

By Charlotte Lofft, FA President

There is an article in this Newsletter by David Conway, Attorney for the FA, regarding a recent Unfair Labor Charge (ULP) filed by the FA against the District with respect to the District's unwillingness to negotiate a Free Speech Policy.

It is worth remembering that the FA filed another ULP against the District in January of this year as well. That makes two ULPs filed in less than a year, which is a record for the FA in any calendar year. Additionally, these two ULPs represent the first to be filed by the FA in a decade, which is a reflection of increased FA-District disagreements in recent times.

The following paragraphs summarize the ULP that was filed in January, 2011. Details of this ULP were reported in the February, 2011 edition of The Faculty Focus, available on the FA website, at www.clpfa.com.

The District has 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.

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Ballot Measures in Circulation:

Summarized by Dave Fouquet, FA Chabot Vice President

If you are wondering whether it's open season on public employee unions, compensation and benefits, all you need to do is visit the California Secretary of State website, and look under Ballot Measures, specifically initiatives cleared for circulation - - i.e. the phase of gathering signatures in hopes of qualifying for the election in November 2012 or later. A cheerful sampling is pasted below. Of course we can hope that many of these will fail to qualify; they are offered here mainly for sobering effect, so unit members may better apprehend what dark forces are circling out there. We make no claim that the sampling is exhaustive; get the latest information, and peruse the whole slate, at http://www.sos.ca.gov/elections/elections_j.htm .

1484. 1484. The infamous Niello initiative, that would have capped our STRS pensions at 60% of the average of our top three year's salary, has failed to qualify. However, two new pension reform initiatives are pending at the Attorney General's office, as of Nov. 2. Stay tuned.

1487. Prohibits Political Contributions by Payroll Deduction. (In Signature Verification | Signatures Required: 504,760) Restricts union political fundraising by prohibiting use of payroll-deducted funds for political purposes. Same use restriction would apply to payroll deductions, if any, by corporations or government contractors. Permits voluntary employee contributions to employer or union committees if authorized yearly, in writing. Prohibits unions and corporations from contributing directly or indirectly to candidates and candidate-controlled committees. Other political expenditures remain unrestricted, including corporate expenditures from available resources not limited by payroll deduction prohibition. Limits government contractor contributions to elected officers or officer-controlled committees.

1500. Eliminates Collective Bargaining Rights for Teachers, Nurses, Police Officers, Firefighters, and Other Public Employees. (Circulation deadline: 02/03/12 | Signatures Required: 807,615 | wonder if proponent Ebenstein be a Koch crony?) Eliminates collective bargaining rights for teachers, nurses, police officers, firefighters, and other public employees. Prohibits state and local public agencies from recognizing any labor union or other employee association as a bargaining agent of any public employee. Prohibits state and local public agencies from collectively bargaining with public employee unions or employee associations.

1501. Increases Income Taxes on Teachers, Nurses, Police Officers, Firefighters, and Other Public Employees for Pension Income. (Circulation deadline: 02/03/12 | Signatures Required: 807,615) Increases income tax rate by 15% for annual pension income between $100,000 and $149,999, and 25% for annual pension income over $150,000, on income received by teachers, nurses, police officers, firefighters, and other public employees from the California Public Employees' Retirement System and the California State Teachers' Retirement System.

1502. Increases Retirement Age for Teachers, Peace Officers, and Other Public Employees. (Circulation Deadline: 02/03/12 | Signatures Required: 807,615 | proponent Ebenstein again) Increases the minimum retirement age to 65 (or 58 for sworn public safety officers) for members of the California Public Employees' Retirement System and the California State Teachers' Retirement System, including for teachers, nurses, police officers, firefighters, and other public employees.

1504. Reduces Pension Benefits for Public Employees. Creates a New State Retirement System for Private Sector Employees. (Circulation Deadline: 02/10/12 | Signatures Required: 504,760) Reduces pension benefits for current and future public employees, including teachers, nurses, and peace officers. For two years, and beyond if system pension obligations are underfunded, changes the minimum retirement age and further reduces annual pension amount received. Restricts the availability of defined contribution plans including 401(k) plans for public employees. Creates a new state retirement system for private sector employees. Requires audits of pension systems. Caps base pay for new employees and employees in underfunded systems.

1509. State and Local Government Officials. Retirement Benefits (Circulation Deadline: 03/08/12 | Signatures Required: 504,760) Limits retirement benefits for candidates for office, government officials, and government advisors, to the benefits provided to workers at lowest benefit level in same agency. Limits basis for calculation of such retirement benefits to years of service with government agency in which last served. Applies retroactively to any retirement benefits government officials set for themselves, unless enacted by majority popular vote. Imposes penalties for actions contrary to its terms, including forfeitures and ineligibility for public office. Continued next page

ALSO, under "Initiatives Pending at the Attorney General's Office," there's one not yet cleared for circulation, called "Repeals Dills Act," which would eliminate the right of public employees to go on strike.

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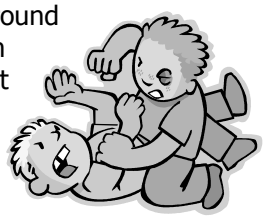
Taking Turns—Rotational Seniority

By LaVaughn Hart, LPC Grievance Officer

So you want to teach the same class as another faculty member—what do you do? A spirited round of rock-paper-scissors? No. Fisticuffs in the staff parking lot? NO!! The contract holds the answer—Rotational Seniority (Article 10C.a)



Here's how it works. If multiple faculty members want to teach the same class, the class goes to the most senior faculty member for whom it has been the longest time since they taught the class. In the case of a course that has never been taught, then the class would go to the most senior faculty member that requests the class.
Let's look at an example, where three faculty members want to teach the same class.

- Faculty Member A is the most senior and taught the class last semester.
- Faculty Member B is the second most senior and has never taught the class.
- Faculty Member C is the least senior and taught the class two semesters ago.

Who gets the class? If you picked Faculty Member B, you're right on track. Faculty Member B is the most senior faculty member for whom it has been the longer (never in this case) since teaching the class. If the same scenario presents itself the next semester, then Faculty Member C would get the class. Should the situation arise for a third semester, it is Faculty Member A's turn to teach the class.

With the reduction in the number of courses that we are offering, the need to use rotational seniority to determine which faculty member teaches a specific class is on the rise. If you have any questions about how to apply rotational seniority to a particular situation, please feel free to contact an E-Board member.

FA CONSIDERING CHANGE IN CONSTITUTION AND BYLAWS

By: Charlotte Lofft, FA President

The FA is considering a change in our Constitution and Bylaws. They have not been amended since March, 2007. If you are interested in serving on a task force to review them, please notify Charlotte Lofft, FA President, at clofft@chabotcollege.edu by November 18, 2011.

FA Dues is a Real Bargain

By: Charlotte Lofft, FA President

The table reflects the current Agency Dues charged by the represented unions in the Bay Area. As you can see, most of them charge considerable more than the FA.

Part of this is because we are not an affiliated union and therefore do not pay into a national or regional organization. The other reason is that we have enjoyed several years of relatively minimal attorney and negotiations cost. That situation has changed in the past few years, as the FA has filed two different Unfair Labor Charges against the District and incurred considerable other legal and negotiation expenses.

The FA Executive Board is considering a ballot measure to increase our dues structure. We will be in contact with you about this in the future. It is our pleasure to serve you.

Dues charged by Faculty Unions

(Amounts reflect a monthly deduction.)

District	Full-Time Dues	Part-Time Dues
Chabot-Las Positas (CCCI)	$49.00	$12.00
City College SF(CFT)	1.19% of gross	1.3 % gross
Ohlone/Fremont (CCCI)	10 mo./ $18 month	$3/month
West Valley/Mission (CTA)	1% of base salary	$20/semester
Foothill/DeAnza(CCCI)	0.6% of gross	0.45% of gross
Marin	Proportional flat fee $108/mo.	$23/mo.
Peralta (CFT)	1.469% of gross	$28.04/member
San Mateo (CFT) GUA**/>>I/	1.2% of gross	1.2% of gross

Changes In 403b and 457 Plan Contributions

By Charlotte Lofft

Beginning January, 2012, you can invest up to the following amounts for each plan on a pre-tax basis:
Age: Under 50: $16,500/year. Up from $16,000 per year.
Age: Over 50: $22,500/year. Up from $22,000 per year.

Go to the "Forms" link on the HR Website and then fill out the forms and send them to Payroll.