

Attachment A to AFT 2121 Unfair Labor Practice Charge

I. Introduction

1. The Charging Party, the American Federation of Teachers, Local 2121, (AFT 2121 or Union), is the exclusive bargaining representative within the meaning of Government Code § 3540.1(d) for all academic employees employed by the City College of San Francisco. The faculty bargaining unit currently includes approximately 630 full-time tenured and probationary employees, who serve in a variety of academic positions, including instructor, counselor, librarian, and others. The unit also includes approximately 807 part-time, temporary academic employees, and 35 retired faculty who returned to work part-time.

2. The Respondent, City College of San Francisco (CCSF or District), is a public school employer within the meaning of Gov. Code § 3540.1(k). CCSF operates a variety of campuses and sites in the City and County of San Francisco.

3. The parties have been signatories to a series of collective bargaining agreements since 1973. The last collective bargaining agreement ran from July 1, 2013 through June 30, 2015.

II. Bad Faith Bargaining

4. The workload for a full-time faculty employees is 30 teaching units per year, or fifteen units per semester. A full-time academic employee ordinarily works a full-time load, sometimes referred to by the District as a 1.0 FTE load (FTE standing for “full-time equivalent”). This workload may include instructional work, counseling work, and other academic activities. Sometimes the District assigns academic employees to perform special tasks, to prepare curriculum, or to serve the District in miscellaneous ways, which count towards the faculty employee’s regular work load. In addition, academic employees can be “released” from these ordinary academic activities to serve on the Academic Senate, to serve in administrative positions, to serve as union representatives, or in other activities.

5. A full-time academic employee is entitled to be paid a full-time salary. The salaries paid to full-time academic employees are set forth in the parties’ collective bargaining agreement, in a printed salary schedule.

- a. Under Article 13.B.5 of the 2013-2015 Agreement, the District claims to have the right to assign faculty. This provision states, “Assignments shall be made by management or designee as required to fulfill educational offerings of the District and contractual obligations of District and unit members.”

- b. As a result of Article 13.B.5, a faculty member may at times be assigned to less than a full-time load or 1.0 FTE, when the District exercises its assignment authority. For full-time faculty, such “reduced” loads are generally referred to as “underloads.” The District is, nonetheless, frequently required by law and the Agreement to compensate the employee at the full-time rate commensurate with the employee’s proper place on the salary schedules, regardless of whether the District assigns a full-time faculty member to less than full-time work, with limited exceptions (e.g. when the faculty employee has taken an unpaid leave or a sabbatical which pays less than a full salary.).

6. Assignments are generally provided to faculty prior to the beginning of a term, which is always a semester. A full-time load is sometimes created out of smaller assignments, such as assignments to certain classes, or to other duties.

7. It is not uncommon for some full-time faculty to teach or serve less than a full load in any given semester, because the District does not assign a full load, or assigns a full load and then cancels part of the full assignment. Such a situation may arise for a variety of reasons, including:

- a. the District decides to cancel a class due to low enrollment, for budgetary reasons or to meet program needs; or
- b. owing to variances in “load factors,” and the number of hours per week for different courses, a faculty member may be assigned classes that calculate to less than fifteen (15) units.

8. Starting in spring 1980, the parties included in a series of collective bargaining agreements a provision to address what would occur when the District assigned less than a full load to a full-time faculty member, for whom it had paid a full salary. In recent years, this provision has been delineated as Article 18.G. of the parties’ agreements. Article 18.G. refers to underloads as “schedule deviations.”

9. Article 18.G of the recently expired agreement provides in pertinent part:

Article 18.G. Schedule Deviations. Any cumulative deviation which exceeds three (3) units from the contractual workload of a full-time faculty member shall be adjusted within the following three (3) semesters wherever possible and not inconsistent with this contract. No employee shall be assigned more than three (3) units or its equivalent of extra-load courses in one semester without the employee’s consent. A faculty member who owes units (or hours) will be assigned sufficient extra load courses without pay until deficiencies are balanced, or, at the option of the faculty member, he/she shall have his/her salary reduced proportionately to balance part or all of the existing deficit.

10. Under Article 18.G, the Union agreed to permit the District to make-up an “underload,” that is, the amount of unworked load under a faculty member’s paid full-time load, in excess of three (3) units, within the following three semesters. As an alternative, a faculty member could also agree to have his/her salary reduced “proportionately” to “balance part or all of the existing deficit” from an underload. (Article 18.G)

11. Since in or about 1980, whenever a faculty member had an underload, the District knew or should have known about the underload at the time it occurred, because the District, acting through its managerial or supervisory personnel (Department chairs) assigned the underload to the academic employee and maintained records of such assignments.

12. Historically, and recently during the last term of the contract, a few full-time academic employees were paid for a full load but were not assigned to a full load for one or more semesters. Some unit members had part of their assignment cancelled, so they did not work a full-load and thus had an underload. Being paid for a full-load when one was assigned less, is not an overpayment, however, because the faculty member’s status as a full-time, tenured employee entitles them to a full salary.

13. Some of the full-time academic employees identified in paragraph 10 above, retired from the District prior to the current academic year, but returned to teach part-time. These faculty are members of the bargaining unit, and are specifically recognized as unit members in Article 29 (Retired Faculty Re-employed as Faculty). Among these “retired” but current part-time faculty are Rosemary Bergin, Glen Moriwaki and Peter Wood. All are members of AFT 2121.

14. The recently expired Agreement contains terms applicable only to retired faculty who return part-time to district service. This includes:

- “Retired District re-employed faculty, whether full-time or part-time retirees, shall be placed at Step 1 of the appropriate salary column except that retired re-employed faculty continue to receive the hourly or overload rate which they were receiving at the time of retirement, if higher than the rate of the Step at which they are placed. Retired District re-employed faculty shall be allowed to progress through the pro-rata salary schedules based on their semesters of service after retirement.” Art. 20.3.2.

- Article 29, which specifies that Article 1-8, and several other articles or sections pertain to retired faculty who return to work part-time after their retirement became effective.

15. In 2007, the District and AFT 2121 negotiated over, and agreed upon a “Standard Operating Procedure” or “SOP” for alleged salary overpayments received by unit members.

- a. During these negotiations, the District and AFT 2121 did **not** agree that an underload or “cumulative deviation” under Article 18.G amounted to a salary overpayment within the meaning of the SOP.
- b. The parties also did **not** agree the SOP would apply to an underload or cumulative deviation as referenced in Article 18.G. Instead, the SOP refers to salary overpayments resulting from mistake, and states in part,

“CCSF may take action to recoup an overpayment **based on mistake** for up to three years from the date it learns of the overpayment (California Code of Civil Procedure section 338). Emphasis added.
- c. Since the parties executed the SOP in September 2007, the District has not demanded that any employees “repay” any underload or “cumulative deviation” as defined in Article 18.G.

16. During successor negotiations to the recently expired agreement, which began on April 22, 2015, the District proposed to negotiate a modification to Article 18.G. On September 23, 2015, the AFT 2121 proposed to maintain current contract language in Article 18G. On Oct. 7, 2015, the District proposed to add to Article 18G the following:

“A faculty member who owes units at the conclusion of employment shall arrange for repayment of the full monetary value of the such units.”

The parties have not reached agreement on a new successor agreement, and no agreement has been reached on any modifications to 18.G. The AFT 2121 has not agreed to the above-referenced proviso proposed by the District.

17. The District, on or about October 22, 2015, violated the Educational Employment Relations Act (EERA), Government Code sections 3543.5 (a), (b) and (c) by the following acts and conduct:

- a. The District unilaterally determined that henceforth underloads or “schedule deviations” existing at the time of faculty members’ retirement constitute salary overpayments.
- b. The District, by its words and conduct, has indicated that it intends to unilaterally apply the September 2007 SOP for “Salary Overpayment” to faculty in the bargaining unit **who have retired, including faculty who have returned post-retirement** to work in unit positions represented by AFT 2121, and to current faculty who have subsequently returned, notwithstanding that the parties are still negotiating over this subject.

- c. The District's decision to apply the SOP to current faculty, upon their retirement, and to faculty returning from retirement, was not negotiated with AFT 2121, but made unilaterally and implemented by the District on October 22, 2015, when it sent letters (herein the "Letters" or the "Letter") signed by Kerry Wilhite, Associate Dean of Payroll, to approximately 32 current or former academic employees of the District who were or are within the unit represented by AFT 2121, notifying each of them that they owed monies for a "salary overpayment" incurred "prior to your retirement."
- d. None of these individuals who received the Letters, including retirees who have subsequently returned to provide limited part-time service to the District, sometimes at its request, retired with a 'salary overpayment' owed to the District due to an underload or "cumulative deviation" as defined in Article 18.G of the previous contract, or its predecessor agreements.
- e. Attached to the Letter was the SOP negotiated by the parties in September 2007, as well as worksheets apparently created on an unknown date by District representatives, detailing alleged underloads incurred by these current or former faculty, in some cases going back to the mid-1990's.
- f. The District acted unilaterally in determining that current unit members who retire with accumulated underloads or "schedule deviations" shall be treated as if they received salary overpayments, while the District is concurrently negotiating with AFT 2121 over the same subject.

18. Current district employees receiving the Letter include Rosemary Bergin, Glen Moriwaki and Peter Wood. Attached to each of their letters was a copy of the 2007 SOP for Salary Overpayments.

19. None of the Letters to the 32 former or current faculty members identified the "salary overpayment" as having been based on an overpayment "mistake." Instead, each refers to a prior underload and/or cumulative deficiency as defined by Article 18.G.

20. The District contemporaneously knew, or should have known, of any occasion when a full-time faculty member was assigned to **less** than a full-time load but was paid for a full-time load, since such assignments are made by managerial and/or supervisory District employees, including department chairs. Further, District officials routinely maintain records detailing the assignments that are made.

21. The District Letter threatens that the college may bring lawsuits against the recipient, unless arrangements are made to pay the alleged monies owed to the District within a short time period.

22. The new policy, that underloads shall be treated by the District as salary overpayments at time of retirement, purports to apply to all current employees of the District, and will, inter alia, create liabilities for them that the District expects them to repay either before they retire and when they are employed, or after their retirement. While the parties are entitled to negotiate over certain post-retirement aspects of an employee's employment, the AFT 2121 cannot negotiate a provision which requires employees to repay an actual or alleged salary "overpayment."

23. In demanding in negotiations that AFT 2121 agree that faculty who accumulate underloads have received a "salary overpayment" which they must "make up" or arrange to pay at separation, the District is attempting to coerce AFT 2121 to agree to negotiate over a non-mandatory, non-negotiable subject of bargaining. *Berkeley Unified School District* (2012) PERB Dec. No. 2258. The District's conduct also violates section 3543.5(c).

24. By the conduct described herein, the District has denied AFT 2121 its right to represent employees in violation of section 3543.5(b) of the EERA.

25. By the conduct described herein, the District also derivatively violates section 3543.5(a) of the EERA.

Wherefore, AFT 2121 requests the following remedies:

1. that the District cease and desist violating the EERA as alleged herein;
2. that the District rescind all claims for payment made to individuals who received the Letter and who are employed by the District when this charge is filed; or thereafter, and
3. For such other and further relief as is just and proper.

III. Interference, Restrain and Coercion Through Surveillance of Union Activities

26. The Mission Campus of City College of San Francisco is located in the Mission District of San Francisco, between Valencia and Bartlett Streets and 22nd and 23rd Streets. The Mission Campus offers approximately 300 classes each year.

27. On October 7, 2015 the District held a "Chancellor Chat" meeting at the Mission Campus, scheduled to begin at 10:00 a.m. A "Chancellor Chat" meeting is a meeting where the Chancellor addresses the college community, and affords faculty, classified employees, students, and community members to address him and discuss issues of interest.

28. On October 7, 2015 AFT 2121 conducted informational picketing at two entrances to the Mission campus, one on Bartlett Street and another on Valencia Street. Several entrances to the campus were not subject to informational picketing.

29. Approximately 12 informational pickets began picketing at the Bartlett Street entrance to the campus at or about 9:49 a.m. and continuing until at or about 10:30 a.m. During this period, another approximately 25 academic employees and students joined the informational picketing at the Bartlett Street entrance. The informational pickets did not block ingress or egress from the campus, or interfere with passersby or those entering or leaving the Campus. The informational pickets conducted their picketing just inside the Bartlett Gate, in a large, open area where students and faculty often take breaks. The noise generated by the informational picketing was insufficient to disrupt classes in session.

30. At or about 10:15 a.m., two police officers understood to be members of the San Francisco Community College District Police Department or SFCCDPD, based upon their uniforms, approached the circling pickets. One of the officers began raising objections to the pickets entering the building to attend the Chancellor Chat meeting. The other police officer, raised his cellular phone and recorded the picketers present. It appeared, that he was making a video of the picketers, and thereby recorded their identity. This recording activity by this police officer went on for more than one minute, during which he panned his phone around at the picketers. Said police officers were, at all times material hereto, agents and representatives of the District, acting on its behalf.

31. The above-referenced police officer who was observed to raise his cellular phone and recorded pickets, did not speak to the picketers during the time he appeared to record the picketers.

32. The District has interfered with, restrained and coerced and is interfering with, restraining and coercing its employees represented by AFT 2121, in the exercise of their rights under the EERA, by the following acts and conduct:

a. by video recording and/or photographing of bargaining unit members, and their supporters, who were engaged in informational picketing on October 7, 2015 as described above; or who attended said informational picketing, and who demonstrated their support for AFT 2121 and/or its picketing employees.

b. by retaining the video, audio or other evidence of the identity of unit members captured on said recordings, or whose attendance and/or participation in said picketing described above, was recorded in any manner by the District, its agents, officers and representatives.

33. This actions described herein above in paragraphs 26 through 32 violates section 3543.5(a) of the Act.

Wherefore, AFT 2121 requests the following remedies:

1. The District should be ordered to cease and desist engaging in video, photographic or other surveillance of AFT's peaceful union activities.

2. The District should be ordered to destroy all videos, photos or other recordings, or any derivative documents or media, which identify participants in the informational picketing or other protected concerted activities of the AFT 2121, excluding ordinary recording of District meetings occurring under the provisions of the Brown Act.

3. For such other and further relief as is just and proper.

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