



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE:

Case No:

Date Filed:

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE?

YES

If so, Case No.

NO

1. CHARGING PARTY:

EMPLOYEE

EMPLOYEE ORGANIZATION

EMPLOYER

PUBLIC¹

a. Full name:

b. Mailing address:

c. Telephone number:

d. Name and title of
person filing charge:

Telephone number:

E-mail Address:

Fax No.:

e. Bargaining unit(s)
involved:

2. CHARGE FILED AGAINST: (mark one only)

EMPLOYEE ORGANIZATION

EMPLOYER

a. Full name:

b. Mailing address:

c. Telephone number:

d. Name and title of
agent to contact:

Telephone number:

E-mail Address:

Fax No.:

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

a. Full name:

b. Mailing address:

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

a. Full name:

b. Mailing address:

c. Agent:

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

5. GRIEVANCE PROCEDURE

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

Yes _____ No _____

6. STATEMENT OF CHARGE

- a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)
 - Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)
 - Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
 - Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
 - Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
 - Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code, § 99560 et seq.)
 - Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
 - Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)

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

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

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

DECLARATION

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

at _____ (City and State)

(Type or Print Name)

(Signature)

Title, if any: _____

Mailing address: _____

Telephone Number: _____ E-Mail Address: _____

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of _____,
State of _____. I am over the age of 18 years. The name and address of my
residence or business is _____
_____.

On _____, I served the _____
(Date) (Description of document(s))

(Description of document(s) continued)

on the parties listed below (include name, address and, where applicable, fax number) by (check
the applicable method or methods):

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

___ personal delivery;

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

(Include here the name, address and, where applicable, fax number of the Respondent and any other parties served.)

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on _____, at _____.
(Date) (City) (State)

(Type or print name)

(Signature)

AFT GUILD ATTACHMENT FOR UNFAIR PRACTICE CHARGE

RESPONSE TO QUESTION 6(D):

The Respondent District, by its officers, agents and representatives, has engaged in the following acts and conduct:

BACKGROUND

1. The AFT Guild, Local 1931 (“Union”) is the exclusive representative of the faculty unit members (tenure/tenure-track and adjunct) in the Grossmont-Cuyamaca Community College District (“District”).
2. The District includes two community colleges, Grossmont College and Cuyamaca College.
3. The parties most recent collective bargaining agreement covered the period of July 1, 2014 to June 30, 2017. That agreement has expired.
4. The Union presented its initial proposal for a successor agreement on December 13, 2016. The District respond by presenting its initial proposal on July 18, 2017. Negotiations between the two parties began September 1, 2017.
5. In April of 2018, the Union filed an unfair practice charge with PERB alleging bad faith bargaining in violation of the EERA, section 3543.5 (c).
6. The basis of the unfair practice charge was due to the District’s surface bargaining and other evidence of a totality of bad faith bargaining, specifically its repeated and habitual cancellation of bargaining sessions, failure to come prepared to bargaining sessions, and ending bargaining sessions early.
7. The Union and the District were able to resolve the conflict informally allowing negotiations to go forward.
8. During the bargaining session dated October 8, 2018, the District provided the Union with a series of financial reports showing a summary of total revenues and expenses for the proceeding five years. The reports were provided in an attempt to bolster their proposal on Article 9.1 provided during the same bargaining session.
9. The District’s October 8th proposal on Article 9.1 was to increase all salary schedules across the board by 4% upon adoption of the new collective bargaining agreement for the academic years 2018/2019 and 2019/2020 and 1% for the academic year 2020/2021.
10. The parties additionally discussed a MOU provided by the District. The intent of the MOU was to extend a side-letter dated November 20, 2013, entered into by the parties regarding healthcare benefits for adjuncts.

UNLAWFUL ACTIONS AND CONDUCT

11. During the October 8th bargaining session, the Union requested the data upon which the financial reports provided were based on so that they could make an informed decision on how to respond to the District's proposal and request to sign the MOU.

12. On October 11, 2018, Union president Jim Mahler resubmitted the Union's request by email explicitly asking for the actuals for the 2017/2018 academic year. The specific inquiry was for the salary, PERS/STRS/FBC 3121 contribution, and step, column, and longevity for object codes 1100, 1200, 1300, 1400, 2100, and 2200.

13. In addition to asking for the data from the 2017/2018 actuals, Mr. Mahler also requested by email on October 11, 2018, the cost of health care benefits for adjunct faculty plus how many adjunct faculty were currently participating in the health care benefits plan. Lastly, Mr. Mahler also asked for the unrestricted general fund ending fund balances for the 2017/2018 academic year.

14. The District's lead negotiator, attorney Guy Bryant, responded on October 12, 2018, to Mr. Mahler's October 11th email by providing an excel sheet with some, but not all of the data request on October 8th. The information provided to the Union did not include the actuals from 2017/2018 nor the information requested on adjunct healthcare benefits and unrestricted general fund ending fund balances for the 2017/2018. The District did not offer to meet and confer over the missing information, nor argue or claim that it had an inability or objection to providing the missing information.

15. Within Mr. Bryant's email was a statement from Sahar Abushaban, a member of the District's negotiation team and Vice President of Administrative Services for Cuyamaca College. Ms. Abushaban stated that data on 2017/2018 was only projections because they had not filed their Annual Budget and Financial Report ("311 report") to the California Community College Chancellor's Office, but Ms. Abushaban stated, "[w]e will have it ready by next week".

16. At that time, the next scheduled bargaining session was slated for October 15, 2018.

17. Upon receiving the email from Mr. Bryant containing the statement that the actuals would not be available until after the next scheduled bargaining session, Mr. Mahler responded by email the same day and recommended to Mr. Bryant that the next bargaining session be postponed until the requested information was available.

18. Mr. Bryant agreed to this recommendation and stated that once the information was available the parties could reschedule the next bargaining session.

19. There were no further communications from the District regarding the Union's information request after the October 12 email exchange for over a month-and-a-half. Because of the District's failure to respond in a timely manner, on November 27, 2018, the Union sent a follow-up to the District regarding the earlier information request. On November 27, Mr. Mahler emailed Mr. Bryant requesting an update on when the District would be able to provide the remaining information requested. Mr. Bryant responded the same day by email that he had not heard anything yet and that he would follow up with staff at the District.

20. Three days later, on November 30, 2018, Mr. Mahler followed up with Mr. Bryant by email again after hearing nothing further from the District regarding the missing information or date by which the District would be able to provide the requested information.

21. Mr. Bryant responded by email the same day indicating that he had spoken to the District's Vice Chancellor of Business Services, Sue Rearic, who had expressed that the District was still working on the 311 report. Mr. Bryant further stated that he felt he would receive an update on the status of the information requested soon. Mr. Mahler responded minutes later by email to clarify that the Union was not specifically requesting the 311 report and then reiterated the request that was sent in his October 11th email detailed above paragraphs eleven and twelve.

22. On December 1, 2018, Mr. Bryant sent Mr. Mahler a Microsoft Excel report. The report contained some of what was requested by the Union, but did not include the data on the step, column, and longevity for the 2017/2018 academic year. The report also lacked the information on the cost of health care benefits for adjunct and the number of adjunct faculty currently participating in the health care benefit plan.

23. At the filing of this unfair practice charge, there has been no further information provided nor has there been any bargaining sessions since October 8, 2018, due to the District's failure to provide requested relevant and necessary information to the Union upon request and to provide such information in a timely manner. As a consequence of this violation, the Union has been unable to obtain the information needed to determine how to respond to the District's October 8th proposal and proceed with negotiations.

24. It is a long-established principle of labor law that a recognized employee organization "is entitled to all information that is necessary and relevant to discharging its duty to represent unit employees." *Stockton Unified School District* (1980) PERB Decision No. 143. The determination of whether requested information is relevant is made under a "liberal discovery standard." *State of California (Departments of Personnel Administration and Transportation)*, PERB Decision No 1227-S; *Soule Glass and Glazing Co v. NLRB* (1st Cir. 1981) 652 F.2d 1055, 1092-1093.

25. The courts, the NLRB and PERB, recognize a liberal "discovery-type" standard applies when considering Union information demands. *ACME Industrial* endorsed the "discovery-type standard" applied by the NLRB. 385 U.S. 432, 436 (1967). Thus, the "test of a union's need for such information is simply a showing of 'probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities.'" *State of California (Dept. of Veteran's Affairs)* (2004) PERB Dec. No. 1686-S, 28 PERC & 250, emphasis added. The NLRB thus looks to decide whether the requested information is of "probable" or "potential" relevance. *Transport of New Jersey*, 233 NLRB 694 (1977). Instead of being "dispositive" of an issue between the parties, it "must merely have some bearing on it." *Id.* at 705. If the information simply "aids" the process, it should be provided. *Id.*

26. "The requesting union need not show the precise relevance of the information to particular issues under discussion. Such a rule is necessary because 'it is virtually impossible to tell in advance whether the requested data will be relevant . . .'" *Boston Herald-Traveler Corporation v. NLRB*, 223 F. 2d 58, 60 (1st Cir. 1955), affirming *Boston Herald-Traveler Corp.*,

110 NLRB 297 (1954); see also, *NLRB v. Yarman & Erbe Mfg. Co.*, 187 F. 2d 947, 949 (2d Cir. 1951). Thus, “the information must be provided unless it plainly appears irrelevant.” *Teleprompter Corp. v. NLRB*, 570 F. 2d 4, 8 (1st Cir. 1977), quoting from *NLRB v. Yarman*.

27. Finally, PERB, like the NLRB, also requires **that information be promptly provided**. In *Burbank, supra.*, the Board held that a two-week delay was unjustified and prejudicial to the Union, and tantamount to not providing the information at all. An employer carries a heavy burden of justifying a delay and must generally show that the delay did not prejudice the union. *Union Carbide Corp.* (1985) 275 NLRB 197. Here, the District’s provision of some, limited information does not excuse its failure to provide other requested financial information for negotiations in a timely manner.

UNFAIR PRACTICES

The District, by its agents, officers and representatives, has by the conduct alleged above,

(1) failed to negotiate in good faith with the Union in violation of Government Code sections 3543.5(a) and (c); and all other relevant sections of the Act by failing to provide the Union relevant and necessary information in a timely manner for the Union to represent its members in ongoing contract negotiations with the District, and by failing to adhere to the parties’ past practice for promptly exchanging relevant and necessary requested information; and

(2) interfered with the Union’s right to represent its members in violation of Government Code section 3543.5(b) of the Act.

REMEDIES

The Guild requests the following remedies to resolve these charges:

1. Hold that the District violated the Act by refusing and failing to provide the Union with requested information in a timely manner for negotiations which is relevant and necessary for it to represent its bargaining unit members;
2. Order the District to cease and desist in failing and refusing to provide the Union – timely following its requests – with requested information necessary and relevant for negotiations;
3. Order that the District to immediately provide the Union with the remaining information it initially requested and which the District has failed to provide;
4. Order that the District post a notice of the District’s violation in all work locations where notices to employees are customarily placed and to send the notice electronically to all employees;

5. Because the District's actions were frivolous; in blatant disregard to its known responsibilities and obligations, and otherwise met PERB's standards, order the District to pay attorney fees as allowed by the Act; and
6. For such other and further relief as is just and proper.