STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY,	)	
Charging Party,	)	Case No. LA-CO-63-H
v.	)	PERB Decision No. 1333-H
CALIFORNIA FACULTY ASSOCIATION,	)	June 25, 1999
Respondent.	)	

Appearances; Janette Redd Williams, Attorney, for Trustees of the California State University; Rothner, Segall & Greenstone by Glenn Rothner, Attorney, for California Faculty Association.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by the Trustees of the California State University (CSU) of a Board agent's partial dismissal (attached) of an unfair practice charge. In the charge, CSU alleged that the California Faculty Association (CFA) insisted to impasse over non-mandatory subjects of bargaining in violation of section 3571.1(c) and (d) of the Higher Education Employer-Employee Relations Act (HEERA).[1]

[1]HEERA is codified at Government Code section 3560 et seq. Section 3571.1 states, in pertinent part:

> It shall be unlawful for an employee organization to:
>
> (c) Refuse or fail to engage in meeting and conferring with the higher education employer.

The Board has reviewed the entire record in this case, including the Board agent's partial warning and dismissal letters, CSU's appeal and CFA's response thereto. The Board finds the partial warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The partial dismissal of the unfair practice charge in Case No. LA-CO-63-H is AFFIRMED.

Members Dyer and Amador joined in this Decision.

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3590).

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1 77 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940

February 19, 1999

Janette Redd Williams, University Counsel
Trustees of the California State University
400 Golden Shore, Suite 350
Long Beach, CA 90802

Re: **PARTIAL DISMISSAL LETTER**
Trustees of the California State University v. California Faculty Association
Unfair Practice Charge No. LA-CO-63-H; First Amended Charge

Dear Ms. Redd Williams:

The above-referenced unfair practice charge, filed August 14, 1998, alleges the California Faculty Association (CFA) bargained to impasse on nonmandatory subjects of representation. The Trustees of the California State University (University or CSU) allege this conduct violates Government Code section 3571.1(c) and (d) of the Higher Education Employer-Employee Relations Act (HEERA or Act).

I indicated to you, in my attached letter dated November 9, 1998, that certain allegations contained in the charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended these allegations to state a prima facie case or withdrew them prior to November 16, 1998, the allegations would be dismissed. I later extended this deadline until November 25, 1998.

On November 30, 1998, I received a first amended charge. The first amended charge does not provide any new factual arguments, but instead argues the legal conclusions made by this Board Agent. These legal arguments are presented by Charging Party in the form of a confidential ten (10) page letter. These legal arguments are discussed below.

On February 12, 1998, the parties commenced negotiations for a successor agreement. On June 19, 1998, after more than twenty bargaining sessions, the University informed CFA of its intent to file for impasse with this agency. The parties agreed to hold two additional bargaining sessions on June 30, 1998 and July 1, 1998.

On July 2, 1998, the University filed a Request for Impasse Determination with PERB. On July 12, 1998, CFA withdrew its proposal regarding agency fee.

On July 12, 1998, PERB provided parties with oral notice of its decision to declare impasse. On July 13, 1998, PERB determined that impasse between the parties existed with regard to 17 separate articles, including Article 1-Recognition, Article 12-Appointments, and Article 38-Layoffs.

The University contends that CFA insisted to the point of impasse on the following allegedly nonmandatory subjects of bargaining: (1) Agency Fee; (2) Department Chairs in Bargaining Unit; (3) Hiring of Temporary Employees; (4) Preferential Rehire of Temporary Employees; (5) Establishment of "Continuing Temporary Faculty Unit Employees;" (6) Replacement of Retired Faculty; and (7) Restrictions of Layoff of Employees.

The University and CFA have a bilateral obligation to engage in meeting and conferring about mandatory subjects of negotiations that relate to wages, hours of employment and other terms and conditions of employment. (Gov. Code sec. 3562(r).) However, the obligation to negotiate is not unlimited and a party may lawfully refuse to negotiate about nonmandatory or permissive subjects. (Trustees of the California State University (1997) 22 PERC par. 29001.) As to these subjects, "each party is free to bargain or not to bargain, and to agree or not to agree." (NLRB v. Wooster Division of Borg-Warner Corp. (1958) 346 U.S. 342, 349.)

Allegation 1:

Allegation 1 of the original and first amended charges alleges CFA bargained to impasse over an agency fee proposal. My letter dated November 9, 1998, provided that as the proposal was withdrawn prior to impasse determination, no violation took place.

In its confidential letter, the University argues (1) impasse is determined when the parties declare impasse, or alternatively (2) impasse is determined when PERB gives oral notification of its decision to declare impasse. However, both of these arguments lack merit for the reasons discussed herein.

The University contends impasse is determined when the parties declare impasse at the bargaining table. Although the University cites numerous cases for such an argument, the University overlooks the wording and meaning of HEERA.

PERB Regulation 32792 states in relevant part:

> (a) After declaring impasse orally or in writing to the other party or after jointly declaring impasse, either or both parties may request the Board determine that an impasse exists and appoint a mediator. (emphasis added.)

PERB Regulation 32793 further states:

> (a) The Board shall, within five working days following the receipt of the written request for appointment of a mediator, orally notify the parties that the Board determined that:
>
> (1) An impasse exists and a mediator has been appointed, or
> (2) Impasse has not been reached.

As both provisions vest the determination of impasse with the Board itself, it is clear that impasse exists only when the Board makes such a determination, not when one or both of the parties believe impasse has been reached. Indeed, although both parties may declare impasse, the Board may determine that impasse does not exist and send the parties back to the bargaining table. Such a power rests entirely with the Board, and not with the parties.

The University argues in the alternative that impasse exists when the Board orally notifies the parties under PERB Regulation 32793. However, an understanding of PERB processes and past practice demonstrates that a PERB decision is not final and binding until served on the parties pursuant to PERB Regulation 32140. Moreover, such a interpretation would, in the instant charge and others to follow, require parties to demonstrate that proposals were withdrawn prior to receipt of the Board Agent's telephone call or message.[1] Such an interpretation is incongruous and beyond the scope of PERB Regulations. As such, this allegation must be dismissed, as CFA withdrew the proposal prior to PERB's determination of impasse.

Allegation 2:

With regard to Allegation 2, CFA's proposal states:

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[1] Indeed, the University fails to demonstrate that CFA withdrew the proposal after PERB orally notified the parties of its decision.

> 1.6: The parties agree that all department chairs and department heads shall be included in the bargaining unit.

This proposal is identical to the language included in Article 1.6 of the recently expired agreement. However, the University now objects to this language as nonmandatory.

The University contends that acceptance of such a proposal would now restrict their right to exclude supervisory employees from the bargaining unit, and would instead vest bargaining unit appropriateness with CFA, and not PERB. As noted in my November 9, 1998, letter, Article 1.2 of the proposed Agreement prohibits the bargaining unit from including any management or supervisory employees. As such, it is still unclear how such a proposal would require the University to waive any management rights it already possess.

The University is correct in stating that bargaining unit appropriateness is vested exclusively in PERB. Indeed, with regard to department chairs at the University, PERB has already made a determination and found that department chairs are not supervisory and should be included in the unit. In In the Matter of Unit Determination for Employees of the California State University and Colleges Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act (1981) PERB Order No. JR-ll-H, PERB determined that all but nine (9) of the department chairs employed by the University belonged in the bargaining unit represented by CFA. Thus, it is unclear why a restatement of this determination now violates the HEERA. As this proposal does not violate the HEERA, this allegation must be dismissed.

Allegation 3:

Allegation 3 deals with the hiring of temporary employees. CFA's proposal provides in relevant part:

> 12.10: There shall be no first time appointments of temporary faculty in the CSU until such time that the ratio of temporary faculty to total faculty is reduced to .38. This shall be accomplished by the beginning of the fall term 1999. . . The employer shall attain this goal by consolidating part-time and temporary positions, converting the positions into tenure-track positions, and filing the positions with qualified temporary faculty.

The University argues, by citing Webster's dictionary definitions for "criteria" and "standards", that this proposal violates Government Code section 3562(r)(4), which provides:

> The scope of representation shall not include:
> (4) Criteria and standards to be used for appointment, promotion, evaluation, and tenure of academic employees.

As stated in my November 9, 1998, letter, the University fails to demonstrate what criteria or standards CFA is attempting to bargain. Whether employing the Webster's definition of "criteria" or "standards" or whether employing a basic understanding of such terms, the allegation still fails to state a prima facie case. The University does not demonstrate that CFA's proposal attempts to establish a means of judging employees or applicants, nor does the proposal establish a rule or basis of comparison for measuring applicants or employees. Instead, the proposal attempts to limit the number of new temporary employees, thereby increasing job opportunities and work for those employees previously hired as temporary faculty.

As the Board stated in Jefferson School District (1980) PERB Decision No. 133, the question of reemployment necessarily involves future entitlement to wages and benefits and affects hours worked by bargaining unit members who are reemployed, and therefore is within the scope of representation. Moreover, CFA's proposal is much like a work preservation proposal, which the Board has consistently found to be within the scope of representation. (See, State of California (Department of Personnel Administration) (1987) PERB Decision No. 648-S.) The proposal attempts to limit the number of temporary employees hired by the University, and thus preserve the number of valuable tenure-track positions.[2] The privileges and rights afforded to tenure-track employees are much greater than those afforded to temporary faculty, and CFA has a vested interest in preserving tenure-track work and its benefits. (See, Fremont Unified School District (1997) PERB Decision 1240, where Board found District violated Act when it unilaterally changed the past practice regarding the reemployment of temporary teachers.) As such, this allegation is dismissed.

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[2] Tenure-track employees serve on departmental committees, engage in student advising and admissions, serve on peer review committees for promotion and evaluation, and handle class scheduling. Temporary employees are not afforded such benefits.

Allegation 4:

With regard to Allegation 4, Probationary Appointments, CFA's proposal states in pertinent part:

> 12.17c: Each peer review committee shall give preference to candidates with teaching experience in the CSU. . .

As in Allegation 3, above, the University contends that insisting to impasse upon "preferences" constitutes bad faith bargaining as it interferes with the criteria and standards of appointment. As noted in my November 9, 1998, letter, the University fails to provide any facts demonstrating a "preference" interferes with the means by which applicants are judged or the rules used to compare candidates.

The University also asserts the "preference" will undoubtedly lead to grievances and unfair practice charges. However, the University does not explain why their denial of a tenure-track to former or current employees would cause more grievances or complaints with the preferences. Indeed, it seems likely current or former employees would grieve their denial of tenure-track positions whether they received preference or not. As such, this allegation must be dismissed.

Allegation 5:

CFA's proposal in Allegation 5 regarding "Continuing Temporary Faculty Unit Employees," provides:

> 12.13: Temporary faculty unit employees who have completed twelve (12) semesters or eighteen (18) quarters of service on a single campus in the same academic department . . . shall be eligible for employment as Continuing Temporary Faculty Unit Employees.
>
> 12.14: Continuing Temporary Faculty Unit Appointments shall be defined as temporary bargaining unit appointments that automatically continue each successive academic year unless the Continuing Temporary Faculty Unit Employee is notified no later than June 1 that he or she will not be retained . . . Such notice shall not constitute a layoff.
>
> . . . [A]fter notification, the Continuing Temporary Faculty Unit Employee shall have

> preference for courses in the department which continue to be offered and which will not be assigned to tenure track faculty.

The University again contends this proposal interferes with the criteria and standards for appointments. However, for the reasons stated regarding Allegation 3, above, the allegation fails to state a prima facie case.

CFA's proposal provides that temporary employees serving twelve (12) consecutive semesters in the same department, on the same campus, would automatically continue to be employed by the University unless the University informed the employees by June 1. It is unclear how this proposal violates the University's right to determine the criteria and standards for appointment. Indeed, the proposal itself states the employees must have received satisfactory or better evaluations. Moreover, the proposal does not require the University to continue to employ these teachers, but instead states that the University must inform the employees by June 1, if they are not going to be rehired for the following semester. The University fails to demonstrate this proposal infringes on the criteria and standards for appointment. Instead, this proposal provides reemployment rights for temporary faculty, which is a negotiable subject. (See, Jefferson School District (1980) PERB Decision No. 133; San Mateo City School District (1984) PERB Decision No. 383.)

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which

meets the requirements of Cal. Code Regs., tit.8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code. Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code Regs., tit. 8, sec. 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, sec. 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code Regs., tit. 8, sec. 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By
Kristin L. Rosi
Regional Attorney

Attachment

cc: Glenn Rothner

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940

November 9, 1998

Janette Redd Williams, University Counsel
Trustees of the California State University
400 Golden Shore, Suite 350
Long Beach, CA 90802

Re: **PARTIAL WARNING LETTER**
Trustees of the California State University v. California Faculty Association
Unfair Practice Charge No. LA-CO-63-H

Dear Ms. Redd Williams:

The above-referenced unfair practice charge, filed August 14, 1998, alleges the California Faculty Association (CFA) bargained to impasse on nonmandatory subjects of representation. The Trustees of the California State University (University or CSU) allege this conduct violates Government Code section 3571.1(c) and (d) of the Higher Education Employer-Employee Relations Act (HEERA or Act).

Investigation of the charge revealed the following. CFA is the exclusive bargaining representative for the University's faculty, both tenure-tracked and temporary. CFA and the University are parties to a collective bargaining agreement (Agreement) which expired on June 30, 1998.

On February 12, 1998, the parties commenced negotiations for a successor agreement. On June 19, 1998, after more than twenty bargaining sessions, the University informed CFA of its intent to file for impasse with this agency. The parties agreed to hold two additional bargaining sessions on June 30, 1998 and July 1, 1998.

On July 2, 1998, the University filed a Request for Impasse Determination with PERB. On July 12, 1998, CFA withdrew its proposal regarding agency fee.

On July 13, 1998, PERB determined that impasse between the parties existed with regard to 17 separate articles, including Article 1-Recognition, Article 12-Appointments, and Article 38-Layoffs.

The- University contends that CFA insisted to the point of impasse on the following allegedly nonmandatory subjects of bargaining: (1) Agency Fee; (2) Department Chairs in Bargaining Unit; (3) Hiring of Temporary Employees; (4) Preferential Rehire of Temporary Employees; (5) Establishment of "Continuing Temporary Faculty Unit Employees;" (6) Replacement of Retired Faculty; and (7) Restrictions of Layoff of Employees.

With regard to Allegation 2[1], CFA's proposal states:

> 1.6: The parties agree that all department chairs and department heads shall be included in the bargaining unit.

This proposal is identical to the language included in Article 1.6 of the recently expired agreement. However, the University now objects to this language as nonmandatory.

With regard to Allegation 3, the hiring of temporary employees, CFA's proposal provides in relevant part:

> 12.10: There shall be no first time appointments of temporary faculty in the CSU until such time that the ratio of temporary faculty to total faculty is reduced to .38. This shall be accomplished by the beginning of the fall term 1999. . . The employer shall attain this goal by consolidating part-time and temporary positions, converting the positions into tenure-track positions, and filing the positions with qualified temporary faculty.

With regard to Allegation 4, Probationary Appointments, the proposal states in pertinent part:

> 12.17c: Each peer review committee shall give preference to candidates with teaching experience in the CSU. . .

CFA's proposal in Allegation 5 regarding "Continuing Temporary Faculty Unit Employees," provides:

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[1] Allegation 1 is not described in detail as it was withdrawn by CFA prior to the impasse determination. As such, the content of the proposal is not relevant to the determination of a prima facie case.

> 12.13: Temporary faculty unit employees who have completed twelve (12) semesters or eighteen (18) quarters of service on a single campus in the same academic department . . . shall be eligible for employment as Continuing Temporary Faculty Unit Employees.
>
> 12.14: Continuing Temporary Faculty Unit Appointments shall be defined as temporary bargaining unit appointments that automatically continue each successive academic year unless the Continuing Temporary Faculty Unit Employee is notified no later than June 1 that he or she will not be retained . . . Such notice shall not constitute a layoff.
>
> . . . [A}fter notification, the Continuing Temporary Faculty Unit Employee shall have preference for courses in the department which continue to be offered and which will not be assigned to tenure track faculty. . . .

With regard to Allegation 6, Employee Retirement, CFA's proposal provides:

> 20. During the life of the Agreement any faculty unit employee retiring from the CSU shall be replaced by the appointment of a tenure track faculty member on the campus at which the retirement has taken place.

Based On the above stated facts, allegation 1 through 6 above, as presently written, fail to demonstrate a prima facie violation of the HEERA, for the reasons provided below.

The University and CFA have a bilateral obligation to engage in meeting and conferring about mandatory subjects of negotiations that relate to wages, hours of employment and other terms and conditions of employment. (Gov. Code sec. 3562(r).) However, the obligation to negotiate is not unlimited and a party may lawfully refuse to negotiate about nonmandatory or permissive subjects. (Trustees of the California State University (1997) 22 PERC par. 29001.) As to these subjects, "each party is free to bargain or not to bargain, and to agree or not to agree." (NLRB v. Wooster Division of Borg-Warner Corp. (1958) 346 U.S. 342, 34?.)

Allegation 1:

The University contends CFA bargained to impasse on an agency fee provision. However, facts provided by CSU demonstrate CFA withdrew this proposal prior to the impasse determination. As such, CFA did not bargain to the point of impasse on this provision.

Allegation 2:

The University alleges CFA's Article 1.6 proposal is a nonmandatory subject of bargaining, as it purportedly requires CSU to agree that all department chairs are bargaining unit members regardless of supervisory status. The University's contention is, however, misplaced.

Proposed Article 1.6 states that all department chairs shall be considered bargaining unit members. In reading this provision, *CSV* ignores Article 1.2 of the proposed Agreement which states:

> The parties recognize that employees in the classifications listed in Appendix B of this Agreement and all other management, supervisory, and confidential employees as defined in HEERA are excluded from the bargaining unit.

Reading the agreement as a whole, as required by contract law, the Article 1.6 does not require CSU to violate the HEERA, nor does it require CSU to included supervisory employees in the unit. Indeed, it requires nothing more of the University than what they have been doing all along, as this provision is merely a restatement of the current status quo.

The University also contends that the proposal violates PERB case law. In support of this contention, CSU cites California State University (1982) 7 PERB 14024, a nonprecedential hearing officer decision. However, this contention is also misplaced.

In The Matter of Unit Determination for Employees of California State University and Colleges Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act (1981) PERB Order No. JR-ll-H, the Board held that as a class, department chairs were not supervisory and should be included in the unit. In CSU, supra, the ALJ held that nine (9) of trie 12-month department chairs out approximately 800 department chairs were supervisory employees. Despite CSU assertion, the ALJ did not find that all 12-month department chairs are supervisory employees, nor is the decision precedential beyond the nine affected employees. As such, CSU

fails to provide any statutory or case law demonstrating CFA's proposal is a nonmandatory subject of bargaining.

Allegation 3:

The University also contends CFA's proposal regarding job security of temporary and tenure-track employees violates the HEERA. CFA's proposal provides that CSU will not hire any first time temporary faculty[2] until the ratio of temporary faculty to total, faculty is 38%. CSU contends this proposal violates Government Code section 3562(r)(4) which states in relevant part:

> The scope of representation shall not include:
> (4) Criteria and standards to be used for appointment, promotion, evaluation, and tenure of academic employees . . .

However, CSU fails to demonstrate what criteria or standards for appointment CFA is attempting to bargain. CFA's proposal does not set forth the qualifications for temporary faculty, nor does the provision provide the standards to be employed by CSU in appointing faculty members. Instead, the provision seems to address CFA's job security concerns. CFA's proposal attempts to limit: the number of new temporary employees, thereby increasing job opportunities and work load for those employees who have previously been employed as temporary faculty. As the Board stated in Jefferson School District (1980) PERB Decision No. 133, the question of reemployment necessarily involves future entitlement to wages and benefits and affects hours worked by bargaining unit teachers who are re-employed, and therefore is within the scope of representation. (See also, San Mateo City School District (1984) PERB Decision No. 383.) Moreover, the privileges and rights afforded to tenure-track employees are much greater than those afforded to temporary faculty, and CFA has a vested interest in preserving tenure-track work and its benefits. As such, this proposal does not violate the HEERA.

Allegation 4:

CFA's proposal in Article 12.17c requires that CSU's peer review committee for probationary appointments give "preference" to

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[1] Temporary appointments are defined as appointments for a fixed length of time. For the most part, unlike tenure-track employees, temporary employees do not serve on departmental committees, do not engage in student advising or admissions, do nor serve on peer review panels for promotion or appointment, and do not handle class scheduling.

applicants who have had prior teaching experience at CSU. CSU contends this proposal infringes on their right to make hiring decisions and additionally sets "criteria and standards for appointment." However, the University fails to provide any support for this allegation.

CFA's proposal requires only that "preference" be given to those employees who have already worked as faculty members for the University. The proposal does not require CSU to select these applicants, nor does the proposal require CSU to alter any of its criteria or qualifications for appointment. The proposal merely requires CSU to give preference in tenure-track positions to those temporary employees who have served the University as faculty members in the past. As the University fails to provide any facts demonstrating this preference impinges on its statutory rights, the allegation fails to state a prima facie case.

Allegation 5:

The University contends that CFA's proposal to create rehire rights for temporary faculty members serving 12 consecutive semesters violates the HEERA. CFA's proposal provides that temporary employees serving 12 consecutive semesters in the same department at the same campus, receiving "satisfactory or better" evaluations, would automatically continue to be employed by the University unless the University informed the faculty members by June l. As noted in Allegation 3, above, CSU fails to demonstrate this proposal infringes on the criteria or standards the University uses in appointing faculty. Instead, the proposal provides reemployment rights for temporary faculty members. As such reemployment rights are within the scope of bargaining, the allegation fails to state a prima facie case.

Allegation 6:

CFA proposes in Article 20 that if faculty members who retire during the life of the Agreement are replaced by the University, they shall be replaced with tenure-track faculty positions. CSU contends this proposal impinges on staffing levels and its right to hire employees. However, analogous PERB case law has held that this issue is within the scope of negotiation.

CFA's proposal regarding the replacement of tenure-track faculty with other tenure-tracked employees relates directly to the benefits conferred upon its bargaining unit employees. Facts provided above demonstrate tenure-track employees participate on departmental committees, serve as student advisors, and are allowed input into the hiring of other employees as well as the department's budget. And perhaps most importantly, tenure-track faculty are ensured of future employment. Such benefits are not

conferred upon temporary faculty members. By proposing such a provision, CFA is merely attempting to retain and ensure tenure-track positions and the benefits those positions are conferred. As those benefits are within the scope of representation, CFA's proposal does not demonstrate bad faith bargaining. (Gov. Code 3581.3.)

For these reasons allegations 1 through 6, as presently written, do not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge. contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before November 16, 1998. I shall dismiss the above-described allegation from your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

Kristin L. Rosi
Regional Attorney