

STATEMENT OF GRIEVANCE

EXHIBIT E

Grievant: Fill out Sections 1-5 and file one copy at Chancellor's level.

1. GRIEVANT NAME: AFT Local 2121		LOCATION (SITE) SFCCD	
		LOCATION (DEPT) _____	
2. DATE OF ALLEGED GRIEVANCE: 12/20/12	DATE OF INFORMAL / ORAL DISCUSSION: 12/19/12	DATE OF INFORMAL / ORAL RESPONSE: 12/19/12	AFT IS AUTHORIZED TO FILE THIS GRIEVANCE. <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
3. DATE OF FILING THIS STATEMENT: 12/28/12	SPECIFIC ARTICLE(S), SECTION(S), PROVISION(S) ALLEGED TO HAVE BEEN VIOLATED: AFT 2121 / SFCCD Agreement and specifically Articles 3.B and 20.A.1.2		
4. EMPLOYEE'S STATEMENT OF ALLEGED VIOLATION(S). WHAT IS THE FACTUAL CONTENTION(S)? WHAT OCCURRED? HOW DID THE ALLEGED VIOLATION(S) AFFECT CONTRACT RIGHTS? PROVIDE FACTS NECESSARY TO SUPPORT YOUR POSITION/CONTENTION. See attached.			

[Use reverse side and/or attach pages (specify number) if necessary for full presentation.]

5. STATE FULL RELIEF, REMEDY, OR ACTION YOU REQUIRE OR BELIEVE NECESSARY TO RESOLVE THIS ALLEGED VIOLATION/GRIEVANCE.

See attached.

[Use reverse side and/or attach pages (specify number) if necessary for full presentation.]

GRIEVANT: DO NOT WRITE BELOW THIS LINE.

6.	DATE OF RECEIPT: _____
	DATE OF CONFERENCE: _____
	DATE OF RESPONSE: _____

[Use reverse side and/or attach pages (specify number) if necessary for full presentation.]

7. FINAL/BINDING ARBITRATION DECISION:	
GRIEVANCE RESOLVED: _____	DATE OF REQUEST: _____
GRIEVANCE DENIED: _____	DATE ARBITRATOR REQUESTED: _____
	DATE ARBITRATOR SELECTED: _____
ATTACH ARBITRATOR DECISION.	DATE ARBITRATION HEARING: _____
	DATE ARBITRATION DECISION: _____

Attach all responses, all extra pages, all information to this form.

TIME IS OF THE ESSENCE IN ALL MATTERS.

Section 4. Statement of Grievance

Contract Violations

1. Article 20.A.1.2

AFT 2121 protests the 4.4% annualized unilateral wage reduction imposed by the District retroactively for 2012-13, effective pay date January 2, 2013, on all faculty bargaining unit members. AFT 2121 and all faculty bargaining unit members have been adversely affected by the District's violation of Article 20.A.1.2. Article 20.A.1.2 allows in limited circumstances, adjustments in faculty pay. However, none of the circumstances enumerated in Article 20.A.1.2 exist here, hence the adjustment is not permitted by, and violates Article 20.A.1.2.

Article 20.A.1.2 also requires that before the District "decreases" faculty pay, the parties must first consult over savings and alternate revenue sources, to determine if such savings and revenue sources can offset the need and/or amount of the decrease in faculty pay. Such consultation did not take place either, hence the "decrease" is not permitted by, and violates Article 20.A.1.2.

Finally, the parties executed, and the Board of Trustees approved, a "Tentative Agreement" on or around June 20, 2012, resolving the decrease in state funding between Fiscal Years 2010-11 and 2011-12. At that time, AFT 2121 agreed to a 2.85% wage cut for Fiscal Year 2012-2013, as well as \$8.4 million in labor concessions, to help close the gap from the decrease in state funding. The District cannot now invoke Article 20.A.1.2 *retroactively* to recoup the decrease in state funding from Fiscal Years 2010-11 and 2011-12, as this is not permitted by, and violates Article 20.A.1.2, as well as the parties' Tentative Agreement of June 20, 2012.

2. Article 3.B

The District is also in violation of Article 3.B, Obligation to Bargain. This violation also adversely affects AFT 2121 and all faculty bargaining unit members, by imposing wage cuts without negotiating to impasse and exhausting impasse procedures.

3. Ongoing 5% Wage Reduction, Effective July 1, 2013

We further protest the District's unilateral ongoing wage reduction of 5% effective July 1, 2013 on similar grounds. There is no authority in the Agreement permitting the continuation of this reduction in faculty wages, which also adversely affects AFT 2121 and all faculty bargaining unit members.

Section 5. Remedy

AFT 2121 requests the following remedies:

1. Immediately rescind the 4.4% annualized wage reduction for 2012-13, and thereafter;
2. Make whole all unit members for their loss of wages from the imposition of the 4.4% annualized wage reduction, plus interest at the legal rate;
3. Immediately rescind the 5% ongoing wage reduction effective July 1, 2013, and make all unit members whole for any loss of wages, plus interest at the legal rate;
4. Reimburse AFT 2121 for any loss in dues and/or fees resulting from the foregoing;
5. Cease and desist from further violations of the Articles in question;
6. Inform the bargaining unit, by an email message from the Chancellor, of the rescission and make-whole order; and
7. For such other and further relief that is just and proper.

Last, AFT 2121 has been denied information which it has requested that is pertinent to this matter. Accordingly, it reserves the right to amend this Grievance.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

RECEIVED
P.E.R.B.
SF REGIONAL OFFICE

2012 DEC 21 PM 3:13

DO NOT WRITE IN THIS SPACE:

Case No:

SF-CE-2989-E

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? NO ☒ YES ☐ If yes, Case No.

1. CHARGING PARTY: EMPLOYEE ☐ EMPLOYEE ORGANIZATION ☒ EMPLOYER ☐ PUBLIC¹ ☐

a. Full name: American Federation of Teachers, Local 2121

b. Mailing address: 311 Miramar Avenue, San Francisco, CA 94112

c. Telephone number: (415) 585-2121

d. Name, title and telephone number of person filing charge: Robert J. Bezemek, Patricia Lim, Attorneys, Law Offices of Robert J. Bezemek; 510-763-5690

e. Bargaining unit(s) involved: Academic Employees

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION ☐ EMPLOYER ☒

a. Full name: San Francisco Community College District

b. Mailing address: 50 Phelan Avenue, Room E-200

c. Telephone number: San Francisco, CA 94112

d. Name, title and telephone number of agent to contact: Dr. Thelma Scott-Skillman, Interim Chancellor, 415-239-3303

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 Government Code section 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 sec. 3540 et seq.)

☐

Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)

☐

Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq.)

☐

Meyers-Millas-Brown Act (MMBA) (Gov. Code sec. 3500 et seq.)

☐

Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code sec. 99560 et seq.)

☐

Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code sec. 71630 – 71639.5)

☐

Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code sec. 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: Government Code §§ 3543.5(a), (b), (c)

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.*)

See Attachment A

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 December 21, 2012

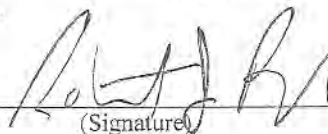
(Date)

at Oakland, CA

(City and State)

Robert J. Bezemek

(Type or Print Name)



(Signature)

Title, if any: Attorney

Mailing address: Law Offices of Robert J. Bezemek, A Professional Corporation, 1611 Telegraph Ave., Suite 936,

Oakland, CA 94612

Telephone Number: (510) 763-5690

Attachment A to Unfair Labor Practice Charge

1. Charging Party is now, and has been since in or about 1977, the exclusive bargaining agent of a unit of academic employees of the Employer. The unit consists of approximately 1,700 full and part-time faculty.
2. The Employer operates the City College of San Francisco, with a variety of campuses and sites in the City and County of San Francisco.
3. The parties have been signatory to a series of collective bargaining agreements ("CBA") for more than 30 years. The last three-year agreement, which was amended on or about July 28, 2011, ran through June 30, 2012.
4. In June 2012, the parties executed an agreement extending the CBA up to and including December 31, 2012.
5. Over the past several months, the parties have been negotiating over a number of issues. No impasse has been reached, or declared, with regard to these negotiations. Many issues remain unresolved, including wages, benefits and numerous terms and conditions of employment.
6. During December 2012, the District, by its negotiators, announced during negotiations that, absent agreement, it intended to impose an 4.4% "annualized" faculty pay cut, starting in January.
7. District negotiators have also explained in negotiations in December 2012, by Emily Prescott, that the District believes it is entitled to cut faculty pay pursuant to the CBA.
8. AFT negotiators, by Charging Party Executive Director Chris Hanzo, Charging Party President Alisa Messer, and legal counsel Patricia Lim, have disputed the District's assertions that it has the contractual right to cut or reduce faculty pay.
9. On or about December 19, 2012 District negotiators declared during a negotiations session that they would impose a 4.4% pay cut on faculty starting in January 2013. They explained that they will make this retroactive to July 1, 2012. (During negotiations conducted in June 2012, Charging Party and the District negotiated a separate 2.85% pay cut for 2012-2013, which also remains in effect.) Charging Party negotiators objected, asserting, *inter alia*, that the District has a duty to negotiate over any faculty pay cut, that the parties are not at impasse, and that the District has no right, contractual or otherwise, to impose this pay cut. These objections were to no avail.
10. On December 20, 2012 District Interim Chancellor Dr. Thelma Scott-Skillman, sent a message via electronic mail to the faculty, a copy of which is attached hereto as

Attachment 1, and incorporated herein by reference as though set forth fully at length. Making good on the District's earlier statements, the Chancellor announced the following unilateral changes to faculty compensation:

"Beginning with the January 2, 2013 paycheck, CCSF will begin implementation of a 4.4% annualized wage reduction for FY 2012-2013 for ... all employees represented by AFT 2121 ... Wage reductions will be implemented in equal installments through June 2013. Because more than half of annual compensation has already been paid, the impact on paychecks for nearly all affected employees will be over 9% for the remainder of the year ..."

11. Chancellor Scott-Skillman explained in **Attachment 1** that the District and "AFT 2121 were unable to reach agreement in negotiations on any alternative scenario to achieve the necessary level of savings ..." The District has not negotiated in good faith in regard to any "alternative scenario," any "necessary level of savings," or any "cuts" in the amount of faculty pay. Dr. Scott-Skillman asserted that the District is permitted to impose such a cut under Article 20.A.1.2. of the Agreement. This statement is not true - Article 20.A.1.2. does not allow such action. In addition, many subjects remain to be negotiated, there has been no declaration of impasse, there is no impasse in regard to a successor agreement, and the parties have not participated in PERB's mediation and fact-finding procedures in regard to a new agreement, including but not limited to, these unilateral changes.
12. Despite the District's continuing obligation to negotiate in good faith in an attempt to reach an agreement on a new contract, Chancellor Scott-Skillman also declared in **Attachment 1**, that the "ongoing reduction in wages ultimately will be 5% beginning on July 1, 2013." This statement constitutes an additional unilateral action, undertaken without bargaining in good faith, without reaching an agreement, despite the absence of an impasse in regard to a successor agreement, and without participating in PERB's mediation and fact-finding process.
13. Chancellor Scott-Skillman's statement (**Attachment 1**) also declares that the District "will make a transition to monthly pay starting on January 2, 2013. Currently, most faculty are paid bi-weekly. The District and Charging Party have not reached agreement on changing faculty pay to a 12-month schedule, hence this change is also a unilateral action, taken in bad faith, and without reaching an impasse on a new agreement, or participating in PERB's mediation and fact-finding process.
14. The message sent by Chancellor Scott-Skillman, **Attachment 1**, also constitutes interference, restraint and coercion of faculty, in violation of section 3543.5 (a) of the Act, in that it, *inter alia*, delivers a message to employees that unionization and collective bargaining are futile, as the District intends to act unilaterally.

15. The above-referenced actions of the District violate sections 3543.5(a), (b), and (c) of the Act, and deny the Charging Party its rights to represent the academic employees of the District as guaranteed by its recognition as the exclusive bargaining agent, and as provided for in section 3543.1 of the Act.
16. As a remedy the Charging Party demands:
- (1) that the District rescind its unilateral cuts on faculty pay, and modifications to its method of paying faculty on a bi-weekly basis.
 - (2) that the District reimburse all faculty for all losses suffered by reason of this unilateral action, plus interest at the legal rate.
 - (3) that the District cease and desist such unilateral action, and such bad faith bargaining, and participate in bargaining in good faith in regard to negotiations over matters within the scope of bargaining, including any changes in faculty wages and benefits, and methods of payment of wages.
 - (4) that the District reimburse the Charging Party for its Attorneys Fees and expenses.
 - (5) that the District post a notice, and send an email of said notice, consistent with the distribution of the Scott-Skillman email of December 20, 2012.
 - (6) for such other and further relief as is just and proper.

Dated: December 21, 2012

From: Gohar Momjian <gmomjian@ccsf.edu>
Date: Thu, Dec 20, 2012 at 4:31 PM
Subject: Faculty: Message on behalf of Dr. Scott-Skillman
To: faculty@ccsf.edu, alisamesser@gmail.com
Cc: admin@ccsf.edu, Thelma Scott-Skillman <tscott-skillman@ccsf.edu>

To: CCSF Faculty

From: Dr. Scott-Skillman, Interim Chancellor

First, I want to thank you again for your service and commitment to City College and for the efforts you and your union have undertaken to help us address our current accreditation and fiscal crisis.

Over the past several weeks, the College has identified immediate steps that must be taken to address a shortfall as great as \$6.5 million for the current year due to our declining enrollment. Regrettably, this requires urgent action that will affect you and all members of our faculty. In this letter, I want to spell out the specifics so you can know exactly what to expect.

Beginning with the January 2, 2013 paycheck, CCSF will begin implementation of a 4.4% annualized wage reduction for FY 2012-13 for administrators, department chairs, and all employees represented by AFT 2121. I will be taking this same pay reduction. Wage reductions will be implemented in equal installments through June 2013. Because more than half of annual compensation has already been paid, the impact on paychecks for nearly all affected employees will be over 9% for the remainder of the year. As part of the effort to save \$6.5 million this year, the District also will be laying off a number of classified employees in the first two weeks of January.

We are taking this action because no other options are available to us. We foresee no additional revenue in the current fiscal year. This includes consideration of Proposition A and Proposition 30 funds. I want to reiterate how grateful the CCSF community is for AFT members' hard work to secure passage of these much-needed measures. Prop 30 avoided cuts for this fiscal year but unfortunately adds no new money to our budget. Prop A revenue will not come in until December, 2013 – too late to affect our current fiscal shortfall.

CCSF and AFT 2121 were unable to reach agreement in negotiations on any alternative scenario to achieve the necessary level of savings. We must now act according to the provisions stated in Article 20.A.1.2 of the Collective Bargaining Agreement previously negotiated with AFT, which provides the District with the

authority to recoup funds from employees as appropriate to offset the loss of state funds.

Based on that provision and taking into account some of the cost savings we have been able to achieve, the ongoing reduction in wages ultimately will be 5% beginning on July 1, 2013. For the remainder of this fiscal year, however, the reduction will be the annualized 4.4% needed to get through this difficult year.

Following constructive discussions with AFT, the District will also make a transition to monthly pay starting on January 2, 2013. The change will provide greater efficiency in the payroll process for CCSF's certificated employees, including improved reporting of earnings to CalSTRS (and avoidance of penalties in the future), fewer pay errors, and more time for payroll staff to attend to problems.

This has been a difficult decision for the College, and I acknowledge the difficulty it will mean for many of you. As educators we must remain committed to the paramount goal of keeping CCSF's accreditation, and continue to do what we can – individually and institutionally – to ensure that CCSF will thrive. Our students, our community, and our colleagues deserve no less.

Gohar Momjian
Executive Assistant to the Chancellor
City College of San Francisco
50 Phelan Avenue, E200
San Francisco, CA 94112
Phone: (415) 239-3797
Fax: (415) 239-3918
gmomjian@ccsf.edu

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,
State of California. I am over the age of 18 years and not a party to the within entitled
cause. The name and address of my residence or business is Law Offices of Robert J. Bezemek,
P.C., 1611 Telegraph Ave., Suite 936, Oakland, CA 94612.

On December 21, 2012, I served the Unfair Practice Charge re: American
(Date) (describe document(s))

Federation of Teachers, Local 2121, v. San Francisco Community College District
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).

Dr. Thelma Scott-Skillman,
Interim Chancellor
Office of the Chancellor
City College of San Francisco
50 Phelan Avenue, Room E-200
San Francisco, CA 94112

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on December 21, 2012, at Oakland, CA

Ellen J. Holmgren
(Type or print name)

Ellen J. Holmgren
(Signature)