

STATE OF FLORIDA  
PUBLIC EMPLOYEES RELATIONS COMMISSION

UNITED FACULTY OF FLORIDA,

Charging Party,

Case Nos. CA-2018-029  
CA-2018-034

v.

FLORIDA POLYTECHNIC UNIVERSITY  
BOARD OF TRUSTEES,

Respondent.

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**CHARGING PARTY'S PROPOSED RECOMMENDED ORDER**

Charging Party, United Faculty of Florida (UFF), submits this proposed recommended order.

**INTRODUCTION**

Through a charge filed on July 16, 2018, UFF alleges that Respondent, the Board of Trustees for Florida Polytechnic University (FPU), violated §§ 447.501(a), (b), and (c), Fla. Stat., by terminating the university's sole Assistant Librarian, Kate Bernard, and its sole Wellness Counselor, Casey Fox, and by eliminating those positions without providing UFF notice and an opportunity to bargain.

On August 20, 2018, UFF filed a second charge, alleging that FPU violated §§ 447.501(a) and (b), Fla. Stat., by terminating two additional employees, Chris Coughlin and Christina Drake, mechanical engineering professors.

The charges were found sufficient and consolidated into one proceeding. A two-day evidentiary hearing was held on Jan. 24–25, 2019, in Lakeland, Florida.

## PROPOSED FINDINGS OF FACT

### The Creation of FPU and the UFF Faculty Bargaining Unit at FPU

FPU began offering classes in the fall of 2014, becoming the newest of the state universities in Florida. Res. Ex. 4 (Faculty Handbook), at 6. *See* § 1000.21(6), Fla. Stat.<sup>1</sup> UFF already represented the faculty at the other eleven state universities by then. T. 32–33 (Churchill).

In 2015 the faculty at FPU began organizing to form their own union. T. 88 (Drake). At that time, Christina Drake served as a faculty representative on FPU’s Board of Trustees. T. 88, 89. In her leadership capacity, Drake regularly met with FPU President Randy Avent and they had a fairly good working relationship. T. 89. In October 2015, Drake met with Avent to notify him that the faculty intended to form a union. T. 29 (Churchill: the meeting was “to give the president a heads-up, just cordially let them know”); T. 89 (Drake). This news made Avent “extremely upset” and he responded to Drake with profanity and an ominous message to the effect of: “you go do what you need to do and I’ll go do what I need to do.” T. 89 (Drake).

FPU publicly and forcefully opposed the faculty unionization effort. T. 31 (Churchill). FPU hired two outside labor law firms and spent about \$60,000 opposing the faculty’s organizing effort. T. 32 (Churchill). FPU’s two senior executives, President Avent and Provost Terry Parker, each took public anti-union positions, mailing letters to faculty’s home addresses, posting advocacy communications on the faculty intranet, and meeting with faculty individually. T. 30 (Churchill), 259–61 (Avent), 290–91 (Parker). *See, e.g.*, UFF Ex. 1 (Avent: “I simply don’t think a union is the best interest of the University or the faculty.”); UFF Ex. 2 (“The University believes its faculty are capable of and much better off speaking for themselves...”); Res. Ex. 63 (Parker: “I do not believe that a union is helpful . . . let’s see what we can do together before you give your individual

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<sup>1</sup> A board of governors administers the system of public universities in Florida, while each university in the system is administered its own board of trustees. Fla. Const. Art. IX, § 7(b).

negotiating power to a union . . . I would prefer that you use the voice that you have with me rather than ceding that voice to a union. . . . So, in closing, please vote.”).

After a contested representation process, on October 27, 2016, the Commission certified UFF as the exclusive bargaining representative for a unit of employees that included:

All full-time employees of the Florida Polytechnic University Board of Trustees in the lower division classifications of professor, assistant professor, associate professor, assistant librarian, wellness counselor, and academic program coordinator.

*United Faculty of Florida v. Florida Polytechnic University Board of Trustees*, Case No. EL-2016-023 (FL PERC, Oct. 27, 2016) (Verification of Election Results and Certification of Exclusive Collective Bargaining Representative).

Neither Avent nor Parker had ever managed unionized workplaces before, nor have they ever been members of unions. T. 258–59 (Avent), 290 (Parker). Another decision-maker in this charge is Mary Vollaro, the chair of FPU’s mechanical engineering department, and she too had no experience with unions. T. 517 (Vollaro). FPU’s managers felt that FPU was intended to be more like a start-up company than a public university, meaning free from the burdens of tenure and unions. T. 261 (Avent); T. 368 (Parker: FPU was intended to be “nontenure-granting”). Even after the faculty union was certified, the administrators have continued to express anti-union sentiments. T. 371 (Parker: “you know, I’d much prefer to work with, you know --- without a union in place. . . . It – it offers you much more flexibility”); T. 518 (Vollaro, explaining that supervisory meetings with faculty are more difficult in the presence of a union representative because of the “union rules”).

The relationship between FPU’s administration and UFF was poor from the beginning, but there were a series of events in the spring of 2018 that exacerbated the already bad labor relationship. T. 33 (Churchill); T. 500–01 (Dewey).

### UFF Protested FPU's Unilateral Change to Fox's Pay Grade

In March 2018, UFF discovered that FPU unilaterally lowered the pay grade of Wellness Counselor Casey Fox. T. 33–34 (Churchill). An attorney for UFF wrote FPU two letters on Fox's behalf alleging that FPU had violated its duty to bargain and demanding that FPU reinstate Fox's former pay grade. UFF Ex. 4 (Mar. 27, 2018); UFF Ex. 9 (May 1, 2018). After meeting with UFF, FPU eventually agreed to restore Fox's pay. T. 58 (Churchill).

### FPU Attempted to Enforce an Unconstitutional Rule Prohibiting Association with Students

In April 2018, FPU's counsel sought to prevent UFF from “involv[ing] students in the ongoing collective bargaining negotiations,” threatening that doing so constituted an unfair labor practice under § 447.501(2)(f), Fla. Stat., and violated the Code of Ethics and Principles or Professional Conduct for the Education Profession in Florida. UFF Ex. 7 (April 19, 2018).

UFF responded to FPU in a letter signed by the chapter's entire leadership team—including Bernard, Fox, Coughlin, and Drake—asking FPU to cease and desist attempting to restrain the rights of faculty and students to work together. UFF Ex. 8 (April 24, 2018). UFF's response letter pointed out that § 447.501(2)(f), Fla. Stat., had been declared unconstitutional and demanded that FPU stop intimidating faculty. UFF Ex. 8 (“...we are troubled by your apparent attempts to extinguish protected rights in a harassing, intimidating, and coercive manner.”). *See generally* T. 35–36 (Churchill).

Parker was angered by union leaders communicating with students about collective bargaining issues and by the union's April 24 letter, and Parker took note of the signatories on that letter. UFF Ex. 10 (Parker, 4/25: “what the letter signatories don't understand . . . All of the noise we have had in the last ten days does hurt us . . . rather than snap badly I went home . . . I am amazed that individuals would sign their name to a document that is so flawed.”). Another

administrator proposed to Parker, “We need to find a way to direct the students to talk to the professors who are not very involved with the union.” *Id.*

#### Bargaining Unit Members Fear Retaliation

In spring 2018, an anonymous letter from a “concerned [FPU] employee” was sent to FPU’s Board of Trustees. UFF Ex. 12 at 22–24. The letter complained about low workplace morale, compensation inequality between employees and administrators, and concluded by listing a number of faculty, including the author’s own name, with information about the concerns in the letter. *Id.* That list included Fox, Coughlin, Drake, the union’s chapter president (Richard Matyi), and other non-bargaining unit staff. *Id.*

The Lakeland daily newspaper, *The Ledger*, asked President Avent about the anonymous letter. Rather than addressing the letter’s substance, Avent responded, “Right now, my concerns are more around the group responsible for the letter.” UFF Ex. 13. Avent seemed to assume that UFF was “the group” behind the letter, “acknowledging some tension during contract negotiations with the unionized faculty.” *Id.*

In May 2018, UFF surveyed FPU’s faculty about their workplace climate. T. 38–39 (Churchill). More than two-thirds of the faculty responded. T. 38. One of the survey questions posed the phrase, “I am openly able to express dissenting views from administration policies without fear of reprisal.” T. 39. Over two-thirds of respondents indicated they disagreed or strongly disagreed with the phrase. *Id.*

On May 23, 2018, Drake and several other UFF leaders attended an FPU Board of Trustees meeting. T. 91–92 (Drake); Res. Exs. 71–73. Drake spoke during public comment, connecting the low workplace moral with the FPU management’s degrading bargaining positions. T. 91–92.

## UFF Leaders Asserted *Weingarten* Rights in the Mechanical Engineering Department

In late March 2018, FPU's mechanical engineering department chair, Mary Vollaro, summoned a professor, Hessam Mirgolbabaei, to a meeting to discuss his performance. UFF Ex. 10 at 4–6; T. 519–20 (Vollaro). Vollaro testified that the meeting was intended to be “mentoring or informal conversation” and that she was surprised when Mirgolbabaei brought a union representative to the meeting. T. 519–20. Vollaro terminated the meeting because she did not want to meet in the presence of the union representative. T. 519–20. Vollaro believes having a supervisory meeting in the presence of a union representative is more difficult because she has to follow all the “union rules, policies, and procedures.” T. 517–18.

There was a dispute about whether and how the meeting would resume, and so on April 12 and again on April 19, 2018, Chris Coughlin, as the UFF Contract Enforcement Committee Chair, wrote to Parker asserting Mirgolbabaei's *Weingarten* rights. UFF Exs. 5 & 6. Drake also involved herself in the issue, informing Mirgolbabaei about his *Weingarten* rights and assisting him to locate a union representative. T. 92–93 (Drake).

Text messages between Vollaro and Parker show that they responded to Mirgolbabaei's assertion of *Weingarten* rights by conspiring to “make him look stupid” and by forcing meetings with him in the hope that he would become insubordinate:

[3/29, Vollaro]: “Escalating. Showed up with Union rep.”

[4/8, Parker]: “My intent is to build an irrefutable claim regarding hessam . . . separate intent regarding union rep stuff . . . working with attorney on that one”

[4/12, Parker]: “Delivered letter to hessam today . . . he was nervous and brought heather whitehead with him . . . seems strange. Early in the morning we got a letter from Chris alleging that we had violated his weingard rights . . . lawyer is all over this, told me to hav emerging anyway. My take on Hessam is to keep the pressure up . . . I suspect that he will not comply in some way”

[4/12, Vollaro]: “Hessam situation is bringing a lot to light . . .”

[4/12, Parker]: “. . . if the faculty spend time protecting a poor performer at the expense of a high performer, they really aren't holding appropriate standards.”

[4/12, Vollaro]: “The union has its place, if used appropriately, which is not happening in this case.”

[4/12, Vollaro]: “. . . Those who have picked up this ‘cause’ are in question themselves . . . Rich . . . Chris & Christina really don’t have much academic experience or mentoring, but very active in union. . . . In my hallway ‘tribe,’ poor performers seems to be supporting each other.”

[4/18, Vollaro]: “Meeting postponed.”

[4/18, Parker]: “I will send email to hessam in a few minutes . . . please reply all and schedule meeting ASAP”

[4/24, Parker]: “I will send and copy as many people that I can justify . . . we need to tag team him a bit and make him look stupid”

[4/24, Vollaro]: “Ok sounds like a plan!”

[5/5, Parker]: “Force the meeting with hessam . . . Hope that hessam becomes insubordinate.”

UFF Ex. 10 (excerpts).

The text messages show Vollaro and Parker’s disdain for the UFF chapter leaders asserting Mirgolbabaei’s *Weingarten* rights (i.e., “protecting a poor performer”), and they specifically name “Rich” [Mayti], “Chris” [Coughlin], and “Christina” [Drake]. T. 525 (Vollaro: “Those are the only people with those names.”) A member of the FPU Board of Trustees also agreed that “the administration thought that [the Mirgolbabaei issue] was being handled inappropriately by those representing UFF.” T. 503 (Dewey).

#### FPU Managers Closely Observe Union Activities

Parker keeps close tabs on which faculty are involved in union activities, and administrators frequently report union activities to Parker. Vollaro, for example, admitted that she watches the faculty in her department and reports their activities to Parker. T. 521–22 (Vollaro).

In texts between Parker and Vollaro, Parker noted that after a collective bargaining session in April 2018, “They seemed ok in tone, but there was a group of faculty in Patrick’s office all afternoon.....in the end, there will be blow back of some sort.....and this has already leaked into the student body in some way.” UFF Ex. 10 at 6 (4/12/18). Patrick Luck is UFF’s secretary/treasurer, was one of the leaders on UFF’s bargaining team, and was often referred to

throughout the hearing as simply, “Patrick.” T. 169–71 (Drake), 374–375 (Parker), 512 (Vollaro). Vollaro replied, complaining about the union’s representation of Mirgolbabaei, and noting the activities of Matyi, Coughlin, and Drake—the three union leaders in her department. UFF Ex. 10 at 7.

Vice Provost Kathryn Miller also reported union activities to Parker. On June 12, 2018, for example, Miller’s assistant emailed her, “Kate Bernard spent about an hour on the phone in her office with the door closed, discussing the environment here at Poly—‘people being afraid;’ etc—and told that person ‘that’s what you are for—to handle this sort of thing so the people who work here don’t have to.’” UFF Ex. 38; T. 227–29 (Miller). Miller immediately forwarded the message to Parker. *Id.* Asked during the hearing why she forwarded this email to Parker, Miller explained, “I try to keep the provost apprised as to what’s going on in my unit.” T. 229.

As another example, on June 21, 2018, Miller texted Parker, “Casey and Kate notified me that they will attend collective bargaining today.” UFF Ex. 39 at 2.

Vollaro also admitted that she followed the activities going on at union meetings and sometimes encouraged particular outcomes. For example, in the summer of 2018, UFF considered adopting a resolution in response to issues regarding the Wellness Counselor position. Vollaro opposed the resolution; met with individual faculty in her department about the resolution; told them how she felt about the resolution; and then encouraged them to attend the union meeting and vote on the resolution. T. 527, 576–77 (Vollaro). The resolution failed. T. 577. Vollaro admitted that she has the authority to discipline the faculty in her department, gives faculty evaluations that impact their pay, and controls faculty course load and assignments. T. 526.

### Stalled Negotiations Over the Assistant Librarian and Wellness Counselor Positions

Throughout collective bargaining, there were frequent disputes involving the rights of the Assistant Librarian and Wellness Counselor positions. T. 42–45 (Churchill). On the first day of negotiations, the university seemed “taken aback” that Bernard and Fox intended to participate on UFF’s bargaining team. *Id.* at 42. The university singled out Bernard and Fox, requiring them to get permission from Miller before attending bargaining meetings and refusing to credit their attendance at bargaining meetings toward their 40-hour workweek requirement—“it would be like allowing employees to go off to a baseball game but clocking in that they worked.” *Id.* at 42 and 44 (Churchill); T. 380 (Parker). The university’s negotiators refused to refer to Bernard and Fox as “faculty.” T. 42 and 44 (Churchill), 380 (Parker). With every new contract article, UFF and the university argued over the same thing: whether equal rights should be extended to the Assistant Librarian and Wellness Counselor positions. *Id.* at 45 (Churchill).

Parker only came to one contract negotiation meeting. T. 373 (Parker). When he attended, in April 2018, he lectured UFF for “spending too much time” advocating for the Assistant Librarian and Wellness Counselor positions and not focusing enough on the “real faculty.” T. 46 (Churchill); T. 299 (Parker: “I criticized the UFF”). *See* UFF Ex. 10 at 6.

### FPU Eliminated the Assistant Librarian and Wellness Counselor Positions Without Notice

As of May 2018, FPU employed one Assistant Librarian, Kate Bernard, and one Wellness Counselor, Casey Fox. UFF Ex. 31. These positions reported to Vice Provost Miller, who reported to Provost Parker. *Id.*

Miller proposed the idea of eliminating the Assistant Librarian and Wellness Counselor. In October 2017, Miller wrote Parker a memo proposing the replacement of the Wellness Counselor position with a new non-clinical case manager position. Res. Ex. 36. On May 5, 2018, Miller wrote

Parker another memo, this time proposing to eliminate three positions in her department—Wellness Counselor, Assistant Librarian, and Assistant Director of Academic Support Services—and creating four new positions—Associate Director Case Management, Associate Director Library, and two new Success Coach positions. Res. Ex. 37. Miller’s rationale for the Associate Director Case Management position was similar as she explained in October 2017, outsourcing the clinical work to contractors. *Id.* Miller’s rationale for the Associate Director Library position was to have one position that could oversee the university’s two libraries, the Florida Industrial and Phosphate Research Institute (FIPR) library and the FPU library. *Id.* at 2. *See* § 1004.346, Fla. Stat. (requiring FPU to house FIPR as an independent agency to research phosphate mining).

Fox and Bernard had always received positive performance evaluations. T. 232 (Miller). And Miller proposed that Fox and Bernard should be offered the opportunity to apply for the new positions. Res. Ex. 37.

Parker is the only person with authority to eliminate positions. T. 440 (Parker). Parker didn’t act on Miller’s proposals until June 2018, at the height of his frustration with UFF, and then he decided only to eliminate the positions of Wellness Counselor and Assistant Librarian, not the other position proposed by Miller to be eliminated, which was outside of the UFF bargaining unit. Res. Ex. 27. Further Fox and Bernard were not told about the new positions or invited to apply. *See* T. 48, 53; Res. Ex. 57; UFF Ex. 14, 15.

Parker made the decision to terminate Bernard on June 7, 2018. T. 303–04 (Parker). On the afternoon of June 21, 2018, Miller delivered a letter to Bernard, notifying Bernard that she was being laid off. UFF Ex. 14. The letter stated the university had identified positions that “do not align with the current needs of the University” and had determined “it is necessary to eliminate

your position of *Assistant Librarian*.” *Id.* Bernard was asked to pack up her things and was escorted off campus by security. T. 48.

Even though FPU and UFF had a bargaining session on the morning of June 21, FPU did not notify UFF that it was eliminating the Assistant Librarian position. T. 48–49 (Churchill: “we had just had a bargaining session hours before, so I was very surprised. . . . I was shocked.”). FPU’s labor counsel, Mark Bonfanti, communicated with Churchill around the same time as Bernard was being laid off to confirm that Bernard was being fired, but Bonfanti did not inform Churchill that the Assistant Librarian position was being eliminated. T. 49 (Churchill); Res. Ex. 57.

On the same day that Bernard was notified of her layoff, June 21, FPU’s general counsel admitted that morning during a bargaining meeting that sometimes the university tells an employee their job has been eliminated due to a reorganization when in fact the university is terminating the employee for other reasons. T. 50 (Churchill).

Parker made the decision to terminate Fox on June 18, 2018. T. 304 (Parker). On June 26, 2018, Miller delivered a letter to Fox notifying her she was being laid off. UFF Ex. 15. The letter stated the university had identified positions that “do not align with the current needs of the University” and had determined “it is necessary to eliminate your position of *Wellness Counselor*.” *Id.* Fox was asked to pack up her things and was escorted off campus by security. T. 586 (Last). Similarly as before with Bernard, Bonfanti communicated with Churchill around the same time that Fox was notified her layoff. T. 52–53 (Churchill); Res. Ex. 57. Bonfanti confirmed that Fox was being fired, but didn’t inform Churchill that the Wellness Counselor position was being eliminated. *Id.*

Later in the day on June 26, 2018, Parker emailed the department chairs an update on the personnel changes. Res. Ex. 27. Parker announced, “we have eliminated the Assistant Librarian

position and will put in place a Director of Libraries.” *Id.* And, “we have eliminated the mental counselor position and will put in place a Case manager.” *Id.*

There was evidence that the decision to eliminate the librarian and counselor positions was hastily implemented, and not planned for months as Miller claimed. FPU didn’t post job opening announcements for the new positions until July 2018, after the positions were vacant. T. 234, 236 (Miller); UFF Ex. 33, 35. It is extraordinary for a university not to employ a librarian to oversee its main library. T. 98 (Drake: “And so that’s very bizarre to have a university not have a dedicated librarian, and I’m not aware of that being customary in the United States. So that seemed rushed.”). The Board of Governors has told state universities they should employ one counselor for every 1,500 students. T. 221–22 (Miller). And common sense dictated that the university inform each student in counseling about the change and ensure they had a transition care plan, but that didn’t happen and a student killed himself. T. 99, 103–04 (Drake).

By June 27, 2018, the university hadn’t even decided how to define the new librarian position. On June 27, 2018, Parker complained to Miller about the cost of paying for a Director of Libraries. UFF Ex. 31 at 3 (Parker: “For director of libraries will it cost that much??”; Miller: “We were paying Kate over 60.”; Parker: “Wow . . . . ok”). *See* T. 239 (Miller: “I believe this was in regards to finalizing a position description so that we could move forward with the university librarian.”).

Miller’s original rationale for eliminating the Assistant Librarian position was so that a new management (“associate director”) position could be created to oversee both the FIPR library and the FPU library. Res. Ex. 37. In the end, however, Parker decided to eliminate the Assistant Librarian position, it was replaced with a nearly identical staff (“librarian”) position, and the university still employs another librarian who only oversees the FIPR library. T. 235–36.

In July 2018, FPU posted an opening for the new position of “University Librarian.” UFF Ex. 35. The job of the University Librarian is nearly identical to the job that Bernard was already performing as Assistant Librarian. *Compare* UFF Ex. 34 *and* 35. The University Librarian job description expands the duties of the Assistant Librarian, at least on paper, so that the new job will do things like monitoring budgetary expenditures and serving as a campus resource for intellectual property issues. *Id.* But Bernard was already doing these things. She tracked resource utilization for budget planning and provided faculty trainings on copyright and intellectual property issues. T. 239–40 (Miller). She also collaborated with faculty to develop and deliver curriculum. T. 104 (Drake).

In August 2018, FPU changed its explanation for the layoffs. On August 2, 2018, FPU’s labor counsel wrote to the union and claimed, “the University has not eliminated the positions, but instead is choosing not to fill them at this time.” Res. Ex. 29. FPU’s witnesses took the same position during the hearing. T. 216 (Miller), 440 (Parker). Miller, for example, claimed that the university had not eliminated the position and she denied recalling that she signed letters stating otherwise. T. 216 (“The position has not been eliminated. . . . I don’t recall that letter”).

While denying that FPU had eliminated the Assistant Librarian and Wellness Counselor positions, FPU’s labor counsel admitted that the university had laid off the sole employees in those positions and offered to bargain over the impacts of that action. Res. Ex. 29. UFF’s labor counsel responded, asserting that UFF had the right to bargain over the decision to eliminate the positions and the resulting impacts, and, without waiving its claim that the university committed an unfair labor practice, agreed to bargain over the impacts of the university’s action. UFF Ex. 42. UFF’s counsel also requested that FPU consent to the new positions of University Librarian and Associate Director of Campus Wellness Management being included in the UFF bargaining unit. *Id.*

FPU and UFF actually met on September 12, 2018, to discuss UFF's concerns about the Assistant Librarian and Wellness Counselor positions, even though FPU was still taking the position that those positions had not been eliminated. Res. Ex. 21 at 2. UFF's chief negotiator explained that bargaining after-the-fact was ineffective. "You can't bargain something after it's happened . . . with the action having already occurred and all the decisions made, it was not meaningful bargaining." T. 70, 72 (Churchill).

#### Drake Publicly Opposed FPU's Retaliatory Personnel Actions

Immediately after Fox was laid off, Drake became UFF's most vocal leader opposing FPU's retaliatory personnel actions and advocating that the Wellness Counselor position be reinstated. On June 28, 2018, she appeared before the Board of Governors for the State University System:

Many of the faculty and academic support staff within Florida Poly have grave concerns over a series of 8 employee terminations that have occurred since the end of the spring semester. These terminations have added to a toxic work environment within the university and appears aimed at suppressing potential whistleblower complaints as well as eliminating key positions within the university because those positions belong within our union. We are now a university without our sole librarian, and also a university, on a remote campus, without a mental health counselor, as required by state regulation. . . . The termination was so abrupt there was no time or ability for the counselor to put into place a continuity of care for her patients, including those for which there is a concern for suicide.

UFF Ex. 16.

Drake also shared her concerns directly to individual members of the Florida Board of Governors for the State University System and the FPU Board of Trustees. UFF Ex. 17 (June 29, 2018).

And Drake reported her concerns to David Blanton, FPU's auditing and compliance officer. UFF Ex. 18. Drake sent Blanton a list of fourteen employees against whom FPU had unlawfully retaliated, including Bernard and Fox. *Id.*

For example, two lab technicians in the mechanical engineering department, Paul Delfino and James Brown, complained about safety issues to Vollaro and Parker, and then they received letters similar to Bernard and Fox stating that they were being laid off because their positions were no longer needed. T. 108–09. Drake testified that their positions were in fact still needed and that losing their positions negatively impacted the department. T. 110–111 (Drake). Students and faculty were unable to access lab space (T. 110) and the loss negatively affected the department’s goal of earning an important accreditation through an entity called ABET. T. 111–12 (Drake); UFF Ex. 29.

As another example, Kade Ross was an independent contractor in FPU’s student living residence. T. 113–14 (Drake). Ross made some public records requests of FPU, and in retaliation FPU’s Chief Financial Officer told Ross’s employer to fire him. *Id.*

Notably, there is a large cross-over between the employees identified in the anonymous employee letter a few months earlier (UFF Ex. 12 at 24) and the employees on Drake’s list to Blanton who wound up being terminated (UFF Ex. 18).

When Blanton met with Drake about her concerns, he shared that he himself was scared about being fired because Avent was upset with him for conducting too many investigations. T. 115 (Drake). Blanton provided Drake a private non-university email for communications. T. 599 (Blanton).

In early August 2018, an FPU student killed himself. UFF Ex. 19. The student had been seeing the Wellness Counselor until she was fired in June, and was very upset when he learned (not from the university) that his counselor had been laid off. T. 104. The *Tampa Bay Times* published a front-page article in a Sunday paper titled, “At Florida Poly, a student suicide and a question: Could it have been prevented?” UFF. Ex. 19. The article quoted Drake extensively,

pointing out that she had publicly warned that the university needed an on-campus counselor and that Fox's termination had been too abrupt. *Id.*

#### Avent and Parker Decide to Non-Renew Drake and Coughlin

It was widely known that there was tension between the administration and the union leaders in the mechanical engineering department, specifically Matyi, Drake, and Coughlin. T. 508 (Dewey). In May 2018, Tom Dvorske, the Vice Provost, met with Jim Dewey, a member of the FPU Board of Trustees, to discuss concerns about faculty in the mechanical engineering department not falling "in line." T. 498, 506 (Dewey).

On June 16, 2018—around the same time that Parker decided to fire Bernard and Fox (T. 341 (Parker: "It's in the same time frame."))—Parker emailed FPU's general counsel a list of seven faculty who Parker stated "we may, for various reasons, choose to have their contracts run out." Res. Ex. 26. Within the Mechanical Engineering Department, Parker's list included the three union leaders: Matyi, Drake, and Coughlin. *Id.* Each of the other four faculty on Parker's list were not union leaders and had negative performance or other disciplinary problems. T. 120–121 (Drake); T. 317 (Parker). *See* UFF Ex. 8 at 4 (identifying UFF leaders).

In early August 2018, Parker called Dewey into his office for a meeting. T. 509 (Dewey). Avent joined. *Id.* There was discussion about university's bad press, agreement that the union must be behind that bad press, and there was "obvious unhappiness." *Id.* Avent exclaimed that he'd "had enough" and was "going to put a stop to it!" *Id.* at 510.<sup>2</sup>

On August 15, 2018, Parker notified Drake and Coughlin that their contracts would not be renewed after the current 2018–2019 academic year. UFF Exs. 20–22. The *status quo* practice at FPU requires one year of notice for a faculty to be non-renewed. T. 458–59 (Parker).

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<sup>2</sup> Avent claimed not to recall this conversation at all. T. 270–71. Parker remembered the meeting, admitted that he "lost [his] temper," but he denied that anyone made any retaliatory statements. T. 308–09.

## FPU's Inconsistent and Shifting Justifications for the Non-Renewals

After receiving her notice of non-renewal, Drake made a request for any records justifying her non-renewal, and the university provided her two memos that Parker sent to Avent, dated July 27 and August 5, 2018. UFF Exs. 23, 24.

Parker's July 27, 2018 memo purported to explain his rationale for not renewing certain faculty contracts. The memo mostly affected the same individuals previously identified in Parker's June 16, 2018 email. Res. Ex. 26. Outside of the mechanical engineering department, each of the non-renewals was based on performance issues. UFF Ex. 23. *See* T. 120–121 (Drake); T. 317 (Parker). Within the mechanical engineering department, Parker's July 27 memo recommended that Drake, Coughlin, Matyi, and another professor, Huseyin Ucar, be non-renewed. UFF Ex. 23. Curiously, Ucar was not identified for potential non-renewal in Parker's June 16 email, and Ucar had already resigned prior to Parker's July 27 memo. T. 159 (Drake). In a second memo on August 5, Parker revised his recommendation and decided not to non-renew Matyi. UFF Exs. 24.<sup>3</sup>

That is to say, Parker purportedly reviewed the appropriateness of each faculty contract in the university, and among the faculty with good performance Parker only concluded that the university was “not well served” (UFF Ex. 20 at 2) by continuing to employ four individuals, one of whom had already resigned (Ucar), thus targeting only the three vocal union leaders in the mechanical engineering department. Parker reached that conclusion mainly by stating that the mechanical engineering department would move away from materials-oriented<sup>4</sup> coursework and

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<sup>3</sup> Cathcart resigned on August 1, 2018. T. 313. Ding was offered a new contract notwithstanding his performance issues, but Parker believes he resigned. T. 191. Ucar resigned before the July 27 memo. T. 159. Matyi was recommended for non-renewal in the July 27 memo, but not in the August 5 memo. So in the end, only Integlia, Steele, Coughlin, and Drake were actually non-renewed. T. 313.

<sup>4</sup> Mechanical engineering includes the study of materials, i.e., “materials science” or “materials science and engineering.” T. 147, 204 (Drake); T. 559 (Vollaro). Within FPU's mechanical engineering degree program, students must elect one of three concentrations: (1) Materials and Advanced Manufacturing, (2) Nanotechnology, or (3) Advanced Topics. T. 125 (Drake). The first two concentrations are considered materials-oriented. T. 533 (Vollaro).

would stop offering three courses—EMA 3050, EMA 3066, and EML 4532—which were taught exclusively by Drake, Coughlin, and Matyi, respectively. UFF Ex. 24 at 4–5; T. 338–39 (Parker); T. 540 (Vollaro). Drake developed EMA 3050 (Introduction to Inorganic Materials) and is the only faculty member to have taught that course. T. 129 (Drake). Coughlin developed EMA 3066 (Introduction to Organic Materials (Polymers)) and was the only faculty member to have taught that course until he resigned in December 2018, at which point Matyi took over teaching the course. T. 129 (Drake). Matyi teaches EML 4532 (Advanced Nanoscale Instrumentation & Characterization). T. 130 (Drake). By removing these courses, Parker concluded that there was no longer sufficient departmental need to justify renewing the employment of Drake, Coughlin, and Matyi. UFF Ex. 24 at 4–5 (“In short, the number of courses available for the materials sciences to teach will shrink and the materials science faculty are not strongly credentialed to teach the ME core curriculum.”).

Even though Parker stated that these courses would be retired and he recommended the personnel decisions against Drake, Coughlin, and Matyi based on the stated plan to retire the courses, Parker took no action to actually retire the courses. T. 325–26 (Parker). The courses have not in fact been retired and there are no plans to retire the courses. T. 326 (Parker); T. 537 (Vollaro). Curriculum in established departments at FPU can only be changed at the initiation of the faculty in the department. T. 324–25 (Parker: “That reconfiguration would be done in collaboration with the department...”); T. 539–40 (Vollaro); UFF Ex. 25 (“Any changes to courses or programs should be initiated by faculty...”); UFF Ex. 37 at 4–5 (“The mechanical engineering faculty collectively hold responsibility for the content of our program . . . Faculty are free to . . . submit a written proposal . . . [which] is distributed to the entire faculty . . . [and] is discussed with a quorum of the faculty in our program faculty meetings.”). Inexplicably, Parker has never spoken with Vollaro

about his stated plan of retiring the EMA 3050, EMA 3066, or EML 4532 courses, nor has Parker seemingly taken any other action to implement his stated plan by initiating the university's procedure for modifying curriculum. T. 324–26 (Parker at 325: “Q. And there’s no plan to eliminate these courses, right? A. No formal plans to date.”); T. 539 (Vollaro, stating that she’s never heard the provost talk about retiring these courses). Through the date of the hearing, no one has ever raised the idea of retiring these courses in any mechanical engineering department meeting. T. 126 (Drake).

In his memo, Parker claims that his stated plan to move away from materials-oriented coursework is supported by recommendations made by a curriculum advisory board and by job statistics provided by a research company, Hanover. UFF Ex. 24 at 4 and 5. In fact, neither of these things supported Parker’s goal. Parker and Vollaro convened a group of industry consultants for a curriculum advisory board meeting in May 2018, but this group did not recommend moving away from materials-related course work, and in any case neither the existence of this group nor their recommendations was ever made known to the mechanical engineering faculty. UFF Ex. 27 at 4–5 (the curriculum advisory board’s “review report”); T. 328 (Parker); T. 546–48 (Vollaro, explaining that she didn’t share the curriculum advisory board’s recommendations with the faculty because the recommendations were “quite minor” and didn’t impact faculty at all). With regard to the research from Hanover, that company actually provided the university information which should have justified expanding materials-focused coursework rather than decreasing it. UFF Ex. 28 at 35 (showing that materials engineering jobs currently have the highest outlook for job growth in Florida—more than the 37 other engineering specialties analyzed, including manufacturing engineering).

FPU has invested heavily in equipment and laboratories to support its materials-oriented degree concentrations and FPU now has one of the best materials concentrations in the country. T. 534 (Vollaro). Students in FPU’s mechanical engineering degree program must elect one of three concentrations, two of which are materials-oriented. T. 533 (Vollaro). And prior to Parker’s July 27, 2018 memo there were ongoing discussions about creating a stand-alone Materials Science and Engineering undergraduate degree or graduate degree program. T. 154–55 (Drake). Again, there has been no discussion among the mechanical engineering department faculty—before or after Parker’s memos—about moving away from the materials-oriented concentrations. T. 128 (Drake).

Parker also supported his rationale for non-renewing Drake, Coughlin, and Matyi by claiming they are “not appropriately credentialed” to teach core department courses, but this claim was also inconsistent with other evidence. Drake, Coughlin, and Matyi have all regularly taught core courses for several years. T. 149 (Drake). *Compare* UFF Ex. 37 at 8–12 (fall 2016 to spring 2018 courses) *and* Res. Ex. 44 at 2 (fall 2018 courses) *and* UFF Ex. 44 (spring 2019 courses) *with* UFF Ex. 24 at 7 (identifying “core program classes”). Neither Drake nor Coughlin have ever been told they were not appropriately credentialed to teach these courses. T. 148 (Drake); T. 561, 563 (Vollaro). They have always received satisfactory performance evaluations and positive student reviews. T. 149–50 (Drake); T. 565 (Vollaro).

Under the university’s credentialing policy, Drake, Coughlin, and Matyi are credentialed to teach undergraduate and graduate mechanical engineering courses because they have doctorate degrees in a mechanical engineering field. UFF Ex. 26 at 2 (“Faculty members teaching graduate and post-baccalaureate course work will possess a doctorate/terminal degree in the teaching discipline or a related discipline.”); UFF Ex. 37 at 6. Materials Science and Engineering is a related

discipline to Mechanical Engineering. T. 147, 204 (Drake); T. 559 (Vollaro). Drake led FPU's mechanical engineering department through a prior accreditation process and confirmed through that process that her degree made her credentialed to teach mechanical engineering courses. T. 141–43 (Drake); T. 352–53 (Parker). Other public universities in Florida also recognize that faculty with Mechanical Sciences and Engineering degrees are credentialed to teach mechanical engineering courses. T. 209 (Drake).

Vollaro admitted that all faculty in her department, including Drake, Coughlin, and Matyi, based on their PhDs, are credentialed to teach any of the four required core courses for freshman and sophomores: EGN 3311 (Statics), EGN 3321 (Dynamics), EGN 3331 (Strength of Materials), and EGN 3365 (Structure and Properties of Materials). T. 544–45 (Vollaro). Vollaro could not explain why Parker determined these four faculty were not credentialed to teach core courses. T. 556 (Vollaro, admitting that might be “an error”).

That is all to say that Drake, Coughlin, and Matyi were properly credentialed to teach numerous core courses in the mechanical engineering department and did so regularly. And there were plenty of additional courses within the two materials-oriented concentrations for them to teach. Indeed, FPU's mechanical engineering department is materials-oriented by the design of its concentrations, and it needs materials-oriented faculty to be able to teach the courses in the two materials-oriented concentrations. *See* T. 533 (Vollaro explaining that students “are required to take four courses per concentration as a part of their degree.”).

In July 2018, FPU's mechanical engineering department submitted an application to become accredited by ABET—something that the university has spent a lot of effort to obtain. T. 111, 131 (Drake); T. 275, 277 (Avent). ABET conducted a site visit at FPU in October 2018 and will determine whether to accredit the department by the summer of 2019. T. 131 (Drake). One of

the ABET accreditation criterion is that “the program faculty must be of sufficient number and have competencies necessary to cover all curricular areas and provide adequate student-faculty interaction.” UFF Ex. 29 at 4. One would think that if Parker genuinely believed the union leaders were not qualified to teach core courses he would have spoken with Vollaro and prevented them from doing so, especially during the semester that ABET representatives were conducting a site visit, but in the Fall 2018 semester, Vollaro assigned each of the three union leaders to teach core classes. Res. Ex. 44 at 2 (Drake taught EGN 3015; Coughlin taught EGN 3311; and Matyi taught EGN 3365).

The university reported information about its faculty to ABET in July 2018, highlighting the assets of its materials-oriented faculty. UFF Ex. 37. ABET has not raised any concerns about the quality of FPU’s faculty. T. 350 (Parker); UFF Exs. 29 and 37. During its site visit in October 2018, ABET’s most serious concern related to FPU’s insufficient number of faculty. UFF Ex. 29 at 1 (listing “faculty” as the only “concern”) and at 4:

While the current faculty numbers and competencies are adequate, program enrollment is expected to grow by as much as 50% over the next five years. Additional faculty will be required to accommodate this growth. If the program is unable to hire additional faculty, this anticipate enrollment growth may limit the program’s ability to continue to provide adequate faculty-student interaction while covering all curricular areas. There the potential exists that this criterion may not be satisfied in the future.

There were additional inconsistencies with Parker’s memo that indicate it was unfairly designed to target the union leaders. The last page of Parker’s memo contains a chart showing the courses that each faculty is credentialed to teach. UFF Ex. 24 at 7. Vollaro had input in creating this chart. T. 409, 448 (Parker); T. 549 (Vollaro). Vollaro and Parker explained that credentialing for purposes of the chart could be accomplished in a number of ways, including by holding a degree (i.e., credentialed by degree or “CD”). T. 345 (Parker); T. 550 (Vollaro). Vollaro holds a

PhD in “Materials Science” (UFF Ex. 37 at 6), which is not considered an engineering degree; it is distinct from a “Materials Science and Engineering” degree. T. 143–44 (Drake); T. 346 (Parker). Nevertheless, Vollaro found herself to be credentialed, CD, to teach the four required core courses for freshman and sophomores: EGN 3311 (Statics), EGN 3321 (Dynamics), EGN 3331 (Strength of Materials), and EGN 3365 (Structure and Properties of Materials). UFF Ex. 24 at 7. Meanwhile, Drake, Matyi, and Ucar hold PhDs in “Materials Science and Engineering,” and yet the chart in Parker’s memo indicates that Drake, Matyi, and Ucar and not credentialed, CD, to teach these courses. *Id.*

Vollaro admitted this was probably an error. T. 556 (Vollaro). When pressed to explain this glaring inconsistency, Parker backtracked, admitting he did not normally wade into credentialing issues (T. 342) and that his memo should not be taken as a formal “credentialing document” but more of an “inventory.” T. 345. Even so, the inventory would have been incomplete. Although Vollaro and Parker agreed faculty wouldn’t typically be credentialed based on their undergraduate degree (T. 346–48 (Parker); T. 552–53 (Vollaro)), Vollaro did just that for herself, explaining vaguely that it depends on the actual courses on one’s undergraduate transcript. T. 555–56 (Vollaro). She admitted, however, that she did not review the course transcripts for any other faculty in her department. T. 556 (Vollaro).

The chart prepared by Parker and Vollaro ended up being very important. T. 446 (Parker: “Q. Isn’t that right, that you ended two people’s [careers] based -- but based on this chart? A. With significant input from the chart, we chose to not offer new contracts to two individuals.”). Yet Parker agreed that chart was not a “finished, polished product.” T. 394. And Parker did not share the chart with any of the affected faculty for review and corrections before non-renewing them based on the chart. T. 341 (Parker: “Q: The chart, why wouldn’t you, you know, share this kind of

a chart with the faculty to get their input and let them correct you if there were things . . . that needed to be corrected? A: . . . if you ran a process where you asked for input and please correct this, we would end up not getting at good information.”).

There were other inconsistencies. Initially, FPU claimed that the non-renewals were motivated by the ABET accreditation process. T. 277 (Avent: “it was all about fit and making sure the departments were ready for ABET accreditation”), 282 (Avent, explaining that the “whole point,” or one of “the big points,” of the nonrenewals was making sure that the department was ready for the ABET accreditation process); UFF Ex. 20. However, the mechanical engineering department’s ABET materials were submitted in July 2018, before the non-renewals were even decided, and the department will be judged based on its current faculty. T. 149–50 (Drake). Parker admitted ABET was not a direct reason for the nonrenewals. T. 337 (Parker).

Drake has a separate whistleblower complaint against FPU. T. 160 (Drake). FPU filed a response to her whistleblower complaint, claiming that Drake was non-renewed based on “lack of student enrollment.” *Id.* That shifting justification for her nonrenewal is likewise not supported by reality. Drake has never been told her classes have low enrollment. T. 160. The department has quickly growing student enrollment, is hiring new faculty, and has too few faculty, not too many. T. 160; UFF Ex. 29 at 4; UFF Ex. 36.

Drake and Coughlin will be replaced by new faculty with substantially less experience. Drake and Coughlin each had among the most industry and teaching experience at FPU, but they are being replaced by recent graduates with zero or very little experience. UFF Ex. 37 at 6–7; T. 160–61 (Drake). And at least one of the new hires does not have any degrees in mechanical engineering. T. 575–82 (Vollaro); Res. Ex 55 (Zahra Sadeghizadeh). The hiring committee and Vollaro have raised concerns about the low quality of the new applicants. T. 161 (Drake).

### FPU's Ongoing Interference With Union Activities

There was additional testimony that FPU has continued to interfere with bargaining unit members' protected activities even during the pendency of this charge.

Another professor in the mechanical engineering department, Melissa Morris, testified that Parker and Vollaro called her into a meeting, reminded her she was a new professor, told her that she should "only speak up to the department chair and not past that point," and that she shouldn't "bring [union] representatives to meetings unless I wanted to risk disciplinary action." T. 473. *See also* T. 491 ("My department chair has asked me repeatedly not to speak up and make further complaint."). *See also* T. 493 ("My department chair said that I would receive discipline if I had a representative come to a meeting, that it would require then formal discipline.").

On Christmas Eve, December 24, 2018, during the pendency of this proceeding, FPU's attorneys contacted Drake directly, without copying the union's counsel, and requested as a "public records request" that she provide them "any electronic correspondence or records (including emails and text messages) regarding or relating to University business sent to or from Christina Drake's personal email account(s) with any of the following individuals or entities: Casey Fox, Christopher Coughlin, Kate Bernard, the United Faculty of Florida, and/or Candi Churchill." UFF Ex. 30. When Drake did not immediately respond over the holidays,<sup>5</sup> FPU's general counsel followed up more directly: "Christina has an obligation to produce the responsive documentation. Otherwise, she is violating not only University policy, but also state law." *Id.*

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<sup>5</sup> FPU's counsel knew the union's attorney was outside of the country over the Christmas and New Year's holidays.

## PROPOSED CONCLUSIONS OF LAW WITH ANALYSIS

### **1. Respondent violated § 447.501(a) and (c), Fla. Stat., by eliminating the positions of Assistant Librarian and Wellness Counselor without first providing UFF notice and an opportunity to bargain.**

After a union has been certified under § 447.309, Fla. Stat., a public employer must bargain over employees' wages, hours, and terms and conditions of employment. A public employer may unilaterally decide some aspects of its organization under § 447.209, Fla. Stat. (management rights), but even then the employer must provide the union an opportunity to bargain over decisions that impact bargaining unit members' wages, hours, and terms and conditions of employment. *Headley v. City of Miami*, 215 So. 3d 1, 9 (Fla. 2017). Unilaterally implementing such a change without first providing the union notice and an opportunity to bargain, even over an issue which an employer has a management right to decide, constitutes a *per se* violation of § 447.501(a) and (c), Fla. Stat. See, e.g., *Southwest Florida Professional Fire Fighters, Local 1826 v. Ft. Myers Beach Fire Control District*, 23 FPER ¶ 28209 (Fla. PERC 1997).

There is no serious question here that FPU eliminated the Assistant Librarian and Wellness Counselor positions and did so without first notifying UFF. Miller's two proposals to eliminate the positions both used the word "eliminate." Res. Exs. 36 and 37. Miller's letters to Bernard and Fox both informed them that they were being laid off because their positions were being "eliminated." UFF Exs. 14 and 15. After the Bernard and Fox were laid off, Parker informed his administrative staff that the positions had been "eliminated." Res. Ex. 27. And FPU's organizational chart was modified to remove the two positions (T. 219–20 (Miller)), even though prior versions of the organizational chart retained positions that were merely vacant. UFF Ex. 31 (showing a vacant second Wellness Counselor position as of May 2018).

FPU's elimination of the Assistant Librarian and Wellness Counselor positions significantly impacted bargaining unit members' terms and conditions of employment. The Assistant Librarian and Wellness Counselor positions both performed work that would otherwise have to be performed by the other bargaining unit members, including developing and delivering curriculum on library and wellness issues. T. 104–05 (Drake). The Assistant Librarian served as a resource and provided training to faculty on copyright and intellectual property issues. T. 239 (Miller). And there was testimony that student mental health issues can interfere with the academic environment, the ability to teach, and faculty office hours—distractions which could reasonably be expected to increase in the absence of a Wellness Counselor. T. 105 (Drake). UFF promptly objected and raised these issues after discovering that FPU had unilaterally eliminated the positions without providing the union notice. Charge, Case No CA-2018-029 (filed July 16, 2018); UFF Ex. 42. UFF also raised another bargainable concern by requesting that FPU consent to the new positions of University Librarian and Associate Director of Campus Wellness Management being included in the UFF bargaining unit. UFF Ex. 42.

While an employer generally has a management right to decide whether work should be performed by new positions outside of a bargaining unit, the mere retitling of bargaining unit work to a new non-bargaining unit job would not be a management right. *City of Jacksonville v. Jacksonville Supervisor's Association, Inc.*, 791 So. 2d 508 (Fla. 1st DCA 2001). *Jacksonville* left intact the Commission's precedent that a mere re-titling of bargaining unit positions to remove them from the unit is not a management right. See, e.g., *Marion Education Association v. School District of Marion County*, 40 FPER ¶ 177 (Fla. PERC 2013). FPU's new University Librarian position appears to be a mere re-titling of the prior Assistant Librarian position.

Although Miller proposed a new management-level (“Associate Director”) position, the University Librarian position ended up being a staff-level position that still reports to Miller, does not have any supervisory role, and performs the same essential job duties that Bernard was already performing. And the university has retained the second position that still oversees the FIPR library. T. 235–36 (Miller). Therefore, UFF not only had the right to bargain over the impacts of eliminating the Assistant Librarian position, UFF had a right to bargain over that change itself, and had the right to bargain to the point of impasse before that change was implemented.

In any case, whether or not FPU’s elimination of the librarian and counselor positions was a management right or not, UFF had the right to notice and an opportunity to bargain at least over the impacts. The situation is therefore no different than the one confronted in *Southwest Florida Professional Fire Fighters, Local 1826 v. Ft. Myers Beach Fire Control District*, 23 FPER ¶ 28209 (Fla. PERC 1997):

The facts before us in this case depict an absolute refusal to bargain by the District due to its failure to even provide Local 1826 with advance notice of the intended change. This lack of notice effectively precluded Local 1826 from having any opportunity prior to implementation of the change to identify expected impacts and request negotiation over those subjects.

Ordinarily, a union wishing to bargain over the impacts of an employer’s decision to unilaterally implement a management right must demand bargaining and identify the impacts it wishes to bargain over. However, like the situation in *Ft. Myers Beach Fire Control District*, there was no obligation to demand bargaining here because FPU has already fully implemented the change as a *fait accompli*. “The case law is well settled that when a change is announced as a ‘*fait accompli*,’ a waiver cannot be inferred from a union’s failure to request bargaining over a change that has already been made.” *Id.* In any case, the filing of an unfair labor practice charge is “the ultimate written demand for bargaining.” *Id.* Thus, FPU violated § 447.501(a) and (c), Fla. Stat.,

because it eliminated the Assistant Library and Wellness Counselor positions without first providing UFF notice.

The Commission has traditionally required employers found culpable of an unlawful unilateral change to return to the status quo and make whole the employees damaged by the change, even when an employer subsequently agrees to impact bargaining after a charge is filed. *Professional Fire Fighters, Local 1826 v. Ft. Myers Beach Fire Control District*, 23 FPER ¶ 28209 (Fla. 1997). And that makes sense. If UFF had been given notice, UFF might have been able to negotiate a different outcome. Bargaining after-the-fact was ineffective, especially where FPU refused to even acknowledge the truth that it had eliminated the positions. Accordingly, FPU should be ordered to reinstate Bernard and Fox and make them whole.

**2. Respondent violated § 447.501(a) and (b), Fla. Stat., by terminating Kate Bernard and Casey Fox in retaliation for their engagement in protected activities.**

The Commission follows the test enunciated in *Pasco County School Board v. PERC*, 353 So.2d 109, 117 (Fla. 1st DCA 1977):

In order to determine whether the evidence sustains a charge alleging an unfair labor practice, when it is grounded upon an asserted violation of protected activity, the following general principles should be considered by the hearing officer and by PERC:

- (1) In any such proceeding the burden is upon the claimant to present proof by a preponderance of the evidence that (a) his conduct was protected, and (b) his conduct was a substantial or motivating factor in the decision taken against him by the employer.
- (2) If the hearing officer determines the decision of the employer was motivated by a non-permissible reason, the burden shifts to the employer to show by a preponderance of the evidence that notwithstanding the existence of factors relating to protected activity, it would have made the same decision affecting the employee anyway.

A manager's unlawful motivation is a factual finding that is typically dependent on an evaluation of both direct and circumstantial evidence. *Diaz v. City of Plantation*, 35 FPER 116

(Fla. PERC 2009). The timing of a manager's adverse action in relation to protected activities, pretextual explanations for the adverse action, and disparate treatment of employees involved in protected activity may be circumstantial evidence of unlawful motivation. *Schafer v. City of Pompano Beach*, 39 FPER 120 (Fla. PERC 2012). Unannounced and unexpected personnel changes, particularly when accompanied by a hostile attitude and statements, can indicate unlawful motivation. *Hialeah International Association of Fire Fighters, Local No. 1102 v. City of Hialeah*, 9 FPER ¶ 14364 (Fla. PERC 1983). The fact that a manager opposed the union certification or has taken actions after the certification to restrain union activities can also indicate unlawful motivation. *International Union of Police Associations, Local 6090 v. City of Groveland*, 41 FPER ¶ 316 (Fla. PERC 2015).

There is no question that Bernard and Fox engaged in protected activities. Bernard and Fox actively participated on UFF's bargaining team from the beginning. T. 42 (Churchill). Fox worked with a UFF attorney to assert that FPU breached its bargaining obligation by unilaterally changing Fox's pay grade. UFF Exs. 4 and 9. And Bernard and Fox were signatories on the April 19, 2018 letter protesting FPU's unconstitutional attempt to threaten union leaders right against associating with students. UFF Ex. 8.

There is powerful evidence that Parker's decision to eliminate the positions held by Bernard and Fox was substantially motivated by their protected activities. Parker forcefully opposed the faculty unionization effort and continues to prefer that the union not exist at all. T. 290–91, 371 (Parker). Parker knew that Bernard and Fox engaged in protected activities. Parker was "amazed" that Bernard and Fox would sign their names on the April 19, 2018 letter. UFF Ex. 10 (Parker on 4/25/18). That letter made him so angry that "rather than snap badly [he] went home." *Id.* Parker knew that Bernard and Fox were on the UFF bargaining team—Miller kept

Parker apprised of their union activities, including when they were going to attend bargaining sessions—and Parker was frustrated that bargaining was stalled because of the disputes over the Assistant Librarian and Wellness Counselor positions. UFF Exs. 38 and 39 at 2 (“Casey and Kate notified me that they will attend collective bargaining today.”). Parker only attended one bargaining meeting, in April 2018, and he did so to criticize UFF for wasting too much time advocating for the Assistant Librarian and Wellness Counselor positions and not focusing enough on the “real faculty.” T. 46 (Churchill); T. 299, 373 (Parker). UFF (and Bernard and Fox themselves) did not stop advocating for the Assistant Librarian and Wellness Counselor positions, and immediately thereafter Parker eliminated those positions. Res. Ex. 19 (May 2018 bargaining notes, showing Bernard and Fox personally attended on the UFF bargaining team, which continued to advocate for the rights of Assistant Librarian and Wellness Counselor positions); UFF Ex. 39 at 2 (Bernard and Fox attending bargaining in June 2018).

FPU did not notify UFF or otherwise announce its decision to eliminate the Assistant Librarian and Wellness Counselor positions in advance. And the elimination of those positions seemed rushed, not well planned in advance, and not well thought out. FPU didn’t define the successor University Library position until after Bernard had already been laid off. UFF Ex. 31 at 3; T. 239 (Miller). While Miller had originally proposed a reasonable action—consolidating oversight of the university’s two libraries under one management-level position and inviting Bernard to apply for that position—the final outcome was a mess, replacing Bernard with another staff-level position that was essentially the same, and not telling Bernard about the new job. And, most tellingly, the university didn’t eliminate the other non-bargaining unit library position that still oversees the FIPR library. T. 235–36 (Miller). That is to say that Miller proposed a reasonable plan to consolidate two positions into one, but Parker used that proposal to eliminate a troublesome

bargaining unit position and union member, while maintaining the other non-union position. The Wellness Counselor transition was even more bungled. The university didn't even have enough time to inform its students of the change in advance and setup transition care plans, and approximately one month later a student who had been seeing the Wellness Counselor, and wasn't told she was laid off, killed himself. T. 103–04 (Drake).

The university has argued that Miller had been planning to eliminate these positions long in advance for non-retaliatory reasons, but Parker was the decision-maker. T. 303–04, 440 (Parker). The evidence shows that Parker, at the height of his frustration with the union, used Miller's proposals to target union members, while rejecting Miller's proposals that would have eliminated non-union members. Parker only used those proposals from Miller that fit his goal of silencing the union. And Parker's decisions with respect to Bernard and Fox occurred in the same time-frame that Parker also retaliated against Drake and Coughlin.

**3. Respondent violated § 447.501(a) and (b), Fla. Stat., by terminating Christina Drake and Chris Coughlin in retaliation for their engagement in protected activities.**

There is no question Drake and Coughlin engaged in protected activities. Drake was a driving force in creating the union. T. 88–90 (Drake). Both held leadership positions in the union, Drake being the union's Membership and Communications Chair and Coughlin serving as the Contract Enforcement and Grievance Chair. T. 90 (Drake); UFF Ex. 8 at 4. Coughlin was also on the bargaining team. Res. Exs. 19, 32. Drake and Coughlin were leaders in nearly every escalating labor conflict that occurred in the spring and summer of 2018. They each signed the April 19, 2018 letter protesting FPU's unconstitutional attempt to threaten union leaders right against associating with students (UFF Ex. 8), which we know greatly irritated Parker. UFF Ex. 10 (Parker on 4/25/18). They each helped Mirgolbabaei assert his *Weingarten* rights (UFF Exs. 5 & 6; T. 92–93 (Drake), which we also know greatly irritated Parker and Vollaro. UFF Ex. 10 (Parker and Vollaro

at 4/12/19). And Drake was the most outspoken UFF leader publicly protesting FPU's retaliatory elimination of the Assistant Librarian and Wellness Counselor. UFF Exs. 16–19.

There is overwhelming direct and circumstantial evidence that Parker recommended Drake and Coughlin to be non-renewed based on their protected activities—in fact there is no other reasonable explanation. In 2018, Parker told Vollaro that the union leaders in mechanical engineering were not “holding appropriate standards” when they helped Mirgolbabaei assert his right to union representation. UFF Ex. 10 (Parker at 4/12/18). This was in the same context of Parker conspiring with Vollaro to make Mirgolbabaei “look stupid” and hoping that that he would become insubordinate—that's the kind of mindset he has. Shortly after that, the Provost's staff met with at least one member of the FPU Board of Trustees, complaining that faculty in the mechanical engineering department were not falling “in line.” T. 498, 506 (Dewey).

Then in June 2018—around the same time that Parker decided to eliminate the two union jobs that were most troublesome to him—Parker notified the FPU general counsel that he intended to non-renew the three union leaders in mechanical engineering. Res. Ex. 26 (June 16, 2018). Parker gave no explanation for his decision and the only other faculty on this list had poor performance. The union leaders had no performance issues and had among the most experience in their department. Drake and Coughlin were also the only faculty in the department to have obtained external grant funding for engineering research. T. 132–33 (Drake).

When Parker finally formalized his rationale for the non-renewals, it reeked of pretext and bias. Parker's purported rationale boiled down to this: “In short, the number of courses available for the materials sciences to teach will shrink and the materials science faculty are not strongly credentialed to teach the ME core curriculum.” UFF Ex. 24 at 4–5. But neither of those clauses was true: (1) the number of materials-oriented courses was not going to shrink, and (2) the union

leaders were strongly credentialed to teach core mechanical engineering courses. Parker could not reasonably have reached those two conclusions unless he was purposely targeting the union leaders. The mechanical engineering program is growing quickly and needs materials-oriented faculty to teach its materials-oriented curriculum. Eliminating Drake and Coughlin made no sense and adversely impacted the department's ability to obtain ABET accreditation. UFF Ex. 29 at 1 and 4.

Parker apparently met with Avent to discuss the recommended non-renewals sometime in early August. And we know that Avent was already extremely angry at UFF and Drake at that time because he met with at least one member of the FPU Board of Trustee around the same time and exclaimed that he'd "had enough" and was "going to put a stop to it!" T. at 510 (Dewey). So it's not hard to understand why Avent would have happily supported Parker's proposal to get rid of the union troublemakers in the mechanical engineering department.

Perhaps they thought eliminating Matyi at the same would be too obviously illegal, so they kept him on for the current academic year. Once the department has new hires in place, however, Parker's rationale will support non-renewing Matyi next year. *See* T. 320 (Parker: "Q. And then even with respect to Matyi, though, in the -- in the final analysis, you kind of leave his status dangling, don't you? You've said you don't think he's highly qualified to teach core mechanical engineering courses, but we'll reevaluate our needs next year? A. Correct.>").

It is normally difficult to see into someone's mindset. But here Parker had an obvious hostility toward the union, toward the Assistant Librarian and Wellness Counselor positions, and toward the union leaders in the mechanical engineering department. At the height of his frustration with the union, in June 2018, Parker decided to take care of all of his problems at the same time with the various pretextual means that were available to him. His rationale for non-renewing the

mechanical engineers was completely absurd. His justification for eliminating the other two positions wasn't much better. And both decisions were implemented so hastily and secretively that they were bungled. Parker's text messages with Vollaro reveal the kind of thoughts he has about the union and the kind of conspiracies he's willing to coordinate against union members. So the inference here is not difficult. Parker took adverse actions against Bernard, Fox, Drake, and Coughlin based on their union activities.

### **PROPOSED REMEDY**

It is recommended that the Commission issue an order requiring Respondent to:

1. Cease and desist from:

- (a) Discouraging membership in any employee organization by discrimination with regard to hiring, tenure, or other conditions of employment;
- (b) Refusing to or failing to bargain collectively in good faith with UFF over bargaining unit members' wages, hours, and terms and conditions of employment;
- (c) In any like or related matter, interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them under Chapter 447, Part II, Florida Statutes.

2. Take the following affirmative action:

- (a) Restore the Assistant Librarian and Wellness Counselor positions;
- (b) Reinstate Kate Bernard and Casey Fox to their former positions and pay them back pay and benefits, with interest, making them whole;
- (c) Rescind the notices of non-renewal delivered to Chris Coughlin and Christina Drake on August 15, 2018;

(d) Deliver an appropriate notice to its employees stating that Respondent will cease and desist from the action set forth in paragraph one above and that it shall take affirmative action set forth in paragraph two;

(e) Pay UFF its reasonable attorney's fees and costs associated with litigating this case.

Dated: March 25, 2019.

Respectfully submitted,

/s/ Eric Lindstrom

Eric Lindstrom

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*Attorney for Charging Party*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 25, 2019, this document was emailed to Respondent's Representatives, Mark L. Bonfanti (mbonfanti@hagrslaw.com), Jennifer K. Sniadecki (jsniadecki@hagrslaw.com), Regina DeIulio (rdeiulio@floridapoly.edu), and Alexander Landback (alandback@floridapoly.edu).

/s/ Eric Lindstrom

Eric Lindstrom