

STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION

UNITED FACULTY OF FLORIDA, :
: :
Charging Party, :
: :
v. :
: :
FLORIDA POLYTECHNIC :
UNIVERSITY BOARD OF TRUSTEES, :
: :
Respondent. :
_____ :

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

HEARING OFFICER'S
RECOMMENDED ORDER

Eric J. Lindstrom, Orlando, attorney for Charging Party.

Mark L. Bonfanti and Jennifer Sniadecki, Seagrave Beach, and Regina Delulio and Alexander M. Landback, Lakeland, attorneys for Respondent.

INGRAM, Hearing Officer.

On July 16, 2018, United Faculty of Florida (UFF) filed an unfair labor practice (ULP) charge alleging that the Florida Polytechnic University Board of Trustees (University) violated section 447.501(1)(a), (b), and (c), Florida Statutes (2018),¹ by eliminating two bargaining unit positions without bargaining over the impact of that decision, and laying off Kate Bernard and Casey Fox in retaliation for their having engaged in protected concerted activity. UFF filed a second ULP charge on August 20, alleging that the University violated section 447.501(1)(a) and (b), Florida Statutes, by deciding to non-renew the teaching contracts of Professors Christina Drake and Christopher Coughlin in retaliation for their protected concerted activity. Both charges were found to be sufficient. In its answers to the charges, the University denied having committed an unfair labor practice as alleged. The Commission granted UFF's

¹All references to the Florida Statutes are to the 2018 edition.

unopposed motion to consolidate the two cases and appointed the undersigned hearing officer to conduct an evidentiary hearing in the matters.

Following a procedural history unnecessary to recite here, a formal hearing was held in Lakeland before the undersigned on January 24 and 25, 2019. Both parties were given an opportunity to present evidence, examine and cross-examine witnesses, and fully participate in the hearing. Ten witnesses presented testimony, including two rebuttal witnesses. UFF moved forty-four exhibits into the record without objection, and the University moved seventy-seven exhibits into the record without objection.

Following three extensions of time granted by the Commission, the parties filed proposed recommended orders, which I have considered in preparing this recommended order.² An official transcript also was filed.

ISSUES

1. Whether the University through its agents violated section 447.501(1)(a), (b), and (c), Florida Statutes, by eliminating two bargaining unit classifications and terminating the employment of Kate Bernard and Casey Fox, without bargaining and in retaliation for their having engaged in protected concerted activity?
2. Whether the University through its agents committed an unfair labor practice, in violation of section 447.501(1)(a) and (b), Florida Statutes, by non-renewing

²The University filed a proposed recommended order in each case. On April 2, UFF filed a motion to strike the University's proposed recommended orders, asserting that collectively they exceed the page limit prescribed by Florida Administrative Code Rule 28-106.215. The University filed a response opposing the motion on April 11. Upon consideration, UFF's motion is DENIED.

the teaching contracts of Drake and Coughlin in retaliation for their protected concerted activities on behalf of bargaining unit members?

3. If so, what is the appropriate remedy?
4. Whether either party is entitled to an award of attorney's fees and costs?

FINDINGS OF FACT

Based on the record as a whole, including the testimony, exhibits, and my credibility determinations, I make the following factual findings:³

1. UFF is an employee organization within the meaning of section 447.203(11), Florida Statutes.
2. The University is a public employer within the meaning of section 447.203(2), Florida Statutes.
3. The University has a single academic building with two floors. Faculty offices are located on the second floor. (T. 407) The design of the second floor makes it possible to see individuals having conversations with others. (T. 521)
4. Since the University's inception in 2014, Randy Avent has been its president. (T. 258) Prior to joining the University, Avent had never been a manager or administrator in a unionized setting. (T. 259)

³Citations to the official transcript are identified as "T. at" followed by the page number(s). UFF's exhibits are identified as "CP-Ex." followed by the exhibit number(s). The University's exhibits are identified as "R-Ex." followed by the exhibit number(s). Use of a particular citation does not represent the sole support for any finding of fact.

5. Provost Terry Parker was hired in 2016. He has bachelor's, master's, and doctorate degrees in mechanical engineering (ME). (T. 454) As executive vice president, he supervises the University's vice provosts and department chairs. (T. 289, 291-92) Prior to joining the University, Parker had never been a manager or administrator in a unionized setting. (T. 290)

6. In 2016, UFF began organizing a union at the University. On July 18, 2016, the Commission directed an election to be held in the bargaining unit of full-time University employees in the lower division classifications of professor, assistant professor, associate professor, assistant librarian, wellness counselor, and academic program coordinator. See *United Faculty of Florida v. Florida Polytechnic University Board of Trustees*, 43 FPER ¶ 53 (2016).

7. Avent and Parker were publically opposed to unionizing University faculty as they believed a union would be divisive and was not in the best interest of the University. (T. 89, 259-61, 290; CP-Exs. 1-2; R-Ex. 63) Avent said, in a letter to faculty, "I don't believe unions are either innovative or agile, and I can only wonder where this institution would be today if a union had been involved from the outset." (CP-Ex. 1) Parker said that he would prefer to work without a union in place. (T. 371)

8. The University organized and funded a campaign to oppose the election, costing about \$60,000. (T. 30-32, 260-61, 291; CP-Exs. 1-2)

9. Following a secret ballot election, the Commission certified UFF as the exclusive bargaining representative for the above-described unit on October 27, 2016.

See *United Faculty of Florida v. Florida Polytechnic University Board of Trustees*, 43 FPER ¶ 135 (2016).

10. The University and UFF began negotiating its first collective bargaining agreement (CBA) in 2017. (T. 28, 33)

11. On or about February 22, 2018, a “concerned Poly employee” mailed an anonymous letter to each member of the University’s board of trustees. The letter raised several allegations of a poor working environment, excessive salaries, and construction delays. The author also listed at the end of the letter twenty names of individuals who allegedly had knowledge of those allegations, including several who were members of the union. (CP-Exs. 12-13)

12. The University’s administration was not happy about the way issues were raised in the anonymous letter. (T. 501) In a local news article about the letter, Avent was quoted as saying he was concerned about the “group” responsible for the letter, which was perceived to be UFF or certain faculty. (T. 38, 264-65; CP-Ex. 13) There also was a lot of tension in the faculty about the administration’s reaction to that letter. (T. 502)

13. The University tasked its auditing and compliance officer, David Blanton, with investigating the allegations raised in the letter. Blanton interviewed everyone named in the letter that was still employed with the University. None of those individuals admitted having knowledge that the letter was sent to the trustees or said that they agreed to be included in the letter. (T. 591-94; CP-Ex. 12)

14. Around the time that the anonymous letter surfaced, UFF was conducting a climate survey. More than fifty percent of the faculty responded to the survey. Two-thirds indicated that they did not feel comfortable expressing dissenting views about administration policy without fear of reprisal. (T. 38-39; R-Ex. 73)

15. There also were complaints made that the University was denying faculty their rights to union representation at meetings perceived to be disciplinary in nature. (T. 92, 94; CP-Exs. 5-6) On one occasion, ME Professor Hessam Mirgolbabaei appeared for a meeting with his department chair, Mary Vollaro, accompanied by a union representative, and Vollaro postponed the meeting. (T. 519; CP-Ex. 10, pg. 4) UFF addressed these concerns with the University's administration.

16. One of ME's newer professors, Melissa Morris, voiced several concerns about her teaching load and expectations. (R-Ex. 76) On June 6, during a meeting with Parker and Vollaro, Morris was instructed that she should only "speak up" to her department chair and that she should not bring representatives to meetings or she would risk disciplinary action or other consequences, as was the case with Mirgolbabaei.⁴ (T. 473, 491, 494; R-Ex. 77) Morris has been reprimanded for expressing concerns about problems in her department and told repeatedly not to speak up and make complaints. (T. 475, 491)

⁴I do not credit Vollaro's testimony that she "never discouraged anyone from coming to a meeting with her with a union rep." (T. 519) However, I credit the evidence suggesting that Mirgolbabaei also had performance issues that Vollaro and Parker sought to address. (CP-Ex. 10)

Assistant Librarian and Wellness Counselor Layoffs

17. At the time the bargaining unit was certified, the University employed one full-time assistant librarian, Kate Bernard. The University also employed one full-time wellness counselor, Casey Fox, for the entire campus. Both Bernard and Fox reported to Kathryn Miller, vice provost for academic support services and director of libraries.

(T. 215-16, 235)

18. As the assistant librarian, Bernard worked with Miller to implement library programming, conduct trainings, manage library access services and usage statistics, and coordinate the Academic Success Center. The minimum qualifications for the position included a master's degree in library science and strong teaching and technical skills. (T. 239-40; CP-Ex. 34)

19. As the sole on-campus wellness counselor, Fox provided psychological counseling to individuals and groups of students. (CP-Ex. 34) In early 2018, around the time of the mass shooting in Parkland, Florida, Fox expressed to Miller that as a one-person counseling center, she could not sustain walk-in appointments or provide a crisis response. (R-Ex. 62) The University contracted with BayCare, an off-campus healthcare provider, to provide supplemental mental health services and back-up assistance during this time. (T. 232; CP-Ex. 40)

20. Bernard and Fox were actively engaged in negotiating the parties' initial CBA. (T. 30, 33, 64; CP-Ex. 8; R-Exs. 65-66) Bernard was very outspoken during bargaining. (T. 79) University officials questioned Bernard and Fox's participation on the bargaining team, and they were required to report to Miller when they would be absent

from work to attend bargaining sessions. (T. 42, 44, 65) Miller reported this information to Parker. (T. 229-31, 380; CP-Ex. 39)

21. A point of contention during the bargaining process was the type of benefits the University should afford the assistant librarian and the wellness counselor vis-à-vis other teaching faculty. From Parker's perspective, these two classifications should receive less attention in negotiations than the teaching faculty in the unit because they were non-instructional employees. (T. 45-46, 299)

22. In October 2017, Miller proposed adding a case manager to the staffing structure, or alternatively, using BayCare services to support mental health on campus. (R-Ex. 36; CP-Ex. 41)

23. On May 5, 2018, Miller proposed a new plan to Parker to revamp the staffing in her department. By the summer of 2018, she desired to add four positions (an associate director case management, an associate director library, and two success coaches) and eliminate three positions (wellness counselor, assistant librarian, and assistant director academic support services). Specifically, she envisioned the associate director library position would oversee the University's digital library and the Florida Industrial and Phosphate Research Institute (FIPRI) library. She recommended that the persons in the existing positions would be eligible to apply for one of the new roles. (R-Ex. 37)

24. On June 21, Miller asked to meet with Bernard, but did not indicate the nature of the meeting. (T. 225) Bernard asked if she needed a union representation to accompany her, and Miller replied that it was unnecessary. (T. 54) During the meeting,

Miller gave Bernard a letter stating that she was being laid off, effective immediately, because the University had decided to “eliminate [her] position of Assistant Librarian.”

Bernard was directed to pack her belongings and was escorted from the building.

(T. 585-86) Her last day of employment with the University was July 20, 2018.

(CP-Ex. 14; T. 48)

25. The same day that Bernard received her layoff notification, the University and UFF had a bargaining session where a UFF representative spoke of his concerns over recent staff terminations. (T. 49-50) Bernard and Fox attended that session.

(CP-Ex. 39) Candi Churchill, UFF’s chief negotiator, also was present. (T. 28, 47)

26. On Churchill’s drive home from the bargaining session, she received a text from the University’s chief negotiator, Mark Bonfanti, requesting that she call him. The text arrived within an hour of Bernard receiving her layoff letter. (T. 48, 53; R-Exs. 57-58)

27. On June 26, around 10:00 a.m., Miller gave Fox a letter stating that she was being laid off, effective immediately, because the University had decided to “eliminate [her] position of Wellness Counselor.” Fox was directed to pack her belongings and was escorted from the building. (T. 587) Her last day of employment with the University was July 25, 2018. (T. 51, 225; CP-Ex. 15; R-Ex. 57)

28. Upon receiving the notice, Fox told Churchill that she had been laid off. Bonfanti had confirmed with Churchill the University’s decision via text message around 8:30 a.m. that day. (T. 51, 53; R-Ex. 57)

29. Shortly after meeting with Fox, Miller sent an email to the student body informing them of planned changes to academic support services, including plans to hire

an associate director of campus wellness management and the availability of BayCare and other services to assist students with mental health issues. Avent later forwarded that email to all staff. *Id.* There was no mention in the email that Fox was no longer employed with the University or available to meet with students. (R-Ex. 61)

30. That afternoon, at 2:22 p.m., Parker emailed the department chairs an update on staff changes in the academic affairs department. The email stated, in relevant part: “[W]e have eliminated the Assistant Librarian position and will put in place a Director of Libraries.... [W]e have eliminated the mental counselor position and will put in place a Case manager (along with an enhanced set of counseling services using BayCare).”⁵ (R-Ex. 27)

31. Both Bernard and Fox’s letters contained the following justification:

[W]e identified areas in the University where positions as defined do not align with the current needs of the University. Throughout the last several years, the University rapidly grew and with that growth, comes necessary change. Part of this change includes the elimination of roles and job functions, and although each position is individually important, they are no longer justifiable.

(CP-Exs. 14-15)

32. Neither Bernard nor Fox ever received unsatisfactory evaluations. (T. 232)

33. Parker ultimately authorized the layoffs of Bernard and Fox. (T. 303-04)

34. The University never communicated to UFF during negotiations its decision to eliminate Bernard and Fox’s positions or to lay them off as a result thereof. (T. 48, 53)

⁵Parker testified that he never authorized the elimination of the wellness counselor or assistant librarian positions. I discredit this testimony as it is directly contradicted by Parker’s and other’s communications around the time of Bernard and Fox’s layoffs.

35. It was unclear at that time of the layoffs whether the University had a grievance procedure in place for employees in the bargaining unit. (T. 77) There was a procedure for “university employees who are not governed by a collective bargaining agreement.” (R-Ex. 56)

36. As of July 1, 2018, the University contracts with BayCare to provide a full complement of wellness services. (T. 239, 245; R-Exs. 42-43) The University administration believes this model connects students to specialized, professional clinical services more efficiently and effectively. (T. 241, 245)

37. Between July 4 and July 12, the University posted advertisements for a “university librarian” and an “associate director of campus wellness management.” (T. 80-81, 83; CP-Exs. 33, 35) According to the position description, the University’s librarian position is responsible for the operation of the University’s digital collections and manages the FIPRI library. (CP-Ex. 35; R-Ex. 23) According to the position description, the wellness management position is a non-clinical position that is responsible for case management, crisis intervention, and referral services. (T. 234; CP-Ex. 33; R-Ex. 22) Both positions report to Miller. (T. 241)

38. Sometime after Fox’s layoff, one student withdrew from the University and another committed suicide in early August 2018. (T. 101, 104; CP-Ex. 19)

39. The Tampa Bay Times published an article on August 4 about the student suicide and quoted Professor Christina Drake as saying, “We have a campus makeup that is a ticking time bomb [for mental health issues].” (CP-Ex. 19)

40. On August 2, following the filing of UFF's ULP charge, Bonfanti emailed Churchill to explain that "the University has not eliminated the positions, but instead is choosing not to fill them at this time."⁶ Bonfanti also asked Churchill to notify him if UFF desired to engage in impact bargaining over the University's decision. (R-Ex. 29)

41. UFF's legal counsel responded on August 7 to explain the adverse impacts of the University's decision and to express a willingness to engage in impact bargaining. UFF also noted that the two newly-created positions appeared to share a community of interest with the other classifications in the bargaining unit and requested that the University consent to those positions being including in the unit. (CP-Ex. 42)

42. The University and UFF met on September 12 to discuss, among other things, UFF's concerns over the decision to terminate Bernard and Fox. (R-Exs. 21, 30) Churchill expressed that the parties could not meaningfully "bargain something after it's happened" as the action had already occurred and all the decisions made. (T. 68, 70) The University agreed to provide UFF adequate notice of decisions that could implicate impact bargaining. (R-Ex. 21)

43. Ultimately, the parties finalized their initial CBA in January 2019. The CBA contains approximately seven references to the wellness counselor and assistant librarian classifications. (T. 65, 70, 72, 378; R-Ex. 1) The CBA defines the wellness counselor and assistant librarian as "academic professionals" and includes a provision governing advance notice to UFF of any unit member layoffs. (R-Ex. 1, pgs. 51, 62)

⁶While Avent, Parker, and Miller echoed the sentiment that the University never intended to eliminate the positions, I do not find their testimony to be credible. (T. 66, 217, 244, 440, 465; R-Ex. 75, pgs. 12, 19)

44. Prior to Bernard and Fox's layoff, the University's organizational chart contained the assistant librarian and wellness counselor positions as well as others considered "vacant." (T. 223-24; CP-Ex. 31) Subsequently, the University removed those positions from its organizational chart and added the position of associate director of campus wellness management. (T. 219-20, 223-24, 233, 236)

45. As of January 25, 2019, the University did not employ either an assistant librarian or a wellness counselor nor had it sought to fill those positions. (T. 218-19, 234) With Miller as its sole librarian, the University receives assistance from a librarian at FIPRI. (T. 235)

Mechanical Engineering Department

46. During its initial accreditation process, the University decided to reorganize the "Mechanical and Industrial Engineering Department" into the Mechanical Engineering Department. (T. 275-276) ME, in general, includes the study of materials. (T. 147, 204, 559)

47. The University's ME degree offers two concentrations in materials science, also known as electives: nanotechnology and materials in advanced manufacturing. There are four required courses for each concentration. From the beginning, the University had a large focus on nanotechnology and invested heavily in laboratories and equipment. (T. 533-534, 537)

48. Within the ME department, the University employed approximately ten faculty, seven of whom had at least one degree in ME. (CP-Ex. 23-24, 37; R-Ex. 5)

49. Vollaro became chair of the ME department in 2018; as chair, she supervises all ME professors. Vollaro was the academic program coordinator from 2016 to 2017 before that position evolved into department chair. (T. 139-140) As of January 2019, department chairs are excluded from the bargaining unit; prior to that time, Vollaro was a member of the bargaining unit and UFF. (T. 290, 517) Vollaro has a bachelor's degree in ME and master's and doctoral degrees in Materials Science. (T. 144, 146, 516; R-Ex. 55)

50. The four materials science faculty in the ME department include Christina Drake, Christopher Coughlin, and Richard Matyi. (T. 276) Each of these individuals has a doctoral degree and collectively they have teaching experience ranging from one to twenty-five years, among other qualifications. (CP-Ex. 37)

51. Matyi is an associate professor with more than twenty years of teaching experience. He has bachelor and doctoral degrees in materials science and engineering and a master's degree in polymerics. Matyi was the academic program coordinator from 2015 to 2016. He presently serves as president of the UFF chapter at the University and is very outspoken on matters involving the faculty. (T. 139; R-Exs. 31-35, 55)

52. Coughlin was an assistant professor, with approximately seven years of teaching experience and a doctorate degree in polymer science. (R-Exs. 50, 55; R-Ex. 8) He served as chair of UFF's contract enforcement committee, wherein he represented unit members as needed in investigatory or disciplinary meetings. (T. 40) In this role, he expressed concern to the University's administration about its handling of Mirgolbabaei's

request for union representative at a meeting with Vollaro. (T. 41; CP-Exs. 5-6) Coughlin never had any performance issues and received favorable evaluations. (T. 150, 353) He resigned from the University in December 2018. (T. 129)

53. Christina Drake, an assistant professor, was hired in 2014. She earned her bachelor's, master's, and doctoral degrees in materials science and engineering. (T. 143; R-Ex. 7) Prior to joining the University, Drake did not have academic teaching experience. (R-Ex. 50) Drake was nominated for a teaching award by her students and received service awards from the faculty governing body. (T. 150) She never had any performance issues and has taught core ME courses, among others, with favorable student evaluations. (T. 148, 150, 353, 566; CP-Exs. 43, 55)

54. Drake was the academic program coordinator from 2014 to 2015. (T. 139) She served on the University's board of trustees from 2014 to 2016. (T. 87-89)

55. After relinquishing her trustee duties, Drake became UFF's membership and communications chair in the fall of 2017 and presently serves as the grievance and contract enforcement chair. Both positions are part of UFF's executive council. (T. 90, 165-69) Drake also was involved in collecting showing of interest cards during the union's organizational campaign. (T. 29, 88)

56. Drake and Coughlin are the only professors in the ME department to have received external funding for engineering research. (T. 133)

57. On May 23, 2018, Drake, Matyi, and other faculty provided public comments at the University's board of trustees meeting. Those comments addressed

concerns about the educational environment and results of the faculty climate survey. (R-Exs. 70-73) It was apparent to those in attendance that the University's administration was not "thrilled" with UFF leaders speaking at the trustees meeting.⁷ (T. 504)

58. Drake also sent correspondences expressing her concerns about fears of retaliation to individual members of the University's board of trustees, including Jim Dewey and Gary Tyson. (T. 107, 190, 595-597; CP-Ex. 17)

59. On June 28, Drake delivered remarks on behalf of UFF to the Board of Governors for the State University System. (T. 91; CP-Ex. 16) Drake's remarks included concerns about human resource matters, such as the wellness counselor and assistant librarian terminations, which she opined were motivated by a desire to suppress potential whistleblowers and retaliate for union activity. (T. 40; CP-Ex. 16)

60. In a July 12 email to Blanton, the University's inspector general, Drake expressed concerns about a "hostile work environment" at the University and identified fourteen individuals whom she believed had been laid off or fired due to "restructuring" and retaliation. (T. 108, 114, 596-599; CP-Ex. 18) Blanton looked into the matter but was unable to substantiate any of Drake's concerns. (T. 596-597, 601)

61. Drake also sent an email of concern to Marshall Criser, chancellor of the State University System of Florida, on the day of the student suicide in early August 2018. (T. 190) Drake was quoted in a *Tampa Bay Times* article about the student suicide as saying, "We have a campus makeup that is a ticking time bomb [for mental health issues]." (CP-Ex. 19)

⁷I credit Jim Dewey's testimony for this finding of fact. (T. 504)

62. Parker convened a meeting with Dewey and Avent to discuss Drake's email to the chancellor, which frustrated Parker and Avant. Avent lost his temper during the meeting because he believed Drake had misrepresented facts in her email. (T. 306-308, 498, 509) Avent commented that he had "had enough of it" and would "put a stop to it." (T. 509) Dewey thought "it" meant certain individuals, Drake for sure, and maybe others.⁸ (T. 511)

Faculty Non-renewals

63. In 2018, the University was in the midst of programmatic review of its computer engineering, electrical engineering, and mechanical engineering programs through the Accreditation Board for Engineering and Technology (ABET). (R-Ex. 52) ABET is an independent entity that accredits post-secondary education programs in applied and natural science, computing, engineering and engineering technology. (T. 275) In preparation for ABET accreditation, the University reviewed its programmatic and course offerings and faculty credentials, among other things. (T. 277)

64. The administration believed that the materials science faculty were "poorly positioned" to cover core courses in the ME program. (T. 402) Avent commented that the University had a large number of material scientists in its ME department. (T. 274) Therefore, the University shifted its focus to reduce the "overabundance" of materials science faculty. (T. 276, 406)

⁸I found Dewey to be a credible, unbiased witness. To the extent his testimony contradicted that of Avent and Parker, I have credited Dewey's testimony.

65. On May 11, Vollaro met with the ME Curriculum Advisory Board, which later provided minor input on the program's overall objectives; no comments were made about the materials science concentration in particular. (T. 547; CP-Ex. 27; R-Exs. 53-54) Faculty in the ME department were not aware that the advisory board was convened or apprised of its recommendations. (T. 153, 547)

66. On June 16, Parker sent an email to the University's general counsel identifying several faculty whom he was considering non-renewing. In the ME department, those faculty included Coughlin, Drake, and Matyi. (R-Ex. 26)

67. Parker also conferred with the University's vice provost of assessment and instruction, Tom Dvorske, on the credentials of ME faculty, in particular, Matyi, Coughlin, and Drake. Dvorske emailed Parker on July 30 with his conclusions that neither professor had "any prior experience teaching in an ABET accredited mechanical engineering program." (R-Exs. 49-50)

68. Parker prepared a memo, dated July 27, and addressed to Avent, that explained his recommendations for faculty retention and non-renewals across various departments. Specifically, he recommended that the University not offer new contracts to six faculty members, including four ME professors.

69. In the ME department, Parker recommended non-renewing Drake, Coughlin, Matyi, and Huseyin Ucar⁹ because they "are not appropriately credentialed to deliver the core courses in a ME degree program and are not aligned with the ABET

⁹At the time of the memorandum was prepared, Ucar had resigned. Ucar also had performance issues as the basis for his nonrenewal. (T. 319; CP-Ex. 23; R-Ex. 5)

requirements for faculty.” (CP-Ex. 23; R-Ex. 5) Parker also noted plans to add concentrations in aerospace and biomedical engineering; reconfigure the Manufacturing and Materials Processes concentration to target more manufacturing; and evolve the nanotechnology concentration into a more broadly applicable materials science concentration. Doing so would effectively eliminate some materials-related upper-level courses that Drake, Coughlin, and Matyi taught and developed in preparation for ABET accreditation. (T. 129-30; CP-Ex. 23; R-Exs. 5, 51)

70. Attached to the memo was a faculty teaching chart that Parker and Vollaro developed, based on their personal knowledge, to illustrate the overall course offering for a period of time and the credentials of existing ME faculty relative to those courses. (CP-Ex. 23; R-Exs. 5, 67) The chart identifies the teaching capabilities of faculty based on their degrees, experience, and teaching history. (T. 339-40)

71. Not all faculty members were identified in the chart as credentialed to teach every ME course, as Parker and Vollaro relied on currency and expertise in a particular field in determining the best fit for each course, particularly upper-level courses. (T. 550-52) Additionally, some errors were made in completing the chart. For example, while Drake previously taught core ME courses with favorable student evaluations, she was not marked as “credentialed” for all of them. (T. 147, 556; CP-Ex. 44; R-Exs. 44-45)

72. Vollaro believed that all faculty in her department should be able to teach freshmen and sophomore level courses. (T. 544)

73. Though Vollaro has a doctorate degree in materials science, the chart reflects that she is more credentialed to teach ME courses than Drake, Matyi, and

Coughlin. This was due, in part, to the fact that Vollaro has an undergraduate degree in ME. (T. 346, 553-554)

74. On August 2, Parker and Avent discussed the memo. Avent agreed that the University would be better served if it could “capture [the material science] positions with real mechanical engineers or engineers that were specifically mechanical” and revamp the ME program into a “straight mechanical engineering program.” (T. 273, 275-76)

75. Parker and Avent also concluded that two of the six proposed non-renewals should be retained, including Matyi, who is the most highly credentialed materials science professor. (T. 319; CP-Ex. 24) This was to ensure “sufficient teaching capacity for the existing materials science courses.” (CP-Ex. 24)

76. On August 5, 2018, Parker revised the memo to reflect recommendations of non-renewals in the ME department for Drake, Coughlin, and Ucar. The chart was not revised. (T. 120, 319; CP-Ex. 24)

77. On August 15, Parker informed Coughlin and Drake in writing that their contracts would not be renewed. (T. 118; CP-Exs. 21-22) The timing of the notice was delayed due to the student suicide. (T. 310)

78. Both Coughlin and Drake were subject to annual contracts that were set to expire August 15, 2019. (T. 164, 411; R-Exs. 47-48)

79. Drake was never told that she was not adequately credentialed to teach certain courses in the ME department or not aligned with the ABET requirements for faculty. (T. 136)

80. On August 20, Parker sent an email to faculty explaining the University's decisions regarding faculty retention and non-renewals. He explained that the decisions were reached with input from the department chairs or division director and review of each faculty member's support of a broad range of core course delivery in the various departments. (R-Ex. 6)

81. The University hired three new ME faculty for the 2018-2019 academic year, two of whom have terminal degrees in ME and the other in aerospace engineering. (T. 575; CP-Ex. 36; R-Ex. 55)

82. Neither Parker, Vollaro, nor any faculty member has proposed specific changes to the ME curriculum or offered plans to reorganize or reduce ME courses and concentrations, as recommended in the August 5 memorandum. (T. 124, 126-28, 131, 325-27, 537, 539; CP-Ex. 24)

83. ABET issued its audit of the University's programs following a second site visit in October 2018. The report identifies certain shortcomings, identified as concerns and weaknesses. As to the ME program, the ABET team stated: "While the current faculty numbers and competencies are adequate," additional faculty will be required to accommodate future enrollment growth in the program. (T. 111, 136-37, 351; CP-Ex. 29; R-Ex. 52)

84. The ABET team was not informed that Drake and Coughlin's teaching contracts would not be renewed after the 2018-2019 academic year. (T. 334)

ANALYSIS

Issue 1: CA-2018-029

UFF contends that the University violated section 447.501(1)(a)-(c), Florida Statutes, by deciding to eliminate two bargaining unit classifications and lay off the unit employees in those positions without giving UFF prior notice or an opportunity to request impact bargaining in advance of implementation of the University's decision. The University asserts that it did not eliminate the wellness counselor and assistant librarian classifications, but that it has chosen not to fill them for the indefinite future. This averment is unconvincing in light of the remarkable evidence to the contrary.

Failure to Bargain in Good Faith Claim

At all relevant times leading up to Fox's layoff on June 26, references to the restructuring of academic support services within the University suggested that the assistant librarian and the wellness counselor positions were being eliminated. Just a month prior, Miller proposed to Parker that the two positions be eliminated to make room for four new positions, which, in part, would replace the assistant librarian and the wellness counselor positions. In addition, both Bernard and Fox's layoff letters specifically stated that the University had decided to "eliminate" their positions because their roles and job functions were "no longer justifiable." On the same day that Fox was notified of her layoff, the Provost, who ultimately authorized the layoffs, emailed the department chairs to explain that the University had eliminated the assistant librarian and wellness counselor positions. He further explained that the University was creating new

positions to replace the eliminated ones, namely a director of libraries and a case manager with enhanced counseling services through BayCare. Moreover, Miller authorized the removal of both positions from the University's organizational chart following the layoffs, although in the past otherwise "vacant" positions still appeared in the chart. There is no clearer indication of the University's intent than its own consistent usage of the word "eliminate" on multiple occasions by various University administrators. Thus, the University's suggestion that such usage was in error, unintended, or carried a different meaning is implausible.

Notwithstanding, the elimination or abolishment of a position does not constitute an unfair labor practice; these acts are within the scope of management rights enumerated in section 447.209, Florida Statutes. See *National Association of Municipal Employees v. City of Casselberry*, 10 FPER ¶ 15205 (1984) (holding that the abolition and creation of jobs within a bargaining unit are management rights); see also *NAGE v. City of Casselberry*, 10 FPER ¶ 15205 (1984). However, the ability to abolish bargaining unit positions is subject to a public employer's duty to "impact" bargain about the effects of these changes upon the bargaining unit's wages, hours, and other terms and conditions of employment. See, e.g., *IAFF, Local 2416 v. City of Cocoa*, 14 FPER ¶ 19311 at 689-90 (1988), *aff'd*, 545 So. 2d 1371 (Fla. 1st DCA 1989) (impact bargaining obligation discussed in context of management decision concerning the number of employees working). Further, a public employer may not implement a decision concerning a non-mandatory subject, prior to initiating negotiations, if the decision has an

impact on wages, hours, or terms and conditions of employment. *Id.*; *Duval Teachers United v. School Board of Duval County*, 6 FPER ¶ 11271 at 402-03 (1980). Here, the University decided to eliminate two bargaining unit positions without providing adequate notice to UFF or a reasonable opportunity to bargain with UFF over the impact of that decision.

This case is analogous to *Coastal Florida Police Benevolent Association v. Brevard County Sheriff's Office*, 30 FPER ¶ 297 (2004). There, the undersheriff made the decision to transfer several deputies to another detention center because of inmate suicides, overcrowding, and understaffing. *Id.* However, the sheriff failed to provide the union any notice of its intended change nor did the sheriff attempt to enter into negotiations with the union prior to ordering the transfers. *Id.* The Commission held that the sheriff was obligated to provide the union with reasonable notice of its management decision to transfer employees and a reasonable opportunity to request negotiations over the impact of that decision. *Id.* By failing to do so, the Commission concluded that the sheriff "breached its duty to engage in effects bargaining before implementation of its transfer decision." *Id.*

Similarly, the University's exercise of a management prerogative in this case did not preclude mandatory bargaining as to the implementation of its decision to the extent it affected unit members' wages, hours, and terms and conditions of employment. See *Hillsborough County Classroom Teachers Association v. School Board of Hillsborough County*, 7 FPER ¶ 12411 (1981), *aff'd*, 423 So. 2d 969 (Fla. 1st DCA 1982). Usually, an employer must bargain over the negotiable effects of its management decision for a

reasonable period of time before implementing the decision. See *Jacksonville Supervisors Association, Inc. v. City of Jacksonville*, 26 FPER ¶ 31140 (2000), *rev'd in part*, 791 So. 2d 508 (Fla. 1st DCA 2001); *Southwest Florida Professional Fire Fighters, Local 1826, IAFF v. Ft. Myers Beach Fire Control District*, 23 FPER ¶ 28209 (1997).

It is undisputed that the University's chief negotiator contacted Churchill to give her a "heads-up" that Fox and Bernard were being laid off. However, both instances occurred, informally, within a couple hours of the employees receiving notifications of the University's decisions, which were effective immediately. Furthermore, the parties had engaged in a bargaining session on the same day that Bernard was laid off, and Bernard, Fox, and Churchill attended that session. It even appears that Miller and Parker had discussed eliminating the two unit classifications for nearly a year prior to doing so. Thus, the record demonstrates that the University had ample opportunity to notify UFF of its intentions and to engage in negotiations over the impact of that decision well in advance of implementing it.

As in *Coastal Florida Police Benevolent Association*, the University's failure to provide UFF with adequate advance notice of the intended layoffs precluded UFF from having a significant opportunity to identify expected impacts and engage in meaningful negotiations over those subjects prior to implementation. See 30 FPER ¶ 297 (stating that the employer has the obligation to provide notice and an opportunity for the union to engage in meaningful negotiations over the impact of the transfers prior to the decision's implementation); see also *Leon County PBA v. City of Tallahassee*, 8 FPER ¶ 13400 at 726 (1982) (ruling that a union does not waive its right to demand bargaining through an

ineffective demand for negotiations, when the time between an employer's notice of an intended change and effectuation of the change is insufficient to provide a union with a "significant opportunity" to engage in meaningful negotiations). Based on the foregoing, the University's conduct constitutes a violation of section 447.501(1)(c), Florida Statutes.¹⁰

Retaliation Claim

UFF also contends that the University's decision to layoff Bernard and Fox and eliminate their positions was motivated by retaliation for their active support of UFF, in violation of section 447.501(1)(a) and (b), Florida Statutes. Section 447.501(1)(a), Florida Statutes, prohibits public employers or their agents from "[i]nterfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them [by Chapter 447, Part II]." The rights of employees protected by this provision are set forth in section 447.301(1) and (3), Florida Statutes, and include "the right to form, join, and participate in" a union or refrain from doing so, and the right to engage in other concerted activities for "collective bargaining or other mutual aid or protection." Section 447.501(1)(b), Florida Statutes, prohibits public employers, their agents, or representatives from encouraging or discouraging membership in any employee

¹⁰I acknowledge that UFF was able to express its concerns about the adverse impacts of the University's decision during a bargaining session in September 2018. I also acknowledge that the University reacted to some of those concerns by, for example, agreeing to provide UFF adequate notice of decisions that would impact negotiations. However, I do not find that UFF was afforded an opportunity for meaningful bargaining after the University had already decided to implement its plans to eliminate the positions in question.

organization by discrimination with regard to hiring, tenure, or other conditions of employment.

In *Pasco County School Board v. Public Employees Relations Commission*, 353 So. 2d 108 (Fla. 1st DCA 1978), the court announced the test to determine whether an adverse employment action constitutes an unfair labor practice. *Pasco* provides:

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.

Id. at 117 (footnotes omitted).

Here, the University's agents were well aware that Bernard and Fox were active participants on UFF's bargaining team from the beginning and attended numerous collective bargaining sessions in an effort to formalize the parties' initial CBA. Even on the day Bernard was laid off, Bernard and Fox had attended a bargaining session. I also credit Churchill's testimony that Bernard was very outspoken during bargaining. As the only employees in their respective unit positions, Bernard and Fox's participation in negotiations was vital to UFF to ensure the assistant librarian and wellness counselor

perspectives received adequate and equal treatment vis-à-vis others in the bargaining unit. This evidence is sufficient to establish the part (a) of the first prong of the *Pasco* test.¹¹

As to part (b) of that prong, the evidence supports that Bernard and Fox's participation on UFF's bargaining team was a substantial or motivating factor in the University's decision to terminate their employment by eliminating their positions. While there is no evidence that Bernard and Fox were ever prohibited from attending bargaining sessions, Provost Parker and Miller monitored their involvement in negotiations, and Parker even appeared to dismiss the importance of their voices at the bargaining table because they represented non-teaching positions in an otherwise majority faculty unit. Thus, I find that the record supports the conclusion that the University was motivated by a non-permissible reason to terminate Bernard and Fox's employment.

As to the second prong of the *Pasco* test, the University claims that its decision to layoff Bernard and Fox was because their positions no longer "aligned with the current needs of the University" and were "no longer justifiable." This justification ineffectively meets the University's burden to show that notwithstanding the existence of factors relating to protected activity, it would have made the same decision to terminate Bernard and Fox. At best, the University's rationale is pretextual because the University later claimed that it did not eliminate Bernard and Fox's positions, which is incongruous with a legitimate plan to reorganize staffing in academic support services. Moreover, there is no

¹¹It is troubling that the record is devoid of testimony by either Bernard or Fox. Nevertheless, there is sufficient, uncontroverted evidence in the record of their protected activity in terms of assisting UFF in negotiating the parties' first CBA.

credible evidence that Bernard or Fox ever received unsatisfactory evaluations or were not effectively fulfilling their job responsibilities. Nonetheless, the University did not invite either of them to apply for one of the newly created positions in lieu of layoff. I note that in 2018, Miller proposed a staffing remodel that allowed persons in the eliminated positions to apply for one of the new roles. Yet, Parker authorized an elimination of the two unit classifications without any mention of continued employment opportunities for Bernard and Fox. Further, Bernard's layoff left a gap in the delivery of services at the University, requiring other staff and even Miller to carry the workload. Likewise, the termination of Fox left the University without a full-time wellness counselor or a case manager, as one had not yet been hired.

The timing of the University's decision, in connection with the fact that the parties were negotiating its first CBA for a unit that included the wellness counselor and assistant librarian, is proper for consideration. It is unsettling that the University would decide, in the midst of bargaining, to eliminate two classifications that the Commission had only two years prior determined to be appropriate for inclusion in a bargaining unit represented by UFF. The record evidence of the University's overall anti-union stance is unrefuted. It is apparent that the climate at the University's campus was charged with tension between the administration and unit employees. The University's president and provost admitted that they preferred to work without a union in place and fought hard to oppose the creation of a union at the University. This evidence of anti-union animus begs the question of whether the University's decision to eliminate the two classifications was a subterfuge to thwart the Commission's representation decision.

The fact that the University has equivocated over whether the positions were actually “eliminated” also raises questions about its motives. The University maintains that it has retained Bernard and Fox’s positions in the unit, with the prerogative to fill them in the future, although it has no plans to do so. However, it appears that the University created two new positions, which it advertised after the layoffs of Fox and Bernard, to replace the two positions that it effectively eliminated. Yet, there is no indication that the University has consented to the new positions being included in the bargaining unit, as UFF requested in August of 2018. Even if Bernard and Fox’s layoffs were mere collateral consequences of the University’s decision to eliminate their positions, I find that the decision itself was not based on a legitimate purpose.

I note there is no assertion by the University that the newly created positions constitute re-titling of the eliminated classifications. If that were true, however, mere re-titling of bargaining unit positions to remove them from the unit is not a good faith change in an employer’s organization and operations that falls within the management discretion afforded by section 447.209, Florida Statutes. See *City of Jacksonville v. Jacksonville Supervisor’s Association, Inc.*, 791 So. 2d 508 (Fla. 1st DCA 2001).

Based on the totality of the facts in this case and the record as a whole, I conclude that the University’s reasons for laying off Bernard and Fox were plainly pretextual and that their concerted protected activities coupled with obvious union animus were substantial and motivating factors in the University’s decision to eliminate their classifications. This type of unlawful action has a chilling effect on bargaining unit employees’

exercise of their right to engage in protected concerted activity. Therefore, the University's conduct also constitutes an unfair labor practice in violation of section 447.501(1)(a) and (b), Florida Statutes.

Issue 2: CA-2018-034

UFF argues that the University, through its agents, non-renewed the teaching contracts of Drake and Coughlin in retaliation for their union activities, in violation of section 447.501(1)(a) and (b), Florida Statutes. I note at the outset that a public employer has the right to exercise control and discretion over its organization and operations, to direct its employees and relieve them from duty for legitimate reasons. § 447.209, Fla. Stat. However, a public employer may not exercise those prerogatives for unlawful reasons.

Section 447.501(1)(a) and (b), Florida Statutes, provides:

- (1) Public employers or their agents or representatives are prohibited from:
 - a. Interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under this part.
 - b. Encouraging or discouraging membership in any employee organization by discrimination, in regard to hiring, tenure, or other conditions of employment.

As previously explained, the seminal test to determine whether an adverse employment action constitutes an unfair labor practice was announced in *Pasco*, 353 So. 2d at 117.

Where a claim of discrimination is alleged, a finding of an unfair labor practice may necessarily depend upon circumstantial evidence. *Id.* at 119.

In this case, the first prong of the *Pasco* test is satisfied with regard to Drake as her involvement in union activity was prominent within the University.¹² Drake arguably was one of the most outspoken UFF members, repeatedly expressing concerns about alleged retaliation with regard to a series of University personnel decisions. Additionally, she was part of the effort to create the faculty union at the University in 2016. Following her stint as a trustee, Drake assumed various leadership roles on UFF's executive council, including membership and communications chair and grievance and contract enforcement chair. She spoke publicly on behalf of UFF before the University's board of trustees and the state board of governors, in the presence of University administrators, and produced multiple correspondences about what she perceived to be indicia of union animus within the University. The administration was well aware of Drake's advocacy on behalf of unit members. Consequently, Drake's conduct clearly was protected, and thus satisfies part (a) of the first prong of the *Pasco* test.

Part (b) of the first prong of this test requires UFF to prove by a preponderance of the evidence that Drake's conduct was a substantial or motivating factor in the University's decision not to renew her contract. The presence of an anti-union motivation by an employer is a factual matter, which may be resolved upon circumstantial evidence from the record as a whole. See *Pasco*, 353 So. 2d 119; *Diaz v. City of Plantation*, 35 FPER ¶ 116 at 236 (2009). The timing of the decision by the employer in connection

¹²Based on the evidence adduced at the hearing, I find very little direct evidence to support UFF's contention that Coughlin's nonrenewal was based on protected concerted activity. However, inferences drawn from the circumstantial evidence presented certainly point to that conclusion. Nevertheless, I only address here the issues presented in light of the evidence related to Drake.

with the employee's union activity also is a proper consideration in determining whether an unfair labor practice was committed. *Id.*

As aforementioned, the evidence of anti-union animus in this matter is unrefuted. Not only did the University's administration express disdain for having to work with a union in place, it also undertook subversive means to eliminate classifications within the bargaining unit once established, and laid off the individuals that represented those classifications on UFF's bargaining team. The chilling effect on the exercise of protected activity was evidenced through Morris's testimony and the situation involving Mirgolbabaei's desire to have a union representative accompany him to a meeting with his superiors.

Moreover, it is very apparent that the administration was frustrated and discontented with Drake's outspokenness on behalf of UFF regarding personnel and student issues and alleged retaliatory conduct at the University. Drake expressed these concerns not only within the University but also to individuals and sources outside of the University whom she believed could influence the administration's conduct. For doing so, agents of the University convened a meeting wherein President Avent stated that he would "put a stop to it," referring to individuals such as Drake. In fact, Avent believed that "Christina [was] at the center of it." (T. 269) Thus, I conclude that Drake's conduct was a substantial or motivating factor in the University's decision not to renew her teaching contract.

As to the second prong of the *Pasco* test, the University insists that its decision was based on an attempt to staff the ME department with only faculty who are strongly

qualified to support a broad range of core course delivery. This “goal,” according to the administration, was influenced by the ABET accreditation review process. According to the University, its materials science faculty were “poorly positioned” to teach core courses in the ME program, so a decision was made to reduce the “overabundance” of materials science faculty. Consequently, Parker determined that three faculty, including Drake, were not aligned with the ABET requirements for faculty and should not be retained. Again, this proffered rationale is unworthy of credence.

Besides the staffing chart¹³ that Parker and Vollaro created based on their own knowledge and without the input of the professors addressed in the chart, there was no evidence presented that the materials science faculty, specifically Drake, were unqualified to cover the ME curriculum. In fact, Drake, who has a terminal degree in materials science and engineering, was one of the first professors to be hired in the ME program and has taught core engineering courses regularly, with favorable student evaluations and no negative performance evaluations. At no time was she ever advised that she was not credentialed to teach those courses.

Further, the *quality* of ME professors was not questioned by the ABET team during its site visits to the University; in fact, the audit report opined that the current faculty competencies were adequate for the program. The only issue flagged with regard to the faculty was the *quantity* of faculty to support future growth of the University. There is no

¹³There were inconsistencies, contradictions, and shifting explanations in the testimony by Vollaro and Parker as it relates to the chart and the overall credentials of ME faculty. To the extent necessary, I have resolved all inconsistencies in favor of the charging party.

credible evidence in the record that the ABET team was even made aware of Parker's decision not to renew the teaching contracts of Drake and other ME faculty either before or during the 2018 site visit. I also find that it is no coincidence that the three faculty slated for nonrenewal in the ME department—Drake, Matyi, and Coughlin—were all leaders in the union; in fact, Matyi is the union president.¹⁴

Finally, it is questionable that the administration would decide to minimize the materials science concentration after the ME program was revamped to emphasize this area during the University's pursuit of accreditation. It also is not clear that the University is seeking to deemphasize the materials science concentration as neither Parker, Vollaro, or any faculty member has proposed specific changes to the ME curriculum or presented plans to reorganize the program concentrations, as suggested in Parker's memo recommending the non-renewal of Drake and others.

While it is true that Drake's employment was subject to a contract that expires in 2019, the totality of the evidence establishes a nexus between Drake's protected concerted activity and the adverse employment action taken against her. I am not persuaded that the University's agents would have made the same decision to non-renew Drake's contract but for her protected concerted activity. I note also that Parker's decision to lay off Bernard and Fox and not renew the contracts of Drake and other unit

¹⁴While I acknowledge the administration's ultimate decision to renew Matyi's contract, it does not undermine Parker's initial recommendations not to renew Matyi's contract along with that of Drake and Coughlin. Furthermore, the inference of discriminatory intent would have been more apparent had Matyi been non-renewed since Parker and Vollaro agreed that "Matyi is the most highly credentialed faculty member of the group." (CP-Ex. 24)

members occurred within close proximity. Thus, based on the totality of the circumstances and reasonable inferences drawn from the record as a whole, I find that the University committed an unfair labor practice in violation of section 447.501(1)(a) and (b), Florida Statutes, with its decision to non-renew Drake's teaching contract.

Attorney's Fees and Costs

Section 447.503(6)(c), Florida Statutes, allows the Commission to award reasonable attorneys' fees and costs of litigation to a prevailing party when it determines such an award to be appropriate. *See also Leon County Police Benevolent Association v. City of Tallahassee*, 8 FPER ¶ 13400, *aff'd*, 445 So. 2d 605 (Fla. 1st DCA 1984). Both parties have requested an award of attorney's fees and costs. As the prevailing charging party in this matter, UFF is entitled to an award of attorney's fees and costs if the University knew or should have known that its conduct was violative of Chapter 447, Part II, Florida Statutes. In light of the foregoing, the University should have known that its conduct, as alleged, was unlawful. Accordingly, I recommend awarding attorney's fees and costs to UFF.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this unfair labor practice charge, pursuant to section 447.503, Florida Statutes.
2. The University committed an unfair labor practice in violation of section 447.501(1)(c), Florida Statutes, by failing to provide UFF with reasonable notice and an opportunity to engage in meaningful negotiations over its decision to eliminate two bargaining unit classifications.

3. The University through its agents violated section 447.501(1)(a) and (b), Florida Statutes, by laying off Bernard and Fox in retaliation for their protected concerted activity.

4. The University through its agents committed an unfair labor practice, in violation of section 447.501(1)(a) and (b), Florida Statutes, by non-renewing Drake's teaching contract in retaliation for her protected concerted activities on behalf of bargaining unit members.

5. An award of attorney's fees and costs of litigation in favor of UFF is appropriate.

RECOMMENDATION

I recommend that the Commission ADOPT the foregoing order and issue a final order directing the University to:

- 1) Cease and desist from:
 - a. Unilaterally eliminating classifications within the bargaining unit without affording UFF advance notice and an opportunity to bargain the impact of its decision;
 - b. Discouraging membership in any employee organization by non-renewing the contracts of employees or otherwise terminating employees in retaliation for their having engaged in protected concerted activity; and
 - c. In like or related manner, interfering with, restraining, or coercing its public employees in the exercise of any right guaranteed them under Chapter 447, Part II.

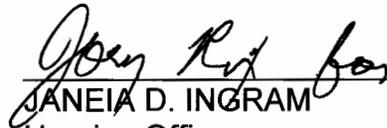
- 2) Take the following affirmative action:
- a. Recognize the classifications of assistant librarian and wellness counselor as being included in the unit, in accordance with the Commission's decision in *United Faculty of Florida v. Florida Polytechnic University Board of Trustees*, 43 FPER ¶ 53 (2016);
 - b. Offer to reinstate Bernard and Fox to their previous positions and provide back pay and any other benefits to which they would be entitled if they had not been laid off;¹⁵
 - c. Rescind Drake's August 15, 2018, non-renewal letter;
 - d. Provide immediately to its employees in the manner in which the University customarily communicates with them, the contents of the Notice to Employees attached to this order stating that the University shall cease and desist from the action set forth in paragraph one above and that it shall take affirmative action set forth in paragraph two. The notice shall include the name of the University's authorized representative. If the notice is by posting, copies of the enclosed Notice to Employees will be posted immediately for sixty (60) consecutive days in conspicuous locations where notices to employees are customarily posted.¹⁶ The University shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by other materials. Copies of the posted notice shall be signed by the University's authorized representative prior to posting; and
 - e. Pay to UFF its reasonable attorney's fees and costs incurred in litigating this case.

¹⁵I note that this recommended remedy comports with prior Commission orders finding a violation of section 447.501(1)(a) and (b), Florida Statutes. However, the undersigned has reason to believe that Bernard and Fox have other employment at this time. Thus, this recommendation is contingent on the desires of each individual to be re-employed with the University.

¹⁶See *School District of Orange County v. Orange County Classroom Teachers Association*, 146 So. 3d 1203 (Fla. 5th DCA 2014) (questioning the practicality of requiring the actual posting of notices given the advancement in modern technology).

Any party may file exceptions to my recommended order, but exceptions must be received by the Commission within **fifteen** days from the date of this order. See Fla. Admin. Code R. 28-106.217(1). An extension of time for filing exceptions will not be granted unless good cause is shown.

ISSUED and SUBMITTED to the Public Employees Relations Commission in accordance with Florida Administrative Code Rule 28-106.216 and SERVED on all parties this 25th day of April, 2019.



JANEIA D. INGRAM
Hearing Officer

JDI/bjk

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STATE OF FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION	
4708 Capital Circle Northwest, Suite 300 Tallahassee, Florida 32303 850.488.8641 Fax: 850.488.9704 www.perc.myflorida.com	
To: Jennifer Sniadecki Mark L. Bonfanti Hall, Arbery, Gilligan, Roberts & Shanlever LLP	From: Office of the Clerk Public Employees Relations Commission
Fax: (404) 537-5555	Pages: 41
Phone: (850) 533-9125	Date: 04/25/2019
Case: CA-2018-029 CA-2018-034	Re: Hearing Officer's Recommended Order
Comments:	
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4708 Capital Circle Northwest, Suite 300 Tallahassee, Florida 32303 850.488.8641 Fax: 850.488.9704 www.perc.myflorida.com	
To: Alexander M Landback Regina Delulio	From: Office of the Clerk Public Employees Relations Commission
Fax: (863) 874-8716	Pages: 41
Phone:	Date: 04/25/2019
Case: CA-2018-029 CA-2018-034	Re: Hearing Officer's Recommended Order
Comments: <p style="text-align: center;">NOTICE:</p> <p style="text-align: center;">If you have received this facsimile communication in error, please contact the Public Employees Relations Commission, Office of the Clerk, 850.488.8641.</p>	
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STATE OF FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION	
4708 Capital Circle Northwest, Suite 300 Tallahassee, Florida 32303 850.488.8641 Fax: 850.488.9704 www.perc.myflorida.com	
To: Eric J. Lindstrom Egan, Lev, Lindstrom & Siwica, PA	From: Office of the Clerk Public Employees Relations Commission
Fax: (407) 422-3658	Pages: 41
Phone: (407) 422-1400	Date: 04/25/2019
Case: CA-2018-029 CA-2018-034	Re: Hearing Officer's Recommended Order
Comments:	
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