

BACKGROUND

1
2 This grievance arose in October, 2000, when Beau Grosscup, a professor in the
3 political science department at CSU Chico and president of the local CFA chapter,
4 attempted to send a CFA communication using the campus all-faculty e-mail list and was
5 refused access to the system. Grosscup e-mailed campus president Manuel Esteban
6 regarding CFA's ability to "send [e-mail] via the campus all faculty e-mail distribution
7 list in the same manner as Chancellor Reed, you and Bill Pierini do." (Jt. Ex. 9)
8
9 According to Grosscup, CSU and CFA were in bargaining, and the University was using
10 the all faculty e-mail list to disseminate the University's position to faculty. Grosscup felt
11 that the University had an unfair advantage, and he had tried to use the all-faculty list to
12 send a message from CFA to the Chico faculty in response to CSU's e-mail
13 communications. Grosscup testified that President Esteban told him orally that CFA
14 could not post the message under the University's e-mail access guidelines because it was
15 a partisan organization. Grosscup stated that he attempted to address the issue with
16 University administrators at Chico for several months, without success. He filed the
17 grievance January 23, 2001, when he felt there was no point in further discussions. (Jt.
18 Ex. 2) The grievance alleges a violation of Article 6.3 of the collective bargaining
19 agreement, which makes intra-campus mail service available to CFA. On February 15,
20 2001, Grosscup attempted to use the all-faculty e-mail list to send the Hudson notice that
21 CFA is legally required to send annually to all faculty members. Again, access to the list
22 was denied. (Jt. Ex. 12)
23
24
25
26
27
28

1 In its Level I response, dated February 19, 2001, CSU Chico denied the grievance
2 on the basis that the intra-campus mail service referred to in Article 6.3 is for "hard copy
3 material" distributed through the campus mail service, not e-mail distributed through the
4 university computing and communications technology service. The University also cited
5 Executive Memorandum 97-18, Policy on Use of Computing and Communications
6 Technology, as a basis for denying CFA's access:
7

8 Access to the university's computing and communications facilities is only granted for the
9 purpose of educational use and legitimate university-related business. Utilization of these
10 facilities for any other purpose is a violation of University policy and a request to utilize
11 these facilities for any other purpose is inappropriate.

12 If CFA wishes to have a right of access to the e-mail system the appropriate forum is the
13 bargaining table, not arbitration. (Jt. Ex. 2)

14 CFA moved the matter to Level II. (Jt. Ex. 3) In its Level II response, the
15 University further expounded its reasoning:

16 As the Level I response highlights, "the information following this statement in the Article
17 [6.3] makes it clear that intra-campus mail refers to hard copy material that is distributed
18 through the campus mail service." This fact is further reinforced in that this language was
19 negotiated in the early 1980's before e-mail was technologically possible.

20 In addition, the fact that both parties understand that the Article 6 language does not
21 provide for this type of e-mail access to the CFA is demonstrated by the CFA's current
22 initial bargaining proposal for a successor contract demanding "CFA e-mail access
23 comparable to that for the administration." PERB decisions further underscore that
24 "[I]etter mail and e-mail are entirely different types of communication." . . . This is not to
25 say that "incidental" personal use is not prohibited but rather this "minimal" e-mail use
26 does "not include regular, voluminous union messages delivered via lengthy mailing lists."
27 (Jt. Ex. 3. Emphasis in original; citations omitted.)
28

29 The Level II Response ended by referring to Chico Executive Memorandum 97-18,
30 stating that it "limits access to e-mail distribution lists for educational use or legitimate
31 University business." The University denied the grievance and reiterated its original

1 position that CFA would have to bargain any right to access the e-mail system. Following
2 exhaustion of the internal grievance procedures, the matter was referred for arbitration by
3 letter dated May 16, 2001. (Jt. Ex. 4)

4
5 Article 6.3, which grants CFA access to the on-campus mail service, was included
6 in the parties' first collective bargaining agreement, negotiated in 1983. Since then, CFA
7 has used the on-campus mail system at Chico to distribute Union communications
8 through the campus' "J-list." According to Grosscup, CFA makes up a document and
9 sends it to the University print shop, with instructions that it be distributed to the J-list.
10 The print shop prints copies and sends them to the campus mailroom, which distributes
11 them to the campus mailboxes of everyone on the J-list. CFA pays for the costs of
12 printing and distribution. Grosscup testified that he did not know whether CFA or CSU
13 had originally developed the J-list, but because he does not have any input into it now, he
14 assumes that the University maintains the list.
15
16

17
18 Ed Purcell, CFA's Director of Representation, testified that CFA had made
19 bargaining proposals regarding e-mail access in the 1998 (Jt. Ex. 5) and 2001 (Jt. Ex. 7)
20 master contract negotiations in order to clarify the existing contract language, not because
21 the Association believed that it did not have the right to such access. Purcell stated that
22 when there were a large number of proposals in both rounds of bargaining, CFA decided
23 to drop the e-mail demands in bargaining and pursue its rights through litigation (i.e., the
24 arbitration process). Sam Strafacci, CSU's Assistant Vice Chancellor for Human
25 Resources, was the University's chief spokesperson in the 1998 and 2001 contract
26
27
28

1 negotiations. Strafaci testified that from CSU's perspective, CFA's e-mail proposals
2 represented a change in the status quo and were a significant change. CSU's notes from
3 the 1998 negotiations do not make any reference to statements from CFA that its e-mail
4 proposals represented a "clarification" of the existing language. (CSU Ex. 1) In addition,
5 the CFA proposals and rationales in the Technical Letter posted by CSU prior to the 2001
6 bargaining negotiations did not make any reference to clarifying existing contract
7 language. CFA's rationale for the proposed amendment to Article 6.1 was:
8

9 The CSU Administration/Chancellor's Office routinely uses their system wide e-mail
10 access to CSU faculty in order to transmit union/bargaining information to faculty. CFA
wishes to have equal access to the CSU faculty. (Jt. Ex. 7)

11 In fact, Strafaci testified, he is not able to send out an e-mail to all CSU employees
12 system-wide, and he cannot directly access the all-faculty e-mail list at CSU Chico.
13 Instead, transmission is a two-step process: Strafaci can send e-mail to any campus
14 presidents, plus other Human Resources employees, which they then forward for
15 distribution to faculty at each campus. On cross-examination, Strafaci acknowledged that
16 e-mail is mail in electronic form, and that electronic mailboxes are technically faculty
17 mailboxes. In both the 1998 and 2001 master contract negotiations, CSU rejected CFA's
18 bargaining proposal that it have the ability to communicate instantaneously with all
19 faculty.
20
21
22

23 The University has used and continues to use the all-faculty e-mail distribution list
24 to address Association-related matters. Grosscup received an e-mail dated May 8, 2002,
25 from the President of the Chico campus, forwarding a message to all campus presidents
26
27

1 from Sam Strafaci. (Jt. Ex. 8) Strafaci's message was in response to alleged reports from
2 the Association that there would be delays in processing faculty salary increases.

3 Joe Wills, Director of Public Affairs and Publications at CSU Chico, testified that
4 his office oversees the campus' internal e-mail communications to faculty, staff and
5 students. Announcements to all faculty and staff are distributed daily between 1:00 p.m.
6 and 2:00 p.m.; student announcements go out once a week at 5:00 p.m. Chico's all-
7 faculty e-mail list was created in 2000. Certain campus departments have been given the
8 ability to send out e-mail directly: the President's Office; the Provost's Office; the
9 Registrar's Office; Academic Advising; Campus Police; Facilities Management;
10 Accounting; and the Academic Senate. Otherwise, all e-mail announcements have to go
11 through Wills' office.

12 E-mail communications at CSU Chico are regulated by Executive Memorandum
13 97-18, "Policy on Use of Computing and Communications Technology," dated June 26,
14 1997 (attachment to Jt. Ex. 2) and guidelines issued by Wills' office. (Jt. Ex. 11) Wills
15 described the criteria his office uses to evaluate what messages and announcements can
16 be sent through the campus-wide e-mail lists. The first criterion relates to the technical
17 aspects of e-mail: the size and configuration of the proposed message. Sending a large
18 message to everyone at one could bring down the server. The second relates to message
19 content. The office has published guidelines for general e-mail announcements (Jt. Ex.
20 11) that Wills uses in conjunction with Policy EM 97-18. According to the guidelines:
21
22
23
24
25

26 Content cannot contain:

27 A. advertising

- B. public debate or personal opinion
- C. political statements/endorsements or fund raising
- D. personal items for purchase/rent or sought for purchase/rent
- E. advertisements/announcements for outside organizations or nonuniversity-related events or concerns (Jt. Ex. 11)

Wills did not recall having ever been directly asked by CFA to post a message or making any decision regarding a proposed CFA message. If he were asked, he said, he would apply the guidelines to determine if it could be posted.

CSU Chico operates a Web site that is available to the public. Under the heading "Other Resources," the Faculty & Staff page contains links to the state CFA office and the local CFA chapter, as well as California State Employee Association Web sites. Clicking on the CFA local chapter link takes one to the CFA Chico Chapter Web site. Finally, CFA could compile its own faculty e-mail list.

ISSUES PRESENTED

The issues for decision, as stipulated by the parties at the arbitration hearing, are:

Did the California State University Chico violate provisions 6.1-6.11 of the 1998-2001 agreement between the California State University and the California Faculty Association when it denied the California Faculty Association access to the Chico campus all-faculty e-mail distribution list?

If so, what shall the remedy be?

RELEVANT CONTRACT PROVISIONS, ADMINISTRATIVE REGULATIONS AND EDUCATION CODE SECTIONS

The collective bargaining agreement between the parties (Jt. Ex. 1), effective July 1, 1998, to June 30, 2001, provides, in relevant part:

* * * * *

ARTICLE 6 — CFA’S RIGHTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6.1 Upon request of CFA, the CSU shall provide at no cost adequate facilities not otherwise required for campus business for meetings of the CFA. The CFA shall be afforded access to the existing campus telephone system at no cost to the CSU, contingent upon the ability of the system to accommodate such usage. . . . The CFA shall also be afforded access to the CSU net for systemwide and internet telecommunications access, at no cost to the CSU, contingent upon the ability of the system to accommodate such usage. . . .

6.2 [Omitted.]

6.3 Intra-campus mail service shall be available to CFA at no cost for official CFA communications. CFA shall package and label materials for convenient handling according to the normal specifications of the campus, which shall be communicated upon request from CFA. The identifier (CFA) shall appear on all materials sent through the campus mail service by CFA. Faculty unit employee mailboxes, if any, may be utilized by CFA for purposes of CFA communication to faculty unit employees.

6.4 CFA shall have the use of an adequate number of designated bulletin boards for the posting of CFA material. . . .

6.5 A copy of CFA material posted on bulletin boards and CFA material intended for general distribution to faculty unit employees through the campus mail services shall be provided in a timely manner to the appropriate administrator. CFA should exercise responsibility for the content of such material.

6.6 CFA shall not interfere with campus programs, operations, or the work of faculty unit employees.

.....

6.11 Upon the request of CFA, employee lists including those generated by PIMS and other public information shall be provided to CFA as soon as reasonably practicable. . . .

.....

* * * * *

ARTICLE X – GRIEVANCE PROCEDURE

.....

10.6. Arbitration

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

.....
A. The arbitrator's award shall be based solely upon the evidence and arguments appropriately presented by the parties in the hearing and in any post-hearing briefs.

B. The arbitrator shall have no authority to add to, subtract from, modify, or amend the provisions of this Agreement.

.....
1. The standard of review for the arbitrator in other than faculty status cases is whether the CSU violated, misapplied, or misinterpreted a specific term(s) of this Agreement.

.....
* * * * *

POSITIONS OF THE PARTIES

The Association.

CFA's traditional right to use campus mail and have access to campus mail boxes allows for a reasonable interpretation of Article 6.3 that mail includes the implied term and application of electronic mail and e-mail server lists. The manifest intent of the original contract language was to provide the union with the same ability to communicate with campus faculty as was afforded the administration. No inherent disadvantage for the CFA was embedded in the original 1983 contract language or in subsequent successor contracts. Given the reality of the increased importance of and reliance on e-mail in an academic work setting like CSU, and the fact that e-mail has increasingly replaced paper mail as a preferred method of communications on university campuses, it is only reasonable that the exclusive representative of faculty, CFA, would continue to have the same equitable access to the faculty as it has always had in the past.

It is not unusual in contract law that during the course of performance, problems arise and the parties need to adjust their obligations in the light of a situation not

1 contemplated when the contract was made. If good faith efforts to make adjustments fail,
2 an arbitrator may be asked to define the parties' obligations in the context of the
3 unanticipated circumstances, and to apply the "gap-filling" rules that are used when
4 unforeseen circumstances alter the relational realities. Any adjustments must be based on
5 fundamental principles of fairness and justice.
6

7 Under HEERA, § 3568, higher education public employees unions have a right to
8 access "mailboxes and other means of communication." More importantly, Article 6 of
9 the collective bargaining agreement provides: (1) access to the CSU net for system-wise
10 and internet telecommunications access (Article 6.1); and (2) access to the intra-campus
11 mail service and faculty mailboxes (Article 6.3). If Articles 6.3, 6.5 and 6.11 are read
12 conjointly with 6.1, one can draw a reasonable construction for an interpretation that
13 CFA bargained for the omitted term regarding "access" to (e)mail server lists or "intra-
14 campus (e)mail service." Additionally, provision 6.5 expressly refers to a plurality of
15 campus mail "services," not just one. Under the contract language, there were no
16 exclusions, disadvantages, or exceptions expressly articulated in the original contract
17 language. When the original contract was bargained, CFA had the same access to intra-
18 campus mail as did the administration. This represented a relational condition of equity
19 with regard to the ability to communicate with campus faculty. CSU had a good faith
20 duty to make an adjustment in the exigent unforeseen circumstances so that CFA was not
21 deprived of the value of the original bargain.
22
23
24
25
26
27
28

1 If access to e-mail server lists cannot be interpreted as a logical adjustment of the
2 existing language regarding "intra-campus mail services," this may be a case where the
3 facts and circumstances fit the "omitted implied term" rule in contract interpretation
4 discussed in Contracts, Second, § 204, inasmuch as the parties failed to anticipate or
5 foresee the situation that later arose as the result of the evolution of e-mail. As discussed
6 by Professors Calamari and Perillo in Contracts, 3rd Edition (West Publishing Co., 1987),
7 in such cases, "the court should supply a term which comports with the community
8 standards of fairness and policy rather than analyze a hypothetical model of the
9 bargaining process." Due to unanticipated technological changes, an unanticipated access
10 gap developed between the parties based upon CSU's denial of CFA's access to intra-
11 campus e-mail server lists. CFA attempted to remedy the situation by asking for a
12 clarification of the collective bargaining agreement in negotiations. A reasonable and
13 good faith interpretation would provide CFA with the same access to "intra-campus
14 (e)mail" as the Academic Senate and high-level campus administrators have.
15
16
17

18 The 1998 PERB decision cited by CSU in its Level 2 response, *CSEA v. State of*
19 *California*, is not applicable in this case. The CSEA bargaining unit did not have the
20 strong contractual language supporting its right to access "mail" and the e-mail network
21 that CFA has in Articles 6.1 and 6.3 of its collective bargaining agreement. PERB's
22 conclusion that "mail and e-mail are entirely different types of communication" was only
23 relevant in a context where the employee organization had not bargained the right to use
24 and access the e-mail network as CFA has here. Also, they may be different types of
25 communication, but as Strafaci and Wills testified, they are both still "mail."
26
27
28

1 Furthermore, the fact that CFA attempted to get access to the intra-campus e-mail
2 in past bargaining does not prohibit the arbitrator from granting such access through the
3 contract interpretation process. Where a proposal in bargaining is made, unsuccessfully,
4 in order to clarify an existing contract, it does not necessarily follow that the
5 interpretation subsequently sought in arbitration is wrong. CFA has always maintained
6 that access to intra-campus e-mail services is a contractual right already implicitly
7 covered under the existing contract. The issue is properly before the arbitrator as a matter
8 of contractual interpretation. In 1998, CFA felt that access to "all faculty e-mail server
9 lists" was already an implicit promise of the contract, since it was analogous to the "J
10 list" maintained at CSU Chico, which had been used by CFA to distribute paper mail for
11 years. The fact that CFA made its proposal as a subsection under existing language lends
12 credibility to CFA's position that it was requesting a clarification of the existing
13 language. This interpretation is borne out by the 1998 bargaining notes on Article 6, in
14 which union negotiator Greg Tropea stated, "This proposal would not change the status
15 quo." (CSU Ex. 1, p. 9)
16
17
18

19
20 Article 6, as originally written in 1983, did not include access to e-mail as part of
21 the bargain, because the development of e-mail was not foreseen or anticipated by the
22 parties. The fact that the University has added another intra-campus mail service, in the
23 form of e-mail, does not justify a unilateral exclusion that would negate the value of the
24 originally bargained right. E-mail is rapidly replacing and serves as a substitute for paper
25 mail on CSU campuses: it is quicker to send out, cheaper, less labor intensive, and easier
26 to manage once the system has been set up. There is no "undue hardship," "frustration,"
27
28

1 “impracticality,” or “impossibility” case that can be made by the University. The fact that
2 the University is increasingly relying on a new form of mail should not allow it to
3 circumvent past practice and its implied contractual responsibilities and obligations in the
4 contract. CFA has a right to a performance that provides an equivalent value to what was
5 initially bargained for in 1983 and carried forward in subsequent contracts, which was
6 equal access to available campus mail services. The means of delivering mail may have
7 changed, but the promise that the union has equitable access to the means of delivery has
8 not. The technological means of delivery does not negate the promise of delivery, unless
9 there is a specific term creating a restriction. For instance, a contract stating that
10 employees have to sign in and out upon entering and leaving work would not necessarily
11 be subject to mandatory bargaining if the employer replaced the sign-in sheet with a time
12 clock, a technological improvement. Likewise, the promise made to CFA that “mail,”
13 “mail facilities,” “mailboxes” and “intra-campus mail services” would be made available
14 to the union should not be discharged merely because the means of delivery and the form
15 of mail have evolved and changed. Electronic mail is still a type of mail delivered to
16 electronic mailboxes through an electronic medium in an electronic format.
17
18
19
20

21 Lastly, CSU Chico has violated its own e-mail policy. The University has cited the
22 Chico e-mail policy prohibiting partisan usage or “public debate” as a basis for denying
23 CFA’s request to access the all faculty server list. Strafaci’s memo to the CSU Presidents
24 taking exception to a CFA position—which was then distributed by President Esteban to
25 all Chico faculty—is obviously a form of public debate. E-mails from high-level
26 administrators are not reviewed by the Office of Public Affairs and Publication for
27
28

1 partisan content or any other violations of the e-mail guidelines. The fact that the
2 University has allowed the Academic Senate "unrestricted access" while denying it to
3 CFA is also disturbing. Although the Senate and CFA operate in specifically designated
4 arenas, there is some overlap on various matters within the scope of the collective
5 bargaining agreement. The fact that the Senate is given access while CFA is not is further
6 evidence that the administration is devaluing CFA and its role as the exclusive
7 representative of faculty. Such favored treatment is suspect and prejudicial to CFA's
8 mandated responsibilities as the exclusive representative.
9

10
11 The arbitrator should uphold the original bargain and construct the omitted implied
12 term of "all faculty e-mail server list" and apply it to the contract. The arbitrator should
13 find that CSU violated CFA's rights as they are articulated and implied by Article 6. She
14 should also find that CSU Chico is in violation of its own campus e-mail policy when it
15 uses the all faculty intra-campus directory to publicly debate CFA's positions.
16

17
18 **The University.**

19 The Article 6 language granting access to intra-campus mail should not be
20 construed to encompass electronic communication since the language was negotiated in
21 1983, prior to the advent of e-mail. E-mail could not reasonably have been contemplated
22 by the parties when they negotiated the Union's access to the intra-campus mail system.
23 Article 6.3 makes it clear that hard copy mail was intended. The language in Article 6 is
24 very specific in granting various rights of access to the Union: Article 6.1 provides access
25 to the CSU telephone system. Article 6.4 provides access to bulletin boards, and Article
26
27
28

1 6.11, to employee information. If the parties intended to include e-mail and list servers,
2 they would have specifically stated such. The all-faculty list server that CFA is requesting
3 was not created until 2000, and therefore could not have been contemplated in language
4 written in 1983, and not changed since then.

5
6 The CFA's interpretation that the intent of the 1983 language included e-mail is
7 nonsensical and absurd. In 1983, the official definition and common usage of the word
8 "mail" did not include e-mail. In addition, the PERB has taken judicial notice that letter
9 mail and e-mail are entirely different types of communication and ruled that the
10 establishment of a policy regarding one form of communication does not constituted
11 establishment of a policy regarding the other.

12
13
14 CFA is attempting, improperly, to secure in arbitration a right that it has been
15 unable to achieve at the bargaining table. CFA has unsuccessfully put forth proposals to
16 include e-mail in Article 6 in both the 1998 and 2001 contract negotiations. In February
17 1998, CFA proposed a new Article 6.a, which stated, in part: "Electronic mail service on
18 the campus shall be made available to CFA." CSU proposed to maintain the status quo.
19 No changes in the contract language were agreed. CFA's contention that the language
20 was proposed to clarify the existing contract language is not borne out by the minutes of
21 the June 18, 1998, bargaining session at which the matter was discussed. Sam Strafaci,
22 chief negotiator for CSU, testified that Gail Holmes, the CFA chief negotiator, never
23 indicated that the language was for clarification purposes. Ed Purcell, the Union's witness
24 on this point, was not at negotiations that day. During the most recent successor
25
26
27
28

1 negotiations, in March 2001, CFA submitted another proposal requesting access to
2 campus e-mail services: "Provide for CFA e-mail access comparable to that for the
3 administration." The proposal was withdrawn on May 4, 2001. The best objective
4 evidence that the language did not encompass e-mail is demonstrated by the fact that the
5 proposal was submitted after the instant grievance was filed, in January 2001. By
6 submitting its proposal after filing a contract grievance on the same matter, CFA is tacitly
7 admitting that the existing contract language does not guarantee the right of access to e-
8 mail.
9

10
11 As long as the Union has reasonable access to its membership, the employer has a
12 right to reserve some forms of communication, such as e-mail, for official business only.
13 The University is not required to share with the Union all of its means of communication.
14 The University has not acted arbitrarily. High volume e-mails or e-mails with attachments
15 have the potential to interfere with the on-going operations of the e-mail system. In
16 balancing the reasonable access already given to CFA versus the potential adverse effects,
17 the University has chosen not to grant an external entity the uncensored, uncontrolled
18 right of access to its list server. By asking for uncensored direct access, the Union is
19 attempting to secure a right that not even the Chancellor and other University
20 administrators have. Sam Strafaci, Assistant Vice Chancellor for Human Resources,
21 testified that neither he nor the Chancellor of the University is able to send e-mail directly
22 to all faculty at the Chico campus. Any e-mail sent to faculty or staff at a campus is sent
23 to a designated contact, who then distributes the message electronically. Direct access to
24 the Chico campus list server is limited to only a few departments, which must still abide
25
26
27
28

1 by campus policy when sending out an e-mail message. All other messages must be
2 reviewed for compliance with campus policy. Messages may not contain personal
3 opinion, public debate, advertising, political information, or the like.

4
5 The Union already has reasonable access to its membership at the Chico campus
6 via multiple methods of communication, including electronic communications that have
7 not been alleged to be inadequate. CFA sends hard copy communications using the intra-
8 campus mail system's "J" list. CSU has never blocked or interfered with the Union's
9 incidental e-mail communication to faculty on its system, and the University has no
10 objection to the Union creating its own faculty e-mail list and list server. In addition,
11 CSU Chico has permitted the Chico CFA chapter to have a link on its official University
12 Web page. CFA also has its own Web page. CFA provided no evidence of an inability to
13 communicate with its members or any harm from not having access to the all-faculty list
14 server; it would just prefer the use of the faculty list. CFA has provided no evidence that
15 the all-faculty list is an employee list to which it is entitled under Article 6.11. Any
16 allegation that CFA is being discriminated against is not supported by the evidence and is
17 more properly decided before the PERB. Accordingly, the grievance should be denied.
18
19
20

21 DISCUSSION

22 23 **A. Each CFA chapter is entitled under Article 6.3 of the parties' Agreement** 24 **to use of its campus' "intra-campus mail service."**

25
26 There is no dispute between the parties that CFA is entitled under Article 6.3 of
27 the parties' Agreement to use "intra-campus mail service" for official CFA
28

1 communications. The crux of this case is whether the language “intra-campus mail
2 service” includes the e-mail system at CSU Chico, specifically, the all-faculty list used to
3 distribute e-mail messages to faculty at Chico. The University contends that Article 6.3
4 applies only to written communications sent through the traditional intra-campus mail
5 service and that CFA is not entitled to make use of the Chico campus’ all-faculty list-
6 server to distribute CFA communications via the campus e-mail system.
7

8
9 CFA has had access to intra-campus mail service to distribute official union
10 communications since the parties’ first collective bargaining agreement. Presently, Article
11 6.3 states:

12 Intra-campus mail service shall be available to CFA at no cost for official CFA
13 communications. CFA shall package and label materials for convenient handling according
14 to the normal specifications of the campus, which shall be communicated upon request
15 from CFA. The identifier (CFA) shall appear on all materials sent through the campus mail
16 service by CFA. Faculty unit employee mailboxes, if any, may be utilized by CFA for
17 purposes of CFA communication to faculty unit employees.

18 Historically, this provision has applied to distribution of written or printed
19 materials through a traditional intra-campus mail system. At Chico, CFA sends written
20 communications through campus mail using the “J list.” As described by Beau Grosscup,
21 CFA is not required actually to “package and label materials for convenient handling,” as
22 stated in Article 6.3. Instead, CFA sends a copy of the proposed communication to the
23 campus print shop, with directions to distribute it to the J list; the print shop produces the
24 necessary number of copies and forwards them to the campus mailroom, which in turn
25 handles physical distribution.¹
26

27 ¹ Each campus may have different requirements for how “intra-campus mail” is physically handled; this
28 grievance relates solely to the intra-campus mail system at Chico.

1 The first contract language regarding CFA's access to faculty through various CSU
2 communication facilities, including intra-campus mail service, was negotiated in 1983, in
3 the parties' first collective bargaining agreement. (Jt. Ex. 10) Even if e-mail had been
4 invented in 1983, it was certainly not in such widespread use as it is today, to the point
5 where it has begun to replace traditional written communications in many workplaces,
6 including academia. Clearly then, the parties did not contemplate e-mail in their 1983
7 negotiations and the language they negotiated did not specifically refer to or include e-
8 mail. Nor does CFA suggest that it did. The Union has taken a different tack: it argues
9 that the intent of Article 6, as negotiated in 1983, was to provide CFA with the same,
10 broad-based ability to communicate with campus faculty that the administration had.
11 Accordingly, as communications methods have changed and expanded over time, CFA
12 contends, so Article 6 should be interpreted to include new methods of communication
13 used by the administration, such as e-mail.
14
15
16

17 **B. Historically under Article 6, CFA's intra-campus access to faculty through**
18 **CSU facilities has been broad-based and extensive. To be consistent with**
19 **the intent of the parties' agreement, the faculty access provisions of the**
20 **current contract should be interpreted broadly.**

21 Contract interpretation requires analysis of both the content of a contractual
22 provision as well as its context within the overall agreement. Although Article 6.3 was
23 originally negotiated prior to the advent of e-mail, there is nothing in the actual language
24 of the provision that would limit an "intra-campus mail service" to traditional campus
25 mail services for written materials. In the parties' first contract, Article 6.3 simply
26 provided: "Intra-campus mail service shall be available for official union business. The
27
28

1 cost of such mail service shall be borne by the Union.” (Jt. Ex. 10) However, other sub-
2 sections of Article 6 provided additional access rights, *i.e.*, for Union bulletin boards
3 (Article 6.4) and for employee lists to be provided to the Union upon request (Article
4 6.9). Articles 6.1 and 6.2 required the Union to abide by campus procedures “for use of
5 campus facilities and campus equipment” and to pay for materials and supplies “incident
6 to each use of campus facilities and campus equipment.” The implication of such
7 language is that CFA would be able, at least under certain circumstances, to use campus
8 facilities and equipment as well, presumably for meetings and other official Union
9 business. Thus, from the very beginning of the parties’ bargaining relationship, the Union
10 has had broad-based access to the faculty. Since 1983, that access has only become
11 broader, as the parties have added other provisions to Article 6.
12
13

14
15 This is why the context of Article 6.3 is important; one cannot look at Article 6.3
16 in a vacuum, when it is part of a wider set of contract provisions establishing Union
17 access to faculty through various means. Article 6, CFA’s Rights, addresses a number of
18 Union rights established by the parties through negotiations, including access to faculty,
19 leaves and release time for conducting Union business, a non-retaliation clause for
20 participating in Union activities, and so on. Most pertinent to this case, Articles 6.1
21 through 6.11 address the Association’s access to faculty and campus facilities. As noted
22 above, they give the Association broad access to CSU’s facilities in order to conduct
23 union business and to send official communications. Article 6.1 guarantees that CFA will
24 have access to meeting space on campus, that it will have access to the University
25 telephone system, and that it will have access to “the CSU net for systemwide and internet
26
27
28

1 telecommunications access, . . . contingent upon the ability of the system to accommodate
2 such usage.”² Article 6.4 guarantees the Union “the use of an adequate number of
3 designated bulletin boards for the posting of CFA material.” Articles 6.9 and 6.11 require
4 the University, upon request, to provide CFA with lists of new appointments and general
5 employee lists, including the home addresses of faculty unit members who have not
6 objected to having their addresses released.³ Taken together, the provisions of Articles 6.1
7 through 6.11 permit extensive use of CSU facilities for the conduct of official Union
8 business.
9

10
11 Under Article 10.6.g of the Agreement, an arbitrator has “no authority to add to,
12 subtract from, modify, or amend the provisions of this Agreement.” Such provisions are
13 common in collective bargaining agreements. While they protect the parties from
14 unwarranted arbitral intrusion into their relationship, they do not interfere with the
15 arbitrator’s right—and obligation—to interpret the meaning of existing contract
16 provisions consistent with the parties’ intent.
17

18
19 In this case, the fundamental difference of opinion between the University and the
20 Association is that CSU interprets Article 6 as providing the Association with
21 communications access to faculty through specific and limited means—which do not
22 include e-mail—while CFA interprets the article more broadly. Since the inception of the
23

24
25 ² The record does not indicate when access to the telephone system and CSUnet were added to the contract.

26 ³ Articles 6.2 and 6.10 address who pays for access (in addition to specific cost allocations in other
27 provisions). Articles 6.5 and 6.8 require CFA to provide copies to the University of CFA material that is distributed
28 to faculty, either by posting or “through the campus mail services,” and to notify the University when CFA
representatives who are not campus employees will be on campus to conduct official business. In Article 6.6, CFA

1 parties' bargaining relationship in 1983, Article 6 has provided the Union with broad
2 access to the faculty through CSU facilities, especially when compared to the access
3 found in other collective bargaining agreements.⁴ In that context, one should continue to
4 interpret Article 6 broadly.

5
6 Such an interpretation is even more appropriate when Article 6 is viewed in the
7 larger context of the enabling legislation that granted collective bargaining rights to
8 employees in higher education. Regarding access to faculty, HEERA § 3568 provides:

9
10 Subject to reasonable regulations, employee organizations shall have the right of access at
11 reasonable times to areas in which employees work, the right to use institutional bulletin
12 boards, mailboxes *and other means of communication*, and the right to use institutional
facilities at reasonable times for the purpose of meetings concerned with the exercise of
the rights guaranteed by this act. (Emphasis added.)

13 Clearly, the California legislature, when it endorsed collective bargaining in higher
14 education, intended that higher education unions should have broad access to faculty. In
15 Article 6 of their Agreement, CSU and CFA have implemented that legislative intent, and
16 the Article should be interpreted accordingly.
17

18
19 The University has argued that by making bargaining proposals about access to e-
20 mail that it subsequently withdrew from master contract negotiations (Jt. Exs. 5, 7), CFA
21 has tacitly admitted that Article 6.3 as currently written does not include any right of
22 Union access to the University's e-mail system. While that is one possible interpretation
23

24 agrees not to interfere with campus operations or employees' work. Article 6.7 designates the CFA Chapter
President as CFA's official representative on each campus.

25 ⁴ Compare, e.g., the very limited negotiated access rights at issue in *CSEA v. CSU (Northridge)*, 8 PERC ¶
26 15065 (Miller, Nov. 15, 1989). The difference in negotiated rights limits the relevance of that decision in this case.
27 Similarly, in *CSEA v. State of California*, PERB Order No. 1279-S (August 21, 1998), the facts are entirely
28 different: the State had a long-standing policy against Union use of State equipment to conduct Union business.

1 of the Union's action, it is not the only one. Unions frequently attempt in contract
2 negotiations to clarify existing rights or to resolve matters that are pending at the
3 grievance level, then abandon those efforts in order to focus bargaining on matters to
4 which they assign a higher priority.

5
6 Here, it is also important to distinguish between CFA's access on a campus-by-
7 campus basis to intra-campus mail services under Article 6.3 and a desire by CFA to
8 access the University's entire e-mail system from its headquarters in Sacramento. Article
9 6.3 only provides CFA with access to *intra-campus* mail service; it does not address
10 system-wide communications by CFA directly out of Union headquarters. The context of
11 Article 6.3's language, which requires compliance with handling requirements "according
12 to the normal specifications of the [individual] campus," makes clear that even
13 communications from CFA headquarters must be handled and distributed on a campus-
14 by-campus basis. The negotiation notes from 1998 (CSU Ex. 1, pp. 8-11) are not as clear
15 as the University has argued. Greg Tropea, a Union negotiator, stated that "This proposal
16 would not change status quo," which supports CFA's position that its proposal for a new
17 Article 6.3.a, specifying access to "electronic mail service on the campus" (Jt. Ex. 5), was
18 merely a clarification of its existing right of access through Article 6.3. The discussion,
19 however, appears to have ranged between intra-campus access and system-wide access by
20 CFA to the University's e-mail system. Sam Strafacci queried, "What is the status quo on
21 campuses?," then ". . . [I]f they can do this already, why change the language?" The notes
22
23
24
25
26

27 *APC v. CSU*, PERB Docket No. LA-CE-584-H (D'Orazio, September 10, 2001), is also of limited relevance, in
28 that it addresses the duty to bargain, not the interpretation of long-standing contract language.

1 on Tropea's answer are not entirely intelligible, but end with Tropea referencing e-mail
2 sent to CFA headquarters in Sacramento. When Tom Ebert inquired for CSU, "Isn't the
3 e-mail already available to the union? I don't understand why this is necessary?," CFA
4 replied with a reference to web page access, not e-mail, then indicated its interest in using
5 e-mail to engage in "membership campaigns and communication." Strafaci then
6 indicated: "Isn't this happening in some way now? I know that you have the e-mail
7 addresses of the membership. Your campus representatives should have them and *also*
8 *have inside access*. Allowing the CFA to receive regular communication versus sending
9 mail to the faculty should be something that you get from your campus representatives."
10 [Id. at 10; emphasis added.] Strafaci's reference to "inside access" could mean the same
11 access to individual campus e-mail lists that is in dispute in this case for the Chico
12 campus. The subsequent discussion between the parties focused not on intra-campus e-
13 mail access but on the problems that CSU would have in providing e-mail addresses
14 centrally, its concerns about CFA's sending out system-wide messages that could bring
15 down the server, and how the Union would comply with the notification requirements of
16 Article 6.5. All in all, the negotiations notes do not establish that CFA was seeking to
17 establish a new right of access to *intra-campus* mail service in the 1998 negotiations. On
18 that topic, they are, for better or worse, merely inconclusive.⁵

19
20
21
22
23 **C. At CSU Chico, e-mail has become a functional alternative to traditional**
24 **written communication, and the campus e-mail system now operates in**
25 **tandem with the traditional intra-campus mail system as part of the overall**
26 **"intra-campus mail service."**

27
28

⁵ It is clear, however, that the University rejected system-wide CFA access to the CSU e-mail system.

1 It would not be an exaggeration to say that, as a result of advances in technology
2 over the past ten years, the use of e-mail for both business and personal communications
3 has exploded. Many businesses carry out significant portions of their communications
4 electronically, to the point where e-mail has become an effective replacement for
5 traditional written communication. As one example of the importance that e-mail has
6 assumed, federal and some state courts in Northern California either permit or require
7 electronic filing of pleadings and issue their opinions electronically in lieu of issuing
8 printed decisions. E-mail has become such a major communications force that traditional
9 mail is pejoratively referred to in some circles as "snail mail." Indeed, as the University
10 pointed out in its brief, the newest dictionaries now include e-mail in their definitions of
11 "mail." E-mail's spectacular rise in popularity is not hard to understand: once an e-mail
12 system is set up, it is quicker, easier and cheaper to use than a traditional written mail
13 system, especially for communicating the same message to large numbers of individuals.
14
15

16
17 Academia, and CSU Chico in particular, has not been left behind in the revolution
18 in communications technology. CSU Chico issued its "Policy on Use of Computing and
19 Communications Technology" (Executive Memorandum 97-18) in June 1997. Joe Wills,
20 Director of Chico's Office of Public Affairs and Publications, testified that CSU Chico
21 now uses e-mail extensively for internal communications to faculty, staff and students.
22 An all-faculty e-mail list, comparable to the J-list used in the traditional intra-campus
23 mail system, was compiled in 2000. Currently, Wills' office sends out daily
24 announcements to all faculty and staff via e-mail. Other offices at CSU Chico have been
25 granted direct, immediate access to the e-mail system in order to conduct their business,
26
27

1 including such important functions as registration (the Registrar's Office) and finance
2 (Accounting). The University uses the e-mail system to publish official University
3 communications regarding Association activity. (Jt. Ex. 8) Finally, both Wills and Sam
4 Strafaci, CSU's Assistant Vice Chancellor for Human Resources, acknowledged that e-
5 mail is a form of mail and that faculty e-mail addresses were the electronic equivalent of
6 the traditional faculty campus mailboxes.
7

8 The abundant and undisputed evidence in the record clearly establishes that at
9 CSU Chico, electronic communication via e-mail, sent through the intra-campus e-mail
10 system, has become an effective and viable alternative to written communication sent
11 through the traditional intra-campus mail system. As a result of technological change and
12 development, CSU Chico's "intra-campus mail service," which was originally comprised
13 solely of the traditional intra-campus mail system for written communications, has
14 evolved into a single *service* comprised of two component *systems*: the traditional intra-
15 campus mail system and the more recent e-mail system for electronic communications.
16 The e-mail system is functionally part of the "intra-campus mail service."
17
18

19
20 **D. Accordingly, CFA is entitled under Article 6.3 to use of the campus e-mail**
21 **system on the same basis as its access to the traditional campus mail**
22 **system, and CSU Chico "violated, misapplied, or misinterpreted" Article**
23 **6.3 when it refused the Union access to its all-faculty e-mail list.**

24 Article 6.3 provides: "Intra-campus mail service shall be available to CFA at no
25 cost for official CFA communications." It also states: "Faculty unit employee mailboxes,
26 if any, may be utilized by CFA for purposes of CFA communication to faculty unit
27

1 employees.” Given the finding that the e-mail system is part of the intra-campus mail
2 service at Chico, Article 6.3 must be interpreted to include the same access for CFA to
3 the e-mail system as it has to the traditional intra-campus mail system for written
4 communications, and the same access to electronic faculty mailboxes as it has to the
5 physical faculty mailboxes used for written communications. The standard of review for
6 an arbitrator under Article 10.6.I is whether the University “violated, misapplied, or
7 misinterpreted a specific term of this Agreement.” Here, CSU Chico misinterpreted
8 Article 6.3 when it excluded the e-mail system from the intra-campus mail service and
9 denied CFA access to the e-mail system on that basis. As the next section explains,
10 however, the access to which CFA is entitled is not necessarily the “direct and immediate
11 access” to the e-mail server that CFA has requested here as a remedy.
12
13

14
15 **E. CFA’s access to CSU Chico’s intra-campus e-mail system is not unfettered;
16 it is regulated by the provisions of Article 6 of the Agreement.**

17 Article 6.3 grants CFA access to the intra-campus mail service for “official CFA
18 communications.” At CSU Chico, CFA distributes written materials through the campus
19 “J list.” The all-faculty server list that is administered by Chico’s Office of Public Affairs
20 and Publications is the electronic equivalent of the J list and, as such, CFA is entitled to
21 send communications to faculty through the electronic all-faculty list in the same manner
22 that it has been granted access to the J list.
23
24

25 CFA contends that under Article 6.3, it is entitled to communications access to
26 faculty “equivalent” to that enjoyed by the University. However, while Article 6.3
27
28

1 guarantees CFA's access to the inter-campus mail service, it also qualifies that access, as
2 do other provisions of Article 6. Those limitations apply equally to e-mail
3 communications and to written communications. Article 6.3 requires CFA to "package
4 and label materials for convenient handling according to the normal specifications of the
5 campus." Article 6.5 requires notice "in a timely manner" from CFA to the "appropriate
6 administrator" at the campus of "CFA material intended for general distribution to faculty
7 unit employees through the campus mail services." Finally, under Article 6.1, CFA's
8 "internet telecommunications access" to the CSUnet is "contingent upon the ability of the
9 system to accommodate such usage. . . ." Thus, CFA's access to intra-campus mail
10 services, for either written or electronic communications, is not unlimited.
11
12

13 At CSU Chico, under Article 6.3's "normal specifications of the campus" for
14 written communications, CFA sends a copy of the material to the campus print shop,
15 which prints out the appropriate number of copies and forwards them to the campus
16 mailroom for distribution according to the J list. Chico's Office of Public Affairs and
17 Publications has published guidelines for "E-mail Announcements" for distribution of
18 messages through the campus e-mail system. (Jt. Ex. 11) Executive Memorandum 97-18
19 also regulates use of the campus' computer and communications technology. Together,
20 these two documents constitute the "normal specifications" for transmission of messages
21 through the campus e-mail system.
22
23
24

25 A review of EM 97-18 does not reveal any inherent inconsistencies between that
26 policy and CFA access to the Chico all-faculty e-mail list. First, there is no dispute that,
27
28

1 under Article 6.1, CFA can use and has been using the University's computer and
2 communications technology for internet communications, including e-mail.⁶ Under EM
3 97-18, access to Chico's computing and communications facilities is "a privilege granted
4 for the purpose of educational use and legitimate university-related business . . ." Access
5 is granted to a broad spectrum of individuals and entities, including retired faculty and
6 staff. The activities of the duly-selected exclusive representative of the faculty constitute
7 "legitimate *university-related* business" (not to be confused with "University business").
8 The University itself has used the all-faculty list to disseminate communications about
9 Association activities, thus negating any argument on its part that Association activities
10 do not constitute "legitimate university-related business."⁷ In addition, the "Legal Basis"
11 section of the Memorandum expressly rejects censorship of material accessible through
12 the CSU Chico networks on the "basis of content" or "views of those contributing to its
13 contributing to its creation." Nor would the section on "User Responsibilities and
14 Acceptable Use" limit access by CFA. That section sets out seven general guidelines for
15 use that are in no way incompatible with CFA's role or activities as a union.⁸

21 _____
22 ⁶ Indeed, one could argue that under HEERA § 3568's "other means of communication" language, CFA is
legally entitled to such use even without bargaining.

23 ⁷ Alternatively, one could conclude that by using the e-mail system to disseminate communications about
CFA activities, the University is in violation of its own policy prohibiting public debate or partisan discussion.

24 ⁸ The guidelines are: (1) Threats, Harassment—users may not use the system to threaten or harass others;
25 (2) Respect for Privacy—users must respect the privacy of others; (3) Sharing of Account—users may not let others
26 use their accounts; (4) Academic Honesty—users must respect the intellectual property of others and adhere to
University standards of academic honesty; (5) Illegal/Incompatible Uses—users may not use the system for
27 purposes "inconsistent, incompatible, or in conflict with state or federal law, CSU policy or university policy"; (6)
System Disruptions—users may not intentionally disrupt the system or obstruct the work of others; (7) Operational
28 Procedures—users must respect and abide by the University's operational procedures. One could argue that CFA
communications violate the campus' guidelines on content of e-mail announcements, but where those guidelines
themselves violate the collective bargaining agreement, such reasoning is specious.

1 The guidelines for "E-mail Announcements," published by Chico's Office of
2 Public Affairs and Publications, are more problematic. The criteria used by Public Affairs
3 to evaluate e-mail announcements encompass both technical aspects of e-mail (the
4 "Content must" bulleted portion of the "Criteria" section) as well as message content (the
5 "Content cannot contain" bulleted portion). According to the guidelines, content may not
6 include advertising, "public debate or personal opinion," "political
7 statements/endorsements or fund raising," personal items for purchase/rent, or
8 advertisements/announcements for "outside organizations or nonuniversity-related events
9 or concerns." Beau Grosscup testified that campus president Esteban told him that CFA
10 could not have access to the campus e-mail system because its messages were "partisan."
11 However, under Article 6.3's grant of access to the intra-campus mail service, CFA is
12 entitled to send official Union communications via the all-faculty list without censorship
13 of their content.⁹ To the extent that the guidelines would limit the content of official
14 Union communications, they violate the collective bargaining agreement. CFA must,
15 however, abide by the technical requirements set by Public Affairs for e-mail messages,
16 which are designed to protect the system from operational failures, as well as the
17 "Process" section of the guidelines. The responsible use provisions of EM 97-18 also still
18 apply to CFA. Accordingly, until such time as the parties make other mutually agreeable
19 arrangements, CFA must submit its proposed e-mail messages to the Office of Public
20 Affairs, which may review them for compliance with the technical requirements of the
21
22
23
24
25

26 ⁹ Actually, Article 6.5 exhorts CFA to "exercise responsibility" for the content of materials it intends to post
27 on bulletin boards or distribute through the campus mail services. Thus, grossly irresponsible material could
28 arguably trigger legitimate objections to its posting from CSU. However, in the ordinary course of business, one
would not expect that to occur.

1 campus guidelines for e-mail announcements. This is comparable to CFA's submitting
2 materials to the campus mailroom for distribution under the J-list; presumably the mail
3 room reviews the materials for compliance with the rules for distribution through its mail
4 system before it actually distributes them.

5
6 Additionally, Article 6.3 states: "The labeler (CFA) shall appear on all materials
7 sent through the campus mail service by CFA." In the context of e-mail, CFA should be
8 identified as the sender on all messages that it wants to distribute through the Chico all-
9 faculty list. This will enable individuals who do not want to receive CFA communications
10 to delete such messages without opening them.

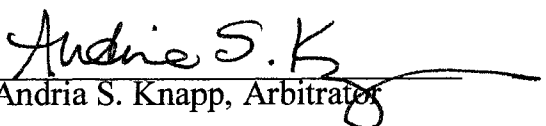
11
12 For "CFA material intended for general distribution through the campus mail
13 services," Article 6.5 requires CFA to provide a copy "in a timely manner to the
14 appropriate administrator." The record does not indicate how this notice has been handled
15 with written communications distributed via the J list at Chico. In the context of e-mail,
16 CFA must submit a copy of proposed e-mail communications to the "appropriate
17 administrator" at Chico, as identified by the University, in a fashion comparable to that in
18 which it submits proposed written communications for distribution through the J list.
19
20

21
22 Under Article 6.1, CFA's access to the CSUnet is "contingent upon the ability of
23 the system to accommodate such usage. . . ." This applies to e-mail messages distributed
24 by CFA via the all-faculty list. The University has raised legitimate concerns about
25 system failures if CFA were to have direct, unrestricted access to the campus e-mail
26
27

1 system.¹⁰ Only a few departments and individuals have such direct access. They do not
2 include the entities most likely to be sending messages to which CFA will feel the need to
3 respond: the Chico campus or central CSU Human Resources Offices or the Assistant
4 Vice Chancellor for Human Resources, Sam Strafaci. There is no basis on which to
5 conclude that access to the all-faculty e-mail list through Chico's Office of Public Affairs
6 would significantly impair CFA's ability effectively to communicate with faculty. CFA's
7 access to the all-faculty list must be consistent with the University's operational needs,
8 which are protected by the technical components of the Office of Public Affairs
9 guidelines. While CFA is entitled under Article 6.3 to access the e-mail system via the
10 all-faculty list administered by Chico's Office of Public Affairs, it is not entitled, without
11 bargaining, to unrestricted direct access.
12
13

14 AWARD

15 For the reasons set forth, the Arbitrator finds that CSU Chico "violated,
16 misinterpreted, or misapplied" Article 6.3 of the Agreement when it denied CFA access
17 to the campus all-faculty e-mail list, and the grievance is sustained. CFA is entitled under
18 Article 6.3 to submit official Union communications for distribution through the CSU
19 Chico all-faculty e-mail list, subject to the limitations discussed in Section E., *supra*. The
20 Arbitrator will retain jurisdiction for a period of ninety (90) days, solely for the purposes
21 of implementing the remedy awarded in the case.
22
23

24 
25 Andria S. Knapp, Arbitrator

26 Date: 29 November 2002

27 ¹⁰ A lengthy message sent at the wrong time could crash the system.