

PERALTA CCD WORKSHOP (8/10/18)  
HYPOTHETICALS

**Hypothetical 1**

- A. The District has never directed employees to take a medical exam to enable assessment of their fitness for duty. However, the operative collective bargaining agreement provides that the District has the right to do this. Yesterday, a manager at one of the District's facilities became concerned about whether an employee could safely perform the functions of the employee's position, specifically, driving a District vehicle from one District location to another. The manager warned the employee that she would be receiving a directive to go to a particular physician for a fitness for duty exam. 10 minutes later, the employee's union representative called the District's Employee Relations Office. The representative indicated that if the District attempted to follow through with this threat, the Union would file charges with PERB (unilateral change) and a grievance, and the employee would take the Union's advice and refuse the manager's directive.
- B. A faculty member receives a variety of student complaints and also is perceived by the Dean that the faculty member is unable to teach effectively. The Dean also perceives that the faculty member has significant memory problems. The Dean recommends to the administration that the District should schedule the instructor for a fitness for duty exam.
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**Hypothetical 2**

The District's collective bargaining agreement (CBA) with Union #1 provides for a 6-month probationary period for all bargaining unit members. The CBA does not state whether or not the District can extend employees' probationary period, but the District has a longstanding practice of extending probationary periods when employees have not had adequate attendance during their probationary periods.

A probationary employee whose job performance was questionable and who had been unavailable to work (sick) for four weeks during the probationary period approached his manager and asked if he was going to pass probation. The manager said that she did not know but that the fact that the employee had been out for a month during the employee's probationary period would make it difficult to pass the employee on probation. The manager suggested that, in lieu of releasing the employee on probation, her probationary period could be extended. The employee did not protest. The day before expiration of the probationary period, the manager extended it by 2 months. The day after expiration of the probationary period, the Union wrote the management an email, indicating that the employee had gained permanency.

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**Hypothetical 3**

Felicity Porter, a tenured math instructor, has had periodically poor performance – being late in submitting final grades; receiving complaints from students about coming late to class, being unprepared and failing to stay current in her field; and spending class time talking local politics. Porter's Dean kept records of these events, including written complaints from students and faculty members going back two years, when the problems first surfaced. Porter learned of these

allegations during her performance review last spring, when they were duly noted in her substandard performance evaluation. Protesting the evaluation, Porter claimed that she had never received written notification of these problems. The Dean pointed to a variety of oral counseling sessions, and further maintained that he had a right to maintain the other documents in his “working file” since Porter’s evaluation three years ago.

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#### **Hypothetical 4**

The District initiates a termination action against Porter, based on the above. Porter’s Union becomes involved, filing unfair labor practice charges with PERB and opposing the termination action.

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#### **Hypothetical 5**

Instructor Chuck Rhodes and District manager Bobbie Axelrod have clashed repeatedly over the years. Axelrod claims that Rhodes over the years has regularly berated and threatened her, including times when his class schedule is not to his liking and when he’s felt that she was not doing her job as an administrator. Axelrod describes many incidents in which Rhodes has yelled at her, invaded her space, and pointed his finger in her face while delivering diatribes against her accusing her of incompetency and bad management. Rhodes counters that Axelrod has actually been unhappy with Rhodes’ politics, his admitted outspoken advocacy against the administration and Axelrod, and fact that Rhodes tried unsuccessfully a couple of years ago to get the District’s Board to terminate Axelrod. Axelrod complains to Employee Relations, indicating that due to Rhodes’ conduct she has been unable to sleep and has trouble concentrating in her job.

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#### **Hypothetical 6**

Jimmy Gee has had a spate of bad luck over the past year, taking ill regularly with alleged coughs and colds, the flu, a couple of sprained ankles, and a minor knee surgery. He ran out of sick leave three months ago. Four months ago, his supervisor begins the process of documenting his absences and warning him in progressively stronger terms that he needed to come to work regularly in order to keep his job.

Gee received a notice of suspension a month ago and filed a grievance in response.

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#### **Hypothetical 7**

- A. Jake Ballard, an account tech, had a spotty job record, and he was about to have his second annual performance review. The day before the review was to occur, after consulting his union rep, he advised his supervisor that he was going to have a union rep attend the performance review. His supervisor said that the union rep could not attend the review. The Union and Jake filed unfair practice charges with PERB.

- B. The performance review occurred without the union rep's presence. A week later, Jake's supervisor scheduled him for a counseling session to assess why Jake's most recent spreadsheeting work had so many errors. Jake again requested union representation. The supervisor denied the request.